IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 27067 of 2014

P. Shyamala W/o K.Rajagopalan
General Power of Attorney of
Mr.K.rajagopalan ... Petitioner

vs.

1. The Secretary to Govt.
   Local Body and Municipal Administration
   Fort St. George, Chennai - 600 009.

2. The Commissioner,
   Corporation of Chennai,
   Rippon Building, Chennai - 600 003.

3. Assistant Revenue Officer-II,
   Corporation of Chennai,
   Rippon Building, Chennai - 600 003. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus calling for the records of the 2nd respondent bearing new assessment C.No.327/2013-14 dated 27.01.2014 and demand notice dated 05.009.2004 and to quash the same with consequential direction to the respondents 2 and 3 to re-do the assessment in respect of building situated at No.50, 200 Feet Road, Madhavaram - 600 060 on the basis of the extent of the land vis-a-vis the constructed area thereon in the presence of the petitioner herein providing an opportunity of being heard in accordance with law.

For Petitioner : Mr. S. Nagarajan

For Respondents: Mr.R.S.Selvam
Government Advocate, for R1
: Mr.T.C.Gopalakrishnan for R2 & R3

O R D E R

The provisional demand notice issued by the Chennai Corporation in respect of the arrears of property tax to be paid is under challenge in this writ petition.

2. The learned counsel for the writ petitioner states that, the provisional assessment of property tax was not made by following procedures and an excess amount has been fixed without considering the nature of the building and without considering the actual extent of the land constructed and other aspects. Thus, provisional notice itself is liable to be set aside.

3. The learned counsel for the petitioners states that, an assessment of Rs. 2,61,485/- for half year fixed is erroneous, thus the petitioner is constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the respondents Chennai Corporation opposed the contention by stating that the writ petitioner is possessing a commercial building and banks and other commercial establishments are now functioning in the said premises belongs to the writ petitioner. Thus, taking note of the nature of the building and extent of the building, the authorities competent had assessed the property tax and informed the writ petitioner that he is liable to pay Rs. 2,61,485/- for half year.

5. This apart, the learned counsel for the respondents states that, it is only a provisional assessment against which, the writ petitioner has got right of appeal before the Zonal Officer concerned, if at all the petitioner is having any grievances with regard to assessment he is at liberty to approach the Zonal Officer for further adjudication in the manner prescribed.

6. Payment of property tax can never be evaded or avoided by the citizens. When the property tax and other statutory charges are not paid by the citizens, it is to be construed that they are infringing the rights of all other citizens residing within the jurisdiction of Chennai Corporation. When common amenities, infrastructure facilities and other benefits are provided to the citizens from and out of the tax payers money then denial of payment or delay in payment or otherwise is to be construed as infringement of the rights of all other tax payers, who are all paying their property tax promptly and within the time stipulated in this regard by the authorities. even in the case of dispute, in respect of the assessment, the petitioner has to approach the competent officers for rectification or modification.

7. When the persons like the writ petitioners are enjoying the common facilities, infrastructure and amenities in the city at the cost of others then, they should shy about the same and every citizen in this regard should have a conscious that they are enjoying such facilities at others costs. If such a feeling is exposed then the citizens, who are liable to pay the property tax and other statutory charges have to pay the same within the time limit prescribed. This being the principles to be followed, this court is of an opinion that there cannot be any leniency or misplaced sympathy in respect of payment of tax to the State and the local bodies. No doubt, they are entitled to raise such disputes, even while raising such disputes, the tax payers are liable to pay tax in a routine manner and disputes shall be resolved by following the procedures contemplated under law. However, under the guise of the pendency of a writ petition or a pendency of an appeal before the authority, the entire payment can never be deferfred by the tax payers. Such an attitude to be deprecated. Subject to the appeal or subject to the writ petition, the tax payers are at liberty to pay the tax. However that is not done in most of the cases, where the writ petitions are filed, the attitude of the persons are to raise certain litigations and thereafter avoid and evade payment of tax to the State as well as to the local bodies. In this view of the matter such writ petitions filed in order to evade the tax payment can never be delayed nor be entertained in a routine manner. Such cases are to be decided at the first instance. Atleast the tax payers must be directed to pay the tax, subject to the final outcome in the writ petition. Under these circumstances a balancing and pragmatic approach is required in order to ensure that the welfare measures and the welfare schemes to be introduced by the State and local bodies get never delayed or paralyzed.

8. Considering the grounds raised in this writ petition, this Court is of an opinion that payment of property tax can never be allowed to be evaded. Even in the case of dispute, in respect of these assessment, the petitioner has to approach the competent officials for rectifications or modifications. Contrarily, the writ petitioner cannot avoid payment for an unspecified period. In the present case, the writ petitioner has not at all paid the property tax for the past more than four years. Pursuant to the interim order granted in the writ petition, the writ petitioner has just paid Rs.50,000/- is not in proportionate. Thus, the submission made in this regard by the writ petitioner deserves no further consideration at all.

9. In view of the facts and circumstances of the matter, this Court is of an opinion that, the writ petitioner is at liberty to file her objections/defence statement,if any in

respect of assessment of the property fixed and thereafter prefer an appeal before the Tax Appellate Tribunal. However, she has to clear the entire property tax dues now demanded viz., Rs.14,06,658/- In the event of, any excess payment if any found after adjudicating the objections then the respondents shall adjust the said excess amount or repay the amount. If any deficit amount then, the writ petitioner is liable to pay the balance amount.

10. Accordingly, the following orders are passed:-

a) The relief as yet as such sought for in the present writ petition stands rejected

b) The Writ petitioner is directed to pay a sum of Rs.14,06,658/- within a period of four weeks from the date of receipt of a copy of this order.

c) On payment of the entire arrears of property tax, the Zonal Officer concerned is permitted to take the appeal or objections, if any, filed by the writ petitioner for adjudication.

d) If the arrears of property tax is not paid by the writ petitioner, then the respondent-Corporation is directed to initiate all further actions by following procedures contemplated under law.

11. With these directions the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions, if any are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pkn/vsi2

To

1. The Secretary ,
Government of Tamil Nadu,
Local Body and Municipal Administration,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
    Corporation of Chennai,
    Rippon Building, Chennai - 600 003.

3. Assistant Revenue Officer-II,
    Corporation of Chennai,
    Rippon Building, Chennai - 600 003

+1cc to Mr.S.Nagarajan, Advocate Sr.62528
+1cc to Mr.T.c.Gopalakrishnan, Advocate Sr.62829
+1cc to the Government Pleader Sr.63473

W.P.No. 27067 of 2014

srg 1/10/2018