In the High Court of Judicature at Madras

Dated : 10.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.7847 & 7848 of 2018
& WMP.Nos.9791 to 9794 of 2018

1.Mrs.Girija Pandey
2.Ms.Vasundhara Devi (a) Kanchana ...Petitioners in both the petitions

Vs

1.The Commissioner, Corporation of Greater Chennai, Ripon Buildings, Chennai-3.

2.The Assistant Revenue Officer, Zone-9, Corporation of Greater Chennai, No.1, Lake Area, 4th Cross Street, Nungambakkam, Chennai-34. ...Respondents in both the petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus (i) to call for the records of the second respondent herein relating to the impugned final notice in Ref. No.Ma.A-9/Va.Thu.Na.Ka.No.R-1/DN-117/2018 dated 01.3.2018 and the impugned warrant of attachment dated 22.3.2018 in Ref.No.Ma.A-9/VA.Thu. Na.Ka.No.R-1/DN-117/44/ 2018 both issued by 2nd respondent in respect of property in Old Door No.56/2 corresponding to New Door No.14/2, Giri Road, T.Nagar, Chennai-17, quash the same and consequently direct respondents 1 and 2 to consider the representations submitted by the petitioners on 23.7.2012, 01.8.2012, 08.2.2015, 21.7.2015 and 21.8.2015 seeking re-fixation of property tax on residential basis to the property in Old Door No.56/2 corresponding to New Door No.14/2, Giri Road, T.Nagar, Chennai-17 on merits with retrospective effect (WP. No.7847 of 2018) and (ii) to call for the records of the 2nd respondent herein relating to the impugned final notice in Ref.No.Ma.A-9/Va.Thu.Na.Ka.No.R-1/DN-117/2018 dated 01.3.2018 and the impugned warrant of attachment dated 22.3.2018 in Ref.No.Ma.A-9/VA.Thu.Na.Ka.No.R-1/DN-117/43/2018 both issued by 2nd respondent in respect of property in Old Door No.56/1 corresponding to New Door No.14/1, Giri Road, T.Nagar, Chennai-17, quash the same and consequently direct respondents 1 and 2 to consider the representations submitted by the petitioners on

23.7.2012, 01.8.2012, 08.2.2015, 21.7.2015 and 21.8.2015 seeking re fixation of property tax on residential basis to the property Old Door No.56/1 corresponding to New Door No.14/1, Giri Road, T.Nagar, Chennai-17 on merits with retrospective effect (WP.No.7848 of 2018).

For Petitioners : Mr.A.S.Vijayaraghavan
For Respondents : Mrs.Karthika Ashok

COMMON ORDER

Mrs.Karthika Ashok, learned Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioners, who are the owners of the properties in question, have challenged the final warrant notices and the distress warrant notices issued by the respondent - Corporation threatening to take action against the petitioners for non payment of the enhanced property tax.

3. The two properties, which are the subject matter of these writ petitions, are a temple and a residential flat. The petitioners filed an application before the second respondent for grant of exemption from levy of property tax in respect of the temple and the same is pending. The petitioners entered into a registered lease deed with Arulmighu Siddhi Vinayagar Swamy Trust agreeing to lease out the flat for residential purposes. The reason for assessing the said flat at commercial rate is on the ground that the office of the said trust has been shown to be in the said flat.

4. The undisputed fact being that the priest, who performs daily poojas, is residing in the said flat, which is a single bedroom flat measuring about 600 sq.ft. Though the trust deed shows that the temporary office of the trust is in the flat, that, by itself, cannot be taken as if the flat is put to non residential usage.

5. The test would be as to what is the transaction between the trust and the petitioners, which can be seen from the lease deed dated 11.7.2012, registered as doc.No.1476 of 2012 on the file of the Sub-Registrar, T.Nagar. The lease deed clearly states that it is for residential purpose only. Apart from that, on facts, it is found that the priest is residing in the said flat. As on date, the flat should be treated as a residential premises and not as a commercial establishment.

6. Accordingly, the writ petitions are allowed, the final warrant notices and the distress warrant notices respectively dated 01.3.2018 and 22.3.2018 are set aside and the matters are remanded to the second respondent with the following directions :

(i) The second respondent is directed to consider the representation of the petitioners dated 01.8.2012 for grant of exemption from levy of property tax in respect of the temple. The photographs produced by the learned Standing Counsel for the respondent Corporation show that though the temple is situated within the apartment complex area, it is open to public, as there is a gate from the road leading to the temple. Furthermore, it is stated that the public in the area are regular worshipers of the temple. Therefore, the second respondent shall consider these factors and pass an order with regard to the claim for exemption within a period of six weeks from the date of receipt of a copy of this order.

(ii) With regard to the flat, the second respondent is directed to revise the assessment under the head 'residential occupation', from the year 2012 onwards and accordingly, issue a demand, which shall be paid by the petitioners.

(iii) It is made clear that the petitioners cannot claim for refund of property tax paid prior to 2012, as this Court has directed the revision to be made only from the year 2012 onwards i.e. prospectively. This direction shall be complied with within six weeks from the date of receipt of a copy of this order.

No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner, Corporation of Greater Chennai, Ripon Buildings,
Chennai-3.

2.The Assistant Revenue Officer, Zone-9, Corporation of Greater Chennai,
No.1, Lake Area, 4th Cross Street, Nungambakkam, Chennai-34.

RS

+2cc to Mr.A.S.Vijayaragavan, Advocate Sr.No.26234
+1cc to Mrs.Karthika Ashok, Advocate SR.No.26258

SSI(CO)
sm:26.4.2018

WP.Nos.Nos.7847 & 7848 of 2018
& WMP.Nos.9791 to 9794 of 2018