IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5619 of 2018
and W.M.P.No.6943 of 2018

N.Sudharasanam .. Petitioner

Versus

1.The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai - 600 003.

2.The Assistant Revenue Officer
Zonal Office V
Greater Chennai Corporation
No.61, Basin Bridge Road
Chennai - 600 021. .. Respondents

The Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the second respondent in relation to orders Ref.Z.O.V.R.D.C.No.R2/SPL/2017 dated 04.12.2017 and the consequential orders ref Zonal Office-5/R.D/SPL dated 07.02.2018 and Z.O.V.R.D.C.No.R2/SPL/2017 dated 06.03.2018, quash the same as having been passed without jurisdiction and in violation of the principles of natural justice.

For Petitioner : Ms.Dakshayani Reddy

For Respondents : Mr.Karthikaa Ashok
Standing Counsel

ORDER

Heard Ms.Dakshayani Reddy, learned counsel appearing for the petitioner and Ms.Karthikaa Ashok, learned Standing Counsel for the respondents Corporation.

2. The petitioner, who is the owner of the property at No.23(12), Prakasam Salai, Broadway, Chennai - 600 001, is aggrieved by the revision of property tax in respect of his building. The respondents issued a notice dated 04.12.2017 stating that there is an under assessment of property tax in respect of the petitioner's property and enclosed a notice in Form-7 dated 04.11.2017, proposing to fix the annual value of the building at Rs.4,44,968 and half-yearly tax at Rs.55,175/-, as against the existing tax at Rs.39,940/-. Form-7 notice states that within 15 days of receipt of such

notice, an appeal has to be preferred to the Commissioner, Greater Chennai Corporation. Accordingly, the petitioner has preferred an appeal to the Commissioner on 18.12.2017, which was sent by post on 19.12.2017. While the appeal petition was pending, the impugned notice dated 06.03.2018 has been sent to the petitioner, wherein it has been stated that a copy of the notice in Form-7 is enclosed along with the communication dated 06.03.2018.

3. It is pointed out by the learned counsel for the petitioner that what has been enclosed along with the said letter is a Form-10 order and not a form-7 notice. Parallely, the respondents have issued a distraint notice on the occupier of the premises and thus, collected a sum of Rs.1,20,000/-. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the respondents corporation seeks to justify their action by contending that there is an under assessment because a head room in the third floor has not been taken into consideration and there is a change of usage and apart from that, there is a change in the constructed area. The learned counsel further submits that the final assessment order in Form-10 has been issued on 10.03.2018.

5. From the counter affidavit, I find that the measurement given as of now, pursuant to an inspection, is marginally different in respect of the ground, first and second floors. In my view, this marginal difference of less than 100 sq. ft could have been on account of an error in measuring the property at the first instance and it is being only a marginal difference, much credence cannot be given to that. So far as the head room in the third floor is concerned, according to the respondents, it has not been assessed and it has been tenanted.

6. The learned counsel for the petitioner submitted that wherever there is a change of usage, the petitioner has established before the authority regarding the date of change of user and he is agreeable to reasonable increase of property tax as may be assessable, when the premises is tenanted.

7. So far as Form-10 notice dated 10.03.2018 is concerned, it was issued two days prior to the filing of this writ petition. I find that when the objections filed by the petitioner before the Commissioner is pending, as per the directions contained in Form-7 notice, without disposing of the same in a proper manner and without affording an opportunity to the petitioner, the final assessment could not have been made.

8. The learned counsel for the respondents strenuously contended that as against the impugned final assessment order, the petitioner has an effective alternative remedy by way of

an appeal before the Taxation Appellate Tribunal. The availability of an alternative remedy is not always a bar for entertaining a writ petition under Article 226 of the Constitution of India, especially, when the Court finds that there is violation of principles of natural justice.

9. In the preceding paragraphs, the Court finds that the petitioner has not been afforded a fair opportunity. Therefore, the availability of an alternative remedy is not a bar for entertaining the writ petition.

10. Thus for the above reasons, the writ petition is allowed and the impugned communication dated 06.03.2018 and the consequential final assessment made in Form-10 notice dated 10.03.2018 are set aside and the matter is remitted to the respondents for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, take note of the observations made in this order and pass a fresh final assessment order in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1.The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai - 600 003.

2.The Assistant Revenue Officer
Zonal Office V
Greater Chennai Corporation
No.61, Basin Bridge Road
Chennai - 600 021.

+1cc to Mr.T.Ashok, Advocate, S.R.No.46944
+1cc to Mr.Dakshayani Reddy, Advocate, S.R.No.47785
+1cc to the Government Pleader, S.R.No.

W.P.No.5619 of 2018

EV(CO)
SMI/02.08.2018