

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2018

CORAM

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

W.P.No. 3142 of 2017

W.M.P.No.3068 & 3069 of 2017

Indralok Hotel Private Limited,
Rep by its General Manager
Mr.Subhadeep Datta,
New No.216, Old No.869/B,
Periyar E.V.R.High Road,
Kilpauk, Chennai - 600 010.

..Petitioner

.vs.

1. The Corporation of Chennai
Rep. by its Commissioner,
Ripon Buildings,
Chennai - 600 003.
2. The Assistant Revenue Officer Ward VIII,
Corporation of Chennai,
Chennai - 600 003.
3. The Deputy Commissioner (R&F),
Revenue Department,
Corporation of Chennai,
Chennai - 600 003.
4. The Zonal Officer,
Zone 8, Corporation of Chennai,
36B, Pulla Avenue, Shenoy Nagar,
Chennai - 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent pertaining to letter dated 22.11.2016 in Ref.No.Z.O.VIII. R.D.C.No.R2/521/2016 and quash the same and consequently direct the respondents to correct the records relating to property tax of the petitioner's property bearing Door No.216, Poonamalle High Road, Kilpauk, Chennai 600 010 and enter the rate of tax for the first hald of 2006-2007 as Rs.11,63,702/-.

For Petitioner : Mr.Richardson wilson

For Respondents : Mr.T.C.Gopala Krishnan

O R D E R

The order of the fourth respondent dated 22.11.2016, directing the writ petitioner to pay the property tax to the tune of Rs.64,58,745/- and also the second half assessment year 2006-07 amounting to Rs.11,63,702/- in total Rs.76,22,447/- is under challenge in this writ petition.

2. The learned counsel appearing for the petitioner states that the original order of assessment of the property tax was questioned by the writ petitioner before the appellate authority namely, the Commissioner, Chennai Corporation. The Commissioner, Chennai Corporation has reduced the property tax amount from Rs.64,58,745/- to Rs.38,91,504/-. The petitioner preferred further appeal before the Taxation Appeals Tribunal, Corporation of Chennai, who in turn further reduced the tax amount to Rs.11,63,702/-. Thereafter, the petitioner had not preferred any further appeal before the Principal City Civil Court through the Municipal Tax Appeal. However, the petitioner has chosen to file this writ petition challenging the claim notice issued by the respondent Corporation in proceeding dated 22.11.2016.

3. The learned counsel for the petitioner further stated that there was a clerical error in respect of the amount of property tax cited in the impugned order. The reduction granted by the Taxation Appeals Tribunal has not been properly calculated by the respondents. Thus, the writ petitioner is constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the Chennai Corporation opposed the contention by stating that in respect of the property tax arrears up to first quarter of 2006-07, the same was assessed to Rs.64,58,745/- which was never disputed nor any appeal was preferred before the Commissioner as well as before the Taxation Appeals Tribunal. The writ petitioner had preferred an appeal only in respect of the assessment made for the second half of the financial year 2006-07. Thus, the very reduction as stated is unconnected with the property tax assessed in respect of the first half of the financial year 2006-07 and therefore, the amount of property tax fixed in respect of first half year 2006-07 was Rs.64,58,745/-, which was not subject matter of any of the appeal in Court of law. Hence the writ petitioner is liable to pay the property tax of Rs.64,58,745/- up to the first half year of 2006-07.

5. However, in respect of the second half year of 2006-07, the writ petitioner preferred an appeal and that appeal was dealt with by the Commissioner of Chennai as well as the Taxation Appeals Tribunal and the amount was reduced to

Rs.11,63,702/-. Thus the reduction of property tax was granted only in respect of the second half year of 2006-07 and accordingly, the writ petitioner is liable to pay a sum of Rs.64,58,745/- up to first half year of 2006-07 and Rs.11,63,702/- towards the second half of 2006-07. Accordingly, the writ petitioner is liable to pay the total arrears of property tax amount of Rs.76,22,447/- as per the demand notice issued to the writ petitioner under proceedings dated 22.11.2016.

6. The learned counsel appearing for the respondent states that the current property tax is being paid by the writ petitioner and there is no arrears as such. Thus, the petitioner is liable to pay only the arrears of property tax amounting to Rs.76,22,447/- as per the demand notice dated 22.11.2016.

7. This Court is of the opinion that in respect of the first arrears amount of Rs.64,58,745/- to be paid for the first half of 2006-07, the writ petitioner has not preferred any appeal before the appellate authority or before the Taxation Appeals Tribunal or before the Principal City Civil Court through the Municipal Tax Appeal. Thus, the arrears amount become final and the writ petitioner is liable to pay the said amount. In respect of the second arrears fixed for the second half of 2006-07, amounting to Rs.11,63,702/-, the initial fixation made by the Corporation was reduced by the Commissioner at the first instance and Taxation Appellate Tribunal by the second instance, reduced the amount to Rs.11,63,702/- which has to be paid by the writ petitioner towards the arrears of property tax due.

8. The contention raised by the learned counsel for the writ petitioner that there was a clerical error, which is left open to the petitioner to approach the Principal City Civil Court through the Municipal Tax Appeal in this regard. However, in respect of the first claim for the first half of 2006-07, there was no appeal and the petitioner is liable to pay the arrears of property tax amount of Rs.64,58,745/-. In respect of the second claim alone, the petitioner can approach the Principal City Civil Court through the Municipal Tax Appeal and therefore, if at all there is any clerical error, the same shall be rectified by filing appeal before the Principal City Civil Court through the Municipal Tax Appeal under Part V Rule 12 of the Chennai City Municipal Corporation Act.

9. This Court is of the opinion that the payment of property tax to Chennai Corporation is the source for implementing welfare schemes and to provide infrastructure facilities and common amenities to the citizens residing within the jurisdiction of Chennai city corporation limits and from and out of the tax payment alone, the welfare schemes are

implemented by the Chennai Corporation limits. There cannot be any compromise in respect of recovery of property tax arrears from the citizens. In the event of delay or non payment, the same will cause prejudice to all other citizens residing within the Chennai City. This apart, the non payers of property tax are infringing the right of other citizens, who all are promptly paying the tax to Chennai City Corporation. The defaulters are not supposed to enjoy the common facilities, on the cost of other citizens, who are all paying the tax in time to Chennai Corporation. Such an attitude of the citizens in delaying the payment of property tax to be deprecated.

10. In respect of the disputes in relation to errors or mistakes regarding the assessment of property tax, the aggrieved persons shall approach the competent Appellate Authority or the Appellate Taxation Tribunal and thereafter, the Municipal Tax cases under the Act to adjudicate the issues. However, the Courts must be cautious that the persons, who are approaching the Court for reduction of property tax is liable to pay the tax and all such discrepancies and disputes shall be resolved by way of an adjudication as contemplated under the Act.

11. This Court is of the considered opinion that the Appellate Authority and the Tribunals are not expected to show any such leniency or misplaced sympathy in respect of payment of property tax by the assesses. The Hon'ble Supreme Court of India reiterated that the benefit of doubt in respect of the tax matters should go to the revenue and certainly not to the tax payers. However, such doubts can be cleared only through the adjudicative process. The Revenue to the State is the larger interest of the public and the same must have priority. Under these circumstances, all the authorities including Appellate Authority, Tribunals must ensure that the payment of property tax are not evaded nor postponed. Once if it is evaded or postponed on flimsy reasons, then the same will create a wrong precedent in the mind of the people, who all are liable to pay the tax to the State. This apart, all such adjudications in respect of collection of tax are to be undertaken without causing any delay and to be decided at the earliest possible. Long delay in disposing of such tax matters will result financial loss to the State Exchequers. The consequences of financial loss to the State Exchequers are disastrous and the same will affect the welfare schemes and other activities to be provided by the State to the public at large under the Constitution of India. Thus, it affects the Constitutional principles and perspectives. The State is not supposed to waste the money and the tax payers money are to be spent judiciously and reasonably even by the State. Thus, the collection of taxes are also imminent in respect of running the public administration. Thus, the Courts must also be cautious, while granting interim orders of State of the payment of tax to the

State. Only on exceptional circumstances, if there is a gross injustice or direct violation of the statutes, then alone the interim orders can be granted, stalling the payment of tax by the assesses to the State. Adjournments in tax matters can never be claimed as a rule. Adjournments in such matters are only exceptions. Only on certain genuine grounds, adjournments can be granted. In all other circumstances, the Courts are bound to proceed with the tax matters and decide without causing any undue delay. Thus, the efficiency in collection of revenue to the State is of paramount importance as the same has got financial implications in respect of the public administration.

12. This Court is of an opinion that the writ petitioner has to pay the arrears of property tax and if any clerical errors, the same can be rectified by way of an appeal. In the event of excess payment, the amount can be adjusted in the future payment of property tax and if any lesser payment, the petitioner may be directed to pay the balance amount. Accordingly, the following orders are passed:

i) The relief sought for in this writ petition stands rejected.

ii) The writ petitioner is directed to pay the total arrears of property tax amount to the tune of Rs.76,22,447/- within a period of four weeks from the date of receipt of a copy of this order.

iii) In the event of failure on the part of the writ petitioner in paying the property tax arrears within the time stipulated above, the respondent corporation is directed to initiate all further actions to recover the amount by initiating proper action and by following the procedures contemplated under law.

13. Accordingly, this writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

pns/rts/kak

To

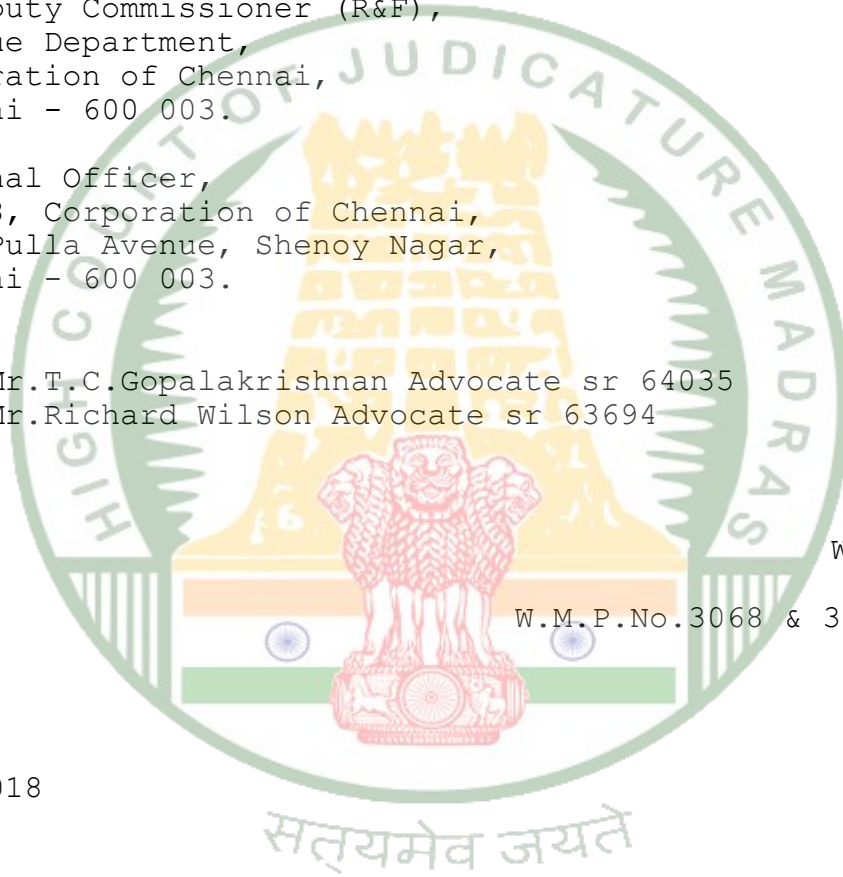
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+1 cc to Mr.T.C.Gopalakrishnan Advocate sr 64035
+1 cc to Mr.Richard Wilson Advocate sr 63694

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