IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.26388 of 2011
and
M.P. No. 1 of 2011

Mr.S.Sarath Babu
... Petitioner

..Vs..

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.

2. The Executive Engineer,
Tamil Nadu Water Supply and Sewerage Board,
Chennai.
... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in 208/RD/088/2011-2012 dated 05.08.2011 and to quash the same as illegal.

For Petitioner : Mr. K.M. Ramesh for M/s.T.D.K.Govindarajan

For Respondents : Mr. V.Selvasekaran For R.1
Mr. N.Ramesh For R.2

O R D E R

The revised assessment order issued by the respondent / Chennai Corporation in proceeding dated 05.08.2011, is under challenge in the present Writ Petition.

2. The learned counsel appearing on behalf of the Writ petitioner states that the Mother of the writ petitioner was the owner of the building at Old No. 72, New No. 110, Sri Thiyagaraya Road, T.Nagar, Chennai. After the demise of his mother, the writ petitioner inherited the property as legal heir and now, he is in possession and enjoyment of the same. The property in question is partly residential and partly

commercial. The writ petitioner has rented out certain portion of the property to the third party and collected the rent. The learned counsel appearing for the petitioner states that the revised assessment made in respect of the premises belongs to the writ petitioner, is erroneous and the Corporation has not done the revised assessment by following the procedures contemplated.

3. The grievance of the Writ petitioner is that the original assessment was revised by the appellate authority and once again, for the same period, another assessment order was issued compelling the writ petitioner to pay the property tax. In other words, the writ petitioner is directed to pay property tax, twice in respect of the same assessment year, which is raised by the Writ petitioner in his appeal.

4. The learned counsel appearing for the respondent corporation denies the allegation by stating that the assessment order was made in accordance with law and there is no infirmity as such. Even in case of the impugned order of revised assessment, the writ petitioner is at liberty to approach appellate authority namely Commissioner, Chennai Corporation. and thereafter, the Taxation Appellate Tribunal under the provisions of Chennai City Municipal Corporation Act, 1919 and before the Principal District Judge, City Civil Court, Chennai. Thus, the Writ Petitioner has to exhaust the appellate remedy available under the Statute, in respect of such discrepancies arises on account of the revised assessment order issued by the Chennai Corporation. This Court cannot entertain such complex facts and circumstances arising on account of the revised assessment of property tax. The Writ Petitioner has to produce the documents and evidences to establish that the revised assessment order passed by the Chennai Corporation is not in accordance with law.

5. Under these circumstances, the Writ Petitioner challenging the very revised assessment order, cannot be considered, since, the same involves adjudication of the complex facts and circumstances.

6. The learned counsel appearing for the respondents further states that the assessment was made in accordance with the procedures contemplated and the property belongs to the Writ Petitioner is commercial complex and the petitioner is effecting lot of alterations and additions in respect of the premises, even in the roof area. Thus, the assessment made is in accordance with law, and there is no infirmity.

7. The Payment of tax can never be evaded or avoided by

the citizens. Citizens residing within the Chennai City area are availing the common infrastructure facilities and other amenities provided by the Chennai Corporation. When the citizens are utilizing the infrastructure facilities and other amenities provided for common purpose, then they are duty bound to pay the property tax to the Corporation and Metro Water Board within the time limit prescribed. Non-payment of property tax and other statutory charges is to be construed as an infringement of the legal rights of other citizens. The Writ Petitioner is not supposed to utilize common amenities and infrastructures at the cost of other tax payers. Every citizen is bound to pay tax in time. In the event of any discrepancy or any dispute in relation to the assessment or otherwise, aggrieved person is at liberty to prefer an appeal in a manner known to law. However, payment of tax must be made without any delay. Under the guise of such dispute or discrepancy, the tax payer shall not make any attempt to evade the payment of tax or postpone the same for an unspecified period. Such an attitude of the citizens should be certainly deprecated. The rights of all other citizens are also to be protected. In the event of not paying the tax by few individuals the same will affect the welfare schemes to be provided by the Corporation to the citizens.

8. This Court is of an opinion that the Writ Petitioner shall approach the appellate authority as stated above by following the procedures contemplated. If any discrepancies or otherwise, in respect of the assessment made, then the same can be corrected by way of adjudication. However, the writ petitioner cannot avoid or evade the payment of property tax to the Chennai Corporation so also Water tax and sewerage charges to the Chennai Metropolitan Water Supply and Sewerage Board. It is brought to the notice of this Court that the writ petitioner has not paid the property tax for the past more than six ears and the arrears of property tax to be paid as of now is Rs. 18,63,452/-.

9. The learned counsel appearing on behalf of the Chennai Metro Water Supply and Sewerage Board also states that the arrears of Water tax and Sewerage charges to be paid by the writ petitioner is Rs. 5,87,153/-.

10. This being the factum of the case, this Court cannot show any leniency or misplaced sympathy in respect of collecting arrears of property tax due to the Chennai Corporation and water tax and sewerage charges due to the Metro Water and Sewerage Board. The writ petitioner is a defaulter for more than six years and he has not paid any property tax at all.

11. This being the factum, the writ petitioner is bound to

pay the entire property tax arrears and if any appeal is preferred by the writ petitioner, the same shall be adjudicated in the manner known to law and if at all, the tax assessment is revised, based on the revision, suitable action may be taken by Chennai Corporation either to adjust the excess payment if any paid by the writ petitioner or to direct the writ petitioner to pay further, if the tax paid is lesser than the assessment. Accordingly, the following orders are passed:

1. The relief as such sought for in the present Writ petition stands rejected.

2. The Writ Petitioner is directed to pay the arrears of property tax amount of Rs. 18,63,452/- in two equal installments within a period of eight weeks. The first installment is to be paid on or before 19.10.2018 and the second installment is to be paid on or before 19.11.2018.

3. In respect of water tax and sewerage charges, arrears amount is Rs. 5,87,153/-. The writ petitioner is directed to pay the same within a period of four weeks from the date of receipt of a copy of this order.

4. In the event of not paying the arrears of the property tax and arrears of Water and Sewerage Board within the time limit stipulated above, the respondents are directed to initiate all further proceedings for recovery of arrears of property tax by following procedures contemplated under law.

13. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

sk/mrm

To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2. The Executive Engineer,
Tamil Nadu Water Supply and Sewerage Board,
Chennai.

+1cc to Mr.TDK Govindarajan, Advocate SR.No.64898

+1cc to Mr.N.Ramesh*, Advocate SR.No.65339

W.P.No.26388 of 2011

GMY(10/10/2018)