IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7173 of 2013

B.V. Suresh Kumar

... Petitioner

Vs

1. The Commissioner,
   Corporation of Chennai,
   Rippon Building,
   Chennai 600 03.

2. The Revenue Officer,
   Corporation of Chennai,
   Zonal Office -II
   No.47,Basin Bridge Road,
   Chennai - 600 079.

3. The Assistant Revenue Officer,
   Corporation of Chennai,
   Zonal Office -II
   No.47, Basin Bridge Road,
   Chennai - 600 079.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for an issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned undated attachment Notice issued by the 1st respondent Vide Zone 5, Ward No.56,Tax Receipt No.01549 for sum of Rs.3,28,175/- (Three lakhs Twenty Eight Thousand one hundred Seventy five only) in furtherance to the undated Final Warrant Notice in Se.ma.a.va.thu/spl/200-0 issued by the third respondent culminated in G.R.S.No.2025/00418 dated Vide Bill No.0621, Division No.25 issued by the third respondent and quash the same and consequently direct the respondents herein to drop the entire proceedings for collecting the difference in property tax for the retrospective period as per the undated final warrant notice in se.ma.a.va.thu/spl/200-0 without disposing the pending appeal filed by the petitioner.

For Petitioner : Mr.R.Abdul Mubeen
For Respondents : Mr.T.C.Gopalakrishnan

O R D E R

The demand of property tax arrears made by the respondents Corporation directing the writ petitioner to pay the same is under challenge in this writ petition. Further, a direction is sought for to direct the respondents to drop the entire proceedings for calculation of the difference in property tax for the retrospective period as per the final demand notice issued by the respondent Corporation.

2.The learned counsel appearing on behalf of the writ petitioner though beautifully articulated the case of the writ petitioner in order to avoid the payment of property tax to Chennai Corporation, this Court is bound by the legal principles settled in this regard.

3.The learned counsel appearing for the petitioner contended that the writ petitioner is paying the property tax as per the assessment made by the Chennai Corporation. He has disputed the enhancement of property tax made with retrospective effect. This apart, the enhancement of property tax was made without disposing of his appeal / objections filed before the authorities concerned. Thus, the authorities are bound to decide the appeal at the first instance and thereafter, decide the enhancement of property tax and thereafter, issue demand notice. Without considering the objections and the appeal filed by the writ petitioner, enhancement of the property tax, through the impugned notice has been issued. Thus, the impugned notice is liable to be scrapped.

4.The learned counsel appearing for the petitioner states that the petitioner has filed a Civil Suit for interim injunction restraining the respondents from collecting the enhanced property tax. On a perusal of the decree, it is an ex-parte decree obtained and even as per the Chennai City Municipal Corporation Act, 1919, no suit is maintainable in respect of the property tax assessed by the officials. Thus, the ex-parte decree passed by the Civil Court cannot have any implication in respect of the collection of property tax, as the decree is not an executable one.

5.The learned counsel appearing for the respondents state that the arrears of property tax in respect of the property belongs to the writ petitioner as of now is Rs.4,06,532/-. The writ petitioner is a chronic defaulter and further, the enhancement of property tax was made in respect of the year 1998. The writ petitioner is possessing the valuable property and the building consisting of Four Floors situated in Prakasam Road, Broadway, Chennai. The market value and the rental value in Prakasam street, Chennai has increased many times. The enhanced assessment of property tax was done in the year 1998. Admittedly, the writ petitioner was paying the old property tax amount of Rs.2,251/-. This Court is unable to accept the very same tax to be paid even in the year 2018, after a lapse of about 18 years. Though, the learned counsel appearing for the petitioner states that the petitioner is willing and ready to pay the property tax, he will do so only after the disposal of the appeal, now pending before the competent authority.

6.The learned counsel appearing for the respondent states that the writ petitioner has already paid 25% of the property tax assessed and after adjusting the said amount, the arrears of amount to be paid / collected is Rs.4,06,532/-.

7. Such a contention deserves no consideration, in view of the fact that mere pendency of the appeal will not preclude the authorities from collecting the property tax, already assessed in respect of the property possessed by the writ petitioner. Under the guise of the pendency of the appeal, the writ petitioner cannot be allowed to escape from the payment of the property tax. Property tax is a liability to the assessee, which is to be collected for the purpose of maintaining the public amenities and infrastructural benefits to the public at large. If the person like the petitioner, who is owning a valuable property in the heart of the Chennai city are refusing to pay the property tax, then the infrastructural facilities to be provided to the citizens of this great Nation will be paralyzed. Undoubtedly, the writ petitioner may have some grievances in respect of the enhanced property tax assessed by the authorities concerned and the appeal so filed by the writ petitioner is to be considered by the authorities and a decision is to be taken, but the same cannot be a ground for the writ petitioner to evade the payment of property tax as assessed. In the event of any excess payment made by the writ petitioner, the same shall be adjusted towards future payment of property tax, in favour of the writ petitioner, after disposing of the appeal. The Constitution Bench of the Hon'ble Supreme Court of India recently held that in the event of any dispute in respect of the assessment of tax or its payment, the same should be held in favour of the revenue and not in favour of the tax payer. Thus, the writ petitioner at the first instance should pay the arrears of property tax and in the event of passing final orders in the appeal, the excess amount if any collected from the writ petitioner, the same shall be adjusted towards future payment of

property tax to be paid by the petitioner.

8.Thus, this Court is of an opinion that the writ petitioner has constructed Four Floors in the property under his possession. The authorities competent are bound to measure the entire constructed portion and pass appropriate orders and accordingly, decide the appeal in the manner known to law. It is pertinent to note that the property tax assessment is to be made based on the extent of the area constructed and other aspects prevailing in that locality and as per the rules in this regard. The officials of Chennai Corporation is directed to measure the property belongs to the writ petitioner and the writ petitioner also shall cooperate for such measurement for the purpose of assessing the actual property tax to be paid by the writ petitioner.

9.This being the factum of the case, the following orders are passed:

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The writ petitioner is directed to pay the arrears of property tax due amount of Rs.4,06,532/- 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 respondents are directed to initiate all further actions by following the procedures as contemplated under law within a period of four weeks thereafter.

(iv) The respondents are directed to re-measure the entire property belongs to the writ petitioner and accordingly, issue an order of assessment and communicate the same to the writ petitioner within a period of four weeks from the date of receipt of a copy of this order.

10. With these observations, the writ petition stands disposed of. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Commissioner,
    Corporation of Chennai,
    Rippon Building,
    Chennai 600 03.

2. The Revenue Officer,
    Corporation of Chennai,
    Zonal Office -II
    No.47,Basin Bridge Road,
    Chennai - 600 079.

3. The Assistant Revenue Officer,
    Corporation of Chennai,
    Zonal Office -II
    No.47, Basin Bridge Road,
    Chennai - 600 079.

+1cc to Mr.R.Abdul Mubeen, Advocate sr.no.62498
+1cc to Mr.T.G.Gopalakrishnan, Advocate sr.no.62350

W.P.No.7173 of 2013

nr 16/10/2018