IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :20.09.2018

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4922 of 2010

S.K.M.Mohideen Maraicair(deceased)

1.Fathima
2.Nilofer
3.Shaik Abdul Kader
4.Jenofer
5.Munofer
(petitioners 1, 2, 4 & 5 rep. by their
power agent Shaik Abdul kader) .. Petitioners

(The petitioners 1 to 5 were impleaded
as per order dated 17.09.2018 in WMP.No.26812/2016)

vs

Corporation of Chennai,
Rep.by its Chief Executive Officer,
Commissioner,
Chennai - 600 003 .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified, calling for the records of the demand notice dated 05.02.2010 R.D. Zone-II, Bill No.1157, Ward No.28 for the premises No.58, Mannady Street, Chennai - 600 001 and quash the same.

For Petitioners : Mr.N.A.Mohamed Noohu
Mr.Martin.D.Thankan
For Respondents : Mr.B.B.Senthil Kumar

O R D E R

The demand notice issued by the respondent Corporation in proceedings dated 05.02.2010 is under challenge in this writ petition. The petitioner states that he is the owner of the premises at No.58, Mannady Street, Chennai - 600 001 and the initial demand was made by the Chennai Corporation and annual value of Rs.37,674/- was assessed in the year 1991 as per the declaration given by the writ petitioner.

2. The grievance of the writ petitioner is that the enhancement of property tax was made without providing a

reasonable opportunity to the writ petitioner. Increased annual value in respect of the property belongs to the writ petitioner was made improperly. It is contended that the impugned demand notice dated 04.02.2009 in Bill no.1157 for the premises at Door No.58, Mannady Street, Chennai - 600 001 from the Assistant Revenue Office of the respondent invoking Rule 21 of Schedule IV Part of Madras Act IV of 1919 calling upon the petitioner to pay Rs.21,44,973/-failing to comply a distress warrant will be issued is unfortunate and illegal exercise of power. A reading of Section 137 of Madras Act IV of 1919 read with Part IV Schedule IV and Rule 2w when the dispute relates to the very basis of the levy of assessment without proper notice to the writ petitioner and demanding tax is improper.

3. The grounds raised by the writ petitioner in the present writ petition had been denied by the respondents. The learned counsel appearing for the respondents relying on the counter affidavit filed by the 1st respondent states that Section 99 to 109 of Chennai City Municipal Corporation Act, 1919 empowers the Corporation of Chennai to levy and collect the property tax on every building together within its site and other adjacent premises. The Half yearly Property Tax is levied based on the Annual Rental Value and the Annual Rental Value taking the following into account:

a) Build Up area
B) Usage
C)Occupancy
D) Type of Construction
E) Basic tax rate

4. It is submitted that the following formulae are adopted for arriving at the Half Yearly Tax:

a) Monthly Rental Value = Plinth area X Basic Rate
B) Annual Rental Value = Plinth area X Basic Rate X 10.92
C)Half Yearly Rent $= \frac{\text{Annual Rental Value X 12.40}}{100}$

5. If the type of construction is semi-permanent, then 20% discount is allowed on the Half Yearly Property Tax. In case of owner occupied property, 25% discount is applicable. The method of calculation of Half Yearly Property Tax slightly varies in case of Special Buildings such as Hospitals, Cinema Theatres, Marriage Hall etc.,

6. The property belongs to the writ petitioner is located in Ward no.28, Zone No.2, Bill No.1157 property bearing Door No.58, Mannady Street, George Town, Chennai -1, within Chennai Corporation Limits. The building has 5 number of floors (ground + 4 floors) and the total built up area works out to 26250 square feet. The usage is non-residential in nature and the building is occupied by tenant. The type of building is

permanent. The Annualvalue is Rs.8,00,600/- and the half yearly property tax works out to Rs.95,672/- per half year. The total arrears payable by him arise from 2/1998-99 to I/2010-11 is Rs.22,40,622/-. The property belongs to the writ petitioner at No.58, Mannady Street, Chennai – 600 001 and the building usage details and floor details are as follows:

Floor No.	Built up area	Usage	Occupancy	Type of construction
0	5250	Non-residential	Tenant	Permanent
1	5250	Non-residential	Tenant	Permanent
2	5250	Non-residential	Tenant	Permanent
3	5250	Non-residential	Tenant	Permanent
4	5250	Non-residential	Tenant	Permanent
Current tax Rs.99,672/-				

7. The learned counsel for the respondent states that the half yearly property tax has been worked out strictly according to the prevailing rules and the rate fixed uniformly according to the area and the authority does not decrease tax. Once in 5 years property tax was enhanced for the property owners of the Chennai City. In this case G.S.A.V. Rs.1,03,358/- G.S.Tax Rs.12,351. The petitioner also paid the tax upto I/1998-99.

8. According to the Annual Value fixed in the property tax metro water tax will be levied based on the GRS revision at an AV of Rs.8,00,600/- and Tax Rs.9,56,672/-. It is further contended that as per CCMC Act, 1919 Sec.375 & Sec.137, 20(2) for arrears of property tax distrait warrant will be issued. The notice was issued through courier service and as per Sec.138G of CCMC Act, 1919, if the petitioner feels the orders passed by the Commissioner is in excess, he has to file objections before the Commissioner and after final orders he has to file an appeal before Taxation Appeal Tribunal, but without doing so directly approach this Court.

9. On perusal of the entire facts and circumstances, this Court is of an opinion that the writ petitioner is a chronic defaulter of payment of property tax. The writ petitioner has not paid any property tax for the past about 19 years. Though, the value of the property is high and the property is situated very much in the heart of the Chennai City, the writ petitioner has not paid the property tax for about 19 years. This being the factum of the case, no leniency can be shown in respect of the case of the writ petitioner. The writ petitioner being a chronic defaulter is liable to pay the property tax without any further delay. The grounds raised by the writ petitioner can be adjudicated before the appellate authority as well as before the

Taxation appellate tribunal and before the municipal tax cases, Principal District Judge, City Civil Court under the provisions of the Chennai City Municipal Corporation Act, 1919. The writ petitioner admittedly has not exhausted the appeal remedy provided under the Statute. Without exhausting the appeal remedy, no writ can be entertained in view of the fact that certain factual discrepancy now raised cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

10. This being the legal principles to be followed, this Court is of an opinion that the writ petitioner is liable to pay the entire arrears of property tax assessed by the respondent Corporation without any further delay. Accordingly, the following orders are passed:

1. The relief as such sought for in the present writ petition stands rejected.

2. The writ petitioner is directed to pay the entire arrears of property tax amount of Rs.36,77,183/- within a period of four weeks from the date of receipt of a copy of this order.

3. In the event of not paying the arrears of property tax within the time limit stipulated above, the respondent Corporation is directed to initiate all further proceedings to recover the entire property tax arrears by following the procedures contemplated under law.

4. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

sk/pns

To

The Chief Executive Officer,
Corporation of Chennai,
Commissioner,
Chennai - 600 003

+2cc to Mr.N.A.Mohamed Noohu, Advocate, S.R.No.65320

W.P.No.4922 of 2010

rrs 08/10/2018