IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.5485 of 2010
and
MP.No.1 of 2010

TEA ESTATES INDIA LTD.,
(Formerly Hindustan Lever Ltd.)
No.10, Damu Nagar, Coimbatore 641 045
Represented by its authorized signatory
S.Govindarajan ... Petitioner

Vs.

1.State of Tamilnadu,
Rep.by Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 09.

2. State of Tamilnadu
Rep.by Secretary to Government,
Labour and Employment, Exchange Department,
Fort St.George, Chennai - 09.

3. The Executive Officer,
Highways Town Panchayat,
Theni District.

4. Taxation Appeals Committee,
Highways Town Panchayat,
Theni District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the Third and Fourth Respondents culminating in order Na.Ka.No.29 of 2009 dated 28.10.2009 and quash the same and to issue a direction to the Respondents to implement the G.O.Ms.No.3816 (Labour) dated 15.09.1966 issued by the Second Respondent while fixing property tax.

For Petitioner : Mr.J.Sivanandaraaj
For R1 & R2 : Mr.J.Ramesh, AGP
For R3 : M/s.T.C.Harinath and S.Anitha

O R D E R

Challenging the order/communication dated 28.10.2009, issued by the third respondent, the petitioner has come up with the present writ petition.

2.The facts of the case in a nutshell are as follows:

The petitioner is engaged in the business of Tea Plantation in Highways Panchayat viz., Chinnamanur, Theni District. On 02.05.2008, the Council of the Highways Town Panchayat passed a Resolution bearing No.56, whereby, the property tax was enhanced by 25%, 100% and 150% in respect of residential, industrial and commercial buildings respectively. Subsequently, the Government passed G.O.Ms.No.110, Municipal Administration and Water Supply Department, Dated 23.06.2008 giving effect to the aforesaid resolution. Pursuant to the same, the third respondent issued a notice dated 12.12.2008 calling upon the petitioner to submit their objections with regard to revision of the property tax for the year 2008-09, within a period of thirty days. Accordingly, the petitioner submitted their objections on 06.01.2009. Without considering the same, the third respondent issued a demand notice, dated 13.01.2009, directing the petitioner to remit the property tax at the revised rate, to which, the petitioner filed their reply on 28.02.2009. However, the third respondent by his communication dated 31.03.2009, again directed the petitioner to remit the revised property tax. Challenging the same, the petitioner preferred an appeal in Appeal No.1 of 2009 under Section 23-A of Tamil Nadu Municipalities Act, 1920, to the fourth respondent. Be that as it may, the third respondent sent a communication dated 28.10.2009, whereby, the petitioner was informed that the demand was confirmed and the appeal was rejected as time barred. Aggrieved over the same, the petitioner is before this Court.

3.The learned counsel for the petitioner made the following submissions:

(i)The property belonging to the petitioner is a plantation registered under the Plantations Labour Act, 1951; the buildings within the same are labour quarters; and the same are meant for providing rent free accommodation to the workers employed in the estate.

(ii)The office and factory premises in the plantation are maintained only for ancillary purposes and the main activity of the petitioner is agricultural operation, viz., growing and harvesting the plantation crops and hence, reasonable revision of the property tax is warranted.

(iii)The Government vide G.O.Ms.No.3816 Labour Department, Dated 15.09.1966 prescribed that the levy of property tax on buildings situated in Plantations should be at a lowest possible rate. Further, in the circular bearing No.Na.Ka.334/2005/E2 dated 12.02.2008 issued by the Commissioner of Town Panchayats, it was indicated that the Government has prescribed an upper ceiling limit of 25% increase on the existing property tax, in the case of owner occupied or rental buildings.

(iv)There is no annual rent value fixed for the labour quarters, as they are provided free of cost to plantation workers by the Estate Owners. However, the Government by G.O.Ms.No.25 Labour and Employment (12) Department, dated 07.03.2008 has fixed a notional rate of Rs.75/- per month to be paid in the case of workers, who are not provided houses by the plantation employers within the State. Thus, the gross annual rent of such labour quarters cannot exceed Rs.900/- per year. Therefore, the third respondent ought to have fixed the annual rental value of the labour quarters based on G.O.Ms.No.25 dated 07.03.2008, after allowing the deduction of 10% towards maintenance allowance for the buildings.

(v)According to the learned counsel, the third respondent, without considering the objections raised by the petitioner, issued the demand notice, directing them to pay the revised property tax. Further, the third respondent, without issuing any notice and providing any opportunity of personal hearing to the petitioner, issued the impugned order/communication confirming the demand of revised property tax and rejecting the appeal filed by the petitioner as time barred, which is arbitrary, illegal and against the principles of natural justice.

(vi)However, without prejudice to their contentions, the petitioner paid a sum of Rs.12,24,708/- towards property tax, for the period 2008-09. Therefore, the learned counsel sought to quash the order/communication dated 28.10.2009 which is impugned herein.

4.Reiterating the averments made in the counter affidavit, the learned counsel for the third respondent submitted that the third respondent revised the property tax in accordance with the guidelines laid down in G.O.Ms.No.110 dated 23.06.2008 and there was no uniform upward revision of property tax at 150%, as alleged by the petitioner. The learned counsel further submitted that the petitioner owned all kind of properties; they involved in raising Tea leaves, which is purely a commercial one; and hence, they are liable to pay the enhanced property tax at 150%. The learned counsel also submitted that the third respondent is the competent authority under the Tamil Nadu District Municipalities Act to revise and enhance the property and also pass appropriate orders on the appeal preferred under Rule 23 of the Taxation and Financial Rules r/w Section 23-A of the Tamil Nadu District Municipalities Act, 1920. Thus, according to the learned counsel, the petitioner is liable to pay the property tax at the revised rate, which comes to Rs.54,40,170/- from the first half yearly of 2009-10 to the first half yearly of 2018-19.

5.Heard all the counsels and perused the records.

6.Though the learned counsel for the petitioner raised very many grounds as against the revision of property tax by 150% for commercial buildings, the main ground of attack made by him is that without issuing notice and providing any opportunity of personal hearing to the petitioner, the impugned order/communication has been issued by the third respondent. According to him, the petitioner has duly submitted their objections against the revision of property tax by 150% in respect of the commercial buildings. Without considering the same in a proper perspective, the third respondent issued demand notice vide proceedings in Na.Ka.No.29 of 2009 dated 31.03.2009, against which, the petitioner filed Appeal No.1/2009 on 13.04.2009, before the fourth respondent, as per Section 23-A of the Act, which is well within the period of limitation. However, by the impugned order/communication, the third respondent rejected the said appeal as time barred and directed the petitioner to remit the property tax at the revised rate. Before doing so, they have not provided any opportunity of being heard to the petitioner and hence, the same is arbitrary, contrary to law and in violation of the principles of natural justice.

7.Such submission made by the learned counsel for the petitioner has not been refuted by the learned counsel for the respondents.

8.Under such circumstances, in the considered opinion of this Court, the demand of revision/enhancement of property tax made by the third respondent at the rate of 150% for commercial buildings, that too, without considering the objections filed by the petitioner and without affording any opportunity of personal hearing to the petitioner, cannot be countenanced, as the same is arbitrary, contrary to law and in violation of the principles of natural justice, as pointed out by the learned counsel for the petitioner. On this ground, the impugned order/communication is liable to be set aside.

9.At the same time, this Court cannot lose sight about the submission made by the learned counsel for the third respondent that the petitioner is due to pay a huge sum of Rs.54,40,170/- towards arrears of the enhanced property tax for the periods from the first half yearly of 2009-2010 to the first half yearly of 2018-19. Considering the submissions, this Court is able to visualise that the petitioner is bound to pay the property tax, even the enhancement is considerably reduced. Hence, this Court is inclined to set aside the impugned order/communication, subject to payment of 25% of the revised property tax by the petitioner. The petitioner also agreed to comply with the said condition.

10.In view of the above, this writ petition stands disposed of, in the following terms:

(i)The impugned order/communication dated 28.10.2009 issued by the third respondent is set aside, on remittance of 25% of the enhanced property tax for the periods from the first half yearly of 2009-10 to the first half yearly of 2018-19 by the petitioner to the authority concerned, within a period of two weeks from the date of receipt of a copy of this order.

(ii)On such remittance, the authority concerned shall issue a fresh notice to the petitioner calling upon them to submit their objections in detail and thereafter, pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of six weeks therefrom.

(iii)While re-fixing the property tax payable to the petitioner, the authority concerned shall take into consideration each and every objections raised by the petitioner and also in the light of the earlier Government Orders referred to by the petitioner.

(iv)However, it is made clear that if the petitioner fails to remit 25% of the enhanced property tax, as directed by this Court, it is open to the authority concerned to recover the entire amount as indicated in the impugned order/communication from the petitioner.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 09.

2. The Secretary to Government,
Labour and Employment, Exchange Department,
Fort St.George, Chennai - 09.

3. The Executive Officer,
   Highways Town Panchayat,
   Theni District.

4. Taxation Appeals Committee,
   Highways Town Panchayat,
   Theni District.

+1cc to Mr.J.Sivanandaraj, Advocate, S.R.No. 48997
+1cc to Mr.S.Anitha, Advocate, S.R.No.49780
+1cc to the Government Pleader, S.R.No.49378

W.P.No.5485 of 2010

GN(28/09/2018)