IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.427 of 2018
and C.M.P.No.3762 of 2018

The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003. .. Appellant/Respondent

Vs.

1. N.Ramachandran

2. R.Rajesh Babu .. Respondents/Petitioners

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court, dated 27.11.2017, made in W.P.No.25146 of 2017.

Prayer in W.P.25146/2017:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the Principal Judge, City Civil Court, Chennai, and quash the order dated 08.02.2017 in M.T.A No 01/2009 as illegal, arbitrary and perverse.

For Appellant : Mrs.Narmatha Sampath, A.A.G., Assisted by Mrs.Karthikaa Ashok

For Respondents : Mr.J.R.K.Bhavanatham

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J U D G E M E N T

(Judgement of the Court was made by S.MANIKUMAR, J.)

Instant writ appeal is directed against the order made in W.P.No.25146 of 2017, dated 27.11.2017, by the Writ Court. Said order reads as follows:

"Heard Mr. P.B.Ramanujam learned counsel for the petitioners' and

Mrs.Karthika Ashok learned Standing Counsel appearing for the respondent. By consent on either side, the writ petition itself is taken up for disposal.

2. The petitioners' are aggrieved by the penultimate direction issued by the Principal Judge, City Civil Court, Chennai in M.T.A.No.1 of 2009 dated 08.2.2017, by which, while setting aside the enhancement of property tax for the petitioners' building and remanding the matter for fresh a consideration, the City Civil Court directed the petitioners' to pay first half of the enhanced demand in the final notice from the date of filing the appeal before the Taxation Appeal Tribunal.

3. The learned counsel for the petitioners' submitted that the petitioners' are not aggrieved by the order of remand, but aggrieved by the direction to pay the enhanced tax as demanded in the final notice from the year 2009 onwards especially when the Court below found that the revision of property tax with retrospective effect is not in accordance with law.

4. Therefore, at the time when the writ petition was entertained, this Court granted an order of interim stay subject to the condition that the petitioners should pay the tax at old rate plus 50% of the enhanced property tax. It appears that the petitioners' are yet to comply with the said condition. But, since the counter affidavit has been filed, the writ petition itself is taken up for disposal.

5. The respondent seeks to justify their action by stating that they are well within their powers to demand enhanced property tax with retrospective effect in terms of Section 100 of the Chennai City Municipal Corporation Act, 1919. However, it is submitted that the revision of property tax was done in the year 2007 for the period from 2001 and the same is well within the limitation prescribed under Section 137B of the said Act.

6. The contention advanced by the respondent in the counter affidavit could have been considered had the respondent challenged that portion of the order passed by the City Civil Court, Chennai in M.T.A.No 1 of 2009 dated 08.02.2017, wherein the Court below held that retrospective revision was not in accordance with law. Thus, the Corporation, having not challenged the said finding, is not justified in now contending that the demand for the enhanced property tax is pending re-consideration of the matter as directed by the City Civil Court.

7. Thus, considering the factual situation prevailing in the matter, this Court is inclined to dispose of this writ petition on the following lines:

i) The finding rendered by the City Civil Court, Chennai in M.T.A.No.1 of 2009 dated 08.02.2017 holding that retrospective revision of property tax is not in accordance with law is confirmed.

ii) The order of remanding the matter for a fresh consideration as ordered by the City Civil Court is also confirmed.

iii) The petitioners are directed to clear the entire arrears of property tax at the old rate (pre-revised rate) and there should not be any default.

iv) The petitioners are directed to pay 50% of the enhanced tax with effect from January 2017 till the matter is decided afresh by the respondent Corporation in terms of the directions issued by the City Civil Court, Chennai in M.T.A.No.1 of 2009 dated 08.02.2017.

v) The arrears of property tax at the old rate plus 50% of the enhanced property tax from January 2017 shall be paid with a period of four weeks from the date of receipt of a copy of this order.

Consequently connected miscellaneous petition is closed. No costs."

2. On this day, when the matter came up for hearing, Mrs.Narmatha Sampath, learned Additional Advocate General, appearing for the appellant, submitted that a review petition will be filed against the order of the Writ Court in W.P.No.25146 of 2017 dated 27.11.2017, and on that score, sought

permission to withdraw the instant writ appeal. She also submitted that the order made in M.T.A.No.1 of 2009, dated 08.02.2017, on the file of the City Civil Court, Chennai would be challenged in the manner known to law. Submission of the learned Additional Advocate General is placed on record.

3. Without prejudice to the rights of the respondents, liberty as sought for by the learned Additional Advocate General is granted and instant writ appeal is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.

+1cc to Mr.J.R.K.Bhavanatham, Advocate sr.no.37397

W.A.No.427 of 2018 and
C.M.P.No.3762 of 2018

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