

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29/6/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1397 of 2018

City Tower Hotels Pvt Ltd
rep. By its Authorised Signatory
Mr.C.G.Biju
146, 148 V.O.C.Salai
Off.Walltax Road
Chennai 600 003.

...Appellant/Petitioner

Vs

1. The Commissioner
Corporation of Chennai
Chennai 600 003.
 2. The Zonal Officer
Zone V, Greater Chennai Corporation
No.61 Basin Bridge
Chennnai 21.
 3. The District Revenue Officer
Zonal Office - V, No.61
Basin Bridge
Chennai 21.
 4. The Assistant Revenue Officer
Greater Chennai Corporation
Zonal Office - V, No.61 Basin Bridge
Chennai 21.
- ...Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 12/6/2018 passed in Writ Petition
No.14053 of 2018.

Prayer in WP.No.14053/2018:Filed under Article 226 of
Constitution of India to pass a writ or certiorarified
mandamus calling for the records in relation to the letter
No.ZOVRDCR2/1574/2017 dt 21.3.2018 issued by the 3rd
respondent received by the petitioner on 3.5.2018 and quash
the same and direct the 3rd respondent or any other district
revenue officer of Chennai Corporation to assess the
assessment for the petitioner company by giving opportunity to
the petitioner company.

For Appellant:Mr.P.Subba Reddy

J U D G M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Assessment order, dated 21/3/2018, issued by the District Revenue Officer, Zonal Office V, Chennai, was sought to be quashed, by a writ of certiorarified mandamus, with a further direction, to the District Revenue Officer, Zonal Office V, Chennai, or any other District Revenue Officer of Chennai Corporation, to assess the assessment, for the City Tower Hotels Private Limited, by giving an opportunity to the hotel.

2. Supporting the prayer sought for, petitioner has relied on the orders passed by this Court, in W.P.Nos.24124 and 24125 of 2017, by which directions were issued to the competent authority of Chennai Corporation, to cause inspection of the petitioner's building, in the presence of authorised representative of the writ petitioner, take measurements and based on the notes of inspection, Chennai Corporation was further directed to issue provisional notice of assessment, clearly indicating, as to how the Corporation had proposed to revise the property tax.

3. In the above writ petitions, petitioner was also directed to be given fifteen days time, to give objections and on receipt of the objections, the competent authority of the Corporation was directed to pass orders on merits, and in accordance with law. It is further directed that till the above procedure is completed, petitioner shall continue to pay the pre-revised tax at the rate of 96,299/-, without default.

4. According to the petitioner, the above said directions were not implemented in letter and spirit. But the District Revenue Officer/Zonal Officer - 5, Zonal V, Chennai, issued another order, dated 21/3/2018, which came to be challenged, in W.P.No.14053 of 2018.

5. Further contention has been made that petitioner/hotel alone has been discriminated. Though before the writ Court, contentions were made that the District Revenue Officer, Zonal V, Chennai has failed to adhere to the directions issued in W.P.Nos.24124 and 24125 of 2017 and there was discrimination, writ Court, while declining to quash the assessment order, dated 21/3/2018, at paragraph Nos.6 to 8, ordered as hereunder:-

"6. The learned counsel for the petitioner also submits that no inspection was conducted by the officials before issuing the notices in Form No.7.

7. This inherent defect goes to the root of the matter thereby affecting the very assessment proceedings. Since there is a gross procedural error in the matter of reassessment, the entire proceedings have to

be set aside, giving liberty to the respondent Corporation to initiate revision proceedings afresh.

8. In the light of the above, the writ petitions are allowed and the impugned notices in Form No.7, dated 27/6/2017 and 6/7/2017 are set aside. Consequently, the demand made vide letter, dated 14/7/2017 is also set aside. There will be direction to the competent authority of the respondent Corporation to cause inspection of the petitioner's building in the presence of the authorised representative of the petitioner take measurements and based on the notes of inspection, the respondent Corporation is directed to issue provisional notice of assessment clearly indicating as to how they propose to file their objections. On receipt of the objections from the petitioner, the competent authority of the respondent Corporation shall afford an opportunity of personal hearing to the authorised representative of the petitioner and thereafter, proceed to pass final assessment order on merits and in accordance with law. Till the above procedure is completed, the petitioner shall continue to remit the property tax at the rate of revised rate i.e., Rs.96,229/- without default. No costs. Consequently, the above W.M.Ps are closed."

6. Being aggrieved by the order made in W.P.No.14053 of 2018, instant appeal is filed on the following grounds:-

(i) The District Revenue Officer, Zonal-5, Greater Chennai, third respondent, did not hear the grievances of the appellant even though specific directions given by the writ Court in W.P.Nos.24124 and 24125 of 2017, dated 07.09.2017 and passed orders in a vindictive manner.

(ii) Order passed by the third respondent is with retrospective effect and thereby increasing the half yearly tax to eleven times than the existing the half yearly tax.

(iii) Writ Court has failed to see and note that the third respondent has made a false statement that the appellant failed to provide particulars, eventhough such particulars and details submitted to the third respondent on various dates, were duly acknowledged by them.

(iv) Writ Court has failed to see that the appellant has paid the tax regularly and there is no default on their side and payments were made upto date, without any default.

(v) Writ Court has failed to appreciate that the respondents have acted in a vindictive manner, without even taking into consideration of the orders passed by the Hon'ble Court passed on 07.09.2017 in W.P. Nos.24124 and 24125 of 2017.

(vi) Writ Court has failed to consider that the appellant has given objections dated 05.03.2018 and finally, the 3rd Respondent passed orders dated 21.03.2018, sticking to the same values and added to that the 3rd Respondent has stated that the petitioner has not filed their objections which is false.

(vii) Writ Court has failed to consider that the assessment had been passed on the basis that, there is full occupancy, and tariff taken is higher than the rent levied on the occupants. Several concessions were given to the occupants based on the demand. Such concessions are usual practice in the hotel industry.

(viii) Writ Court has failed to appreciate that the order passed by this Court on 07.09.2017 in para No.8, it has been made it clear that the competent authority must afford an opportunity for personal hearing to the appellants and thereafter proceed to pass final orders which has not been done in the Appellant's case.

(ix) Writ Court has failed to consider that the method of assessment is contrary to the actual facts and whatever turnover made already has been submitted by the Appellant to the Income Tax Department and these statements submitted to the Income Tax Department is the factual turnover of the Company.

7. Though Mr.P.Subba Reddy, learned counsel for the appellant made submissions, on the above facts and grounds, and sought for interference, this Court is not inclined to entertain the appeal. As rightly pointed out by the writ Court, under the provisions of the Chennai City Municipal Corporation Act, 1919, the Tribunal, which is the Appellate Authority is conferred with the powers of a Civil Court and it can receive the evidence, re-appreciate the factual matrix and then take a decision, in the matter as to whether, tax has to be levied on the enhancement tax.

8. Repeatedly, Courts have held that when there is an alternate remedy, writ petition should not be ordinarily entertained. Moreso, in taxing statutes, when there is a hierarchy of authorities, where factual issues raised, are to be substantiated by proof, writ petition should not be entertained. Reference can be made to few decisions.

9. In Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon'ble Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

10. In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17(SC) = 2000 (10) SCC 13, the Hon'ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

11. In Munshi Ram v. Municipal Committee, Chheharta, (AIR 1979 SC - 1250), the Hon'ble Apex Court observed that,

"when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded."

12. The Hon'ble Apex Court in Titaghur Paper Mills Co. Ltd., v. State of Orissa, reported in 1983 (2) SCC - 433, held as follows:

"11. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed."

13. The Hon'ble Division Bench of this court in a decision reported in 2005 (2) MLJ 246 (M/s.Nivaram Pharma Private Limited Vs. The Customs, Excise and Gold (Control), Appellate Tribunal, South Regional Bench, Madras and Others), has observed that a writ petition is not maintainable when there is a statutory remedy of appeal available more particularly in fiscal matters. Relevant paragraphs are extracted hereunder:

"4. We are surprised that this writ petition was entertained at all. There was a clear alternative remedy against the order of the CEGAT dated 09.07.1997 by means of filing a Reference Application before the CEGAT under Section 35G(1) of the Central Excise Act (hereinafter referred to as the Act) and if that application was rejected by the CEGAT there was a second alternative remedy of approaching this Court under Section 35G(3) of the Act seeking a direction to the CEGAT to make a reference to this Court.

5. It is well settled by a series of decisions of the Supreme Court that particularly in tax matters there should be no short circuiting of the statutory remedies, vide Titaghur Paper Mills Co.

Ltd. Vs. State of Orissa, AIR 1983 SC 603, Assistant Collector of Central Excise, Chandan Nagar Vs. Dunlop India Limited, AIR 1985 SC 330, etc.

7. A Constitution Bench of the Supreme Court in G.Veerappa Pillai Vs. Raman and Raman Ltd., AIR 1952 SC 192 held that as the Motor Vehicles Act is a self contained code and itself provides for a forum for appeal/revision, the writ jurisdiction should not be invoked in matters relating to its provisions. A similar view was taken in Assistant Collector of Central Excise Chandan Nagar Vs. Dunlop India Limited, AIR 1985 SC 330.

15. There are well settled principles of writ jurisdiction and Judges also must exercise self-discipline. It has been repeatedly held by the Supreme Court that in tax matters there should be no short circuiting the statutory remedies of appeal, revision, etc. We are therefore surprised that in this case the learned single Judge did not observe this well settled principle of self-discipline and entertained the writ petition despite existence of statutory remedies."

14. The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon'ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

"Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

15. In United Bank of India Vs. Satyawati Tondon and Others {(2010) 8 SCC 110}, the Hon'ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision

etc., and the particular legislation contains a detailed mechanism for redressal of his grievance."

16. In Nivedita Sharma Vs. Cellular Operators Association of India and Others {(2011) 14 Supreme Court Cases 337}, the Honourable Apex Court held that,

"An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, the high Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal or grievance still holds the field."

17. The Hon'ble Apex Court, after considering a catena of cases, in Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal Case {Thansigh Nathmal Vs. Supt. of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd Vs. State of Orissa (1983) 2 SCC 433} and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance

still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. Vs. State of Haryana* (1985) 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife", the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act, as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in *Chhabil Dass Agarwal Vs. Union of India* {W.P.(c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under

Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

18. After considering a plethora of judgments, in Union of India and Others Vs. Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para 36, the Hon'ble Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i). The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii). The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii). When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv). The High Court will not entertain

a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

19. In Veerappa Pillai Vs. Raman & Raman Ltd {1952 SCR 583}, CCE Vs. Dunlop India Ltd {(1985) 1 SCC 260}, Ramendra Kishore Biswas Vs. State of Tripura {(1999) 1 SCC 472}, Shivgonda Anna Patil Vs. State of Maharashtra {(1999) 3 SCC 5}, C.A.Abraham Vs. ITO {(1961) 2 SCR 765}, Titaghur Paper Mills Co Ltd., Vs. State of Orissa {(1983) 2 SCC 433}, H.B.Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks {(1998) 8 SCC 1}, Tin Plate Co. of India Ltd., Vs. State of Bihar {(1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh {(1999) 1 SCC 209} and Punjab National Bank Vs. O.C.Krishnan {(2001) 6 SCC 569}, the Apex Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

20. Reverting to the case on hand, appellant has contended that directions issued in W.P.Nos.24124 and 24125 of 2017 extracted supra, have not been followed. Appellant alone has been discriminated. As per the statute, Tribunal is a final fact finding authority. The above factual aspects always be raised before the fact finding authority. There is no extraordinary circumstances, warranting interference under Article 226 of the Constitution of India. Accordingly, Writ Appeal is dismissed.

21. At paragraph No.8 of the order made in W.P.No.14053 of 2018, writ Court has granted fifteen days time to file an appeal. For brevity, the same is extracted hereunder:-

"The petitioner is granted 15 days time to file an appeal before the Taxation Appeal Tribunal of the respondent Corporation and if the same is filed along with a copy of this order, the Taxation Appeal Tribunal shall entertain the appeal without rejecting the same on the ground of limitation and proceed to take a decision on the appeal subject to the petitioner complying with the condition of pre-deposit. For a period of 15 days, the respondent Corporation shall not initiate any coercive action against the petitioner."

22. Fifteen days' time will commence from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

mvs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner
Corporation of Chennai
Chennai 600 003.
2. The Zonal Officer
Zone V, Greater Chennai Corporation
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4. The Assistant Revenue Officer
Greater Chennai Corporation
Zonal Office - V, No.61 Basin Bridge
Chennai 21.

+1cc to Mr.P.Subba Reddy, Advocate Sr.No.41931

PVS(CO)

sm:5.7.2018

सत्यमेव जयते

W.A.No.1397 of 2018

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