IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.7.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.12743 of 2018 & WMP.No.14931 of 2018

S.Singaravadivel Rep. by his power of attorney agent and his father M.V.Subbiah ...Petitioner

Vs

1.The Commissioner, Greater Greater Chennai Corporation, Rippon Buildings, Chennai-3.

2.The Revenue Officer, Greater Chennai Corporation, Rippon Buildings, Chennai-3.

3.The Zonal Officer, Zone-VII, Greater Chennai Corporation, M.T.M.Road, Opp. to Dunlop, Ambattur, Chennai-58. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating the order dated 06.3.2018 in Z.O.VII/R.D.C.No.R2/5939/2017 issued by the third respondent, quash the same in respect of the property bearing Door No. 1/422, Valaiyapathi Salai, Mugappair East, Chennai-37 and situated in Zone No.07, Ward No.093, Bill No.01765 and direct the respondents to continue to collect the existing rate of tax without any enhancement.

For Petitioner : Mr.P.M.Bakthavatchalam for Mr.K.Ilamparithy

For Respondents : Mr.T.C.Gopalakrishnan

ORDER

Heard both.

2. The petitioner filed this writ petition challenging the notice dated 06.3.2018, by which, the third respondent proposed to revise the half yearly tax from Rs.24,812/- to Rs.69,965/- with retrospective effect from I/2012-13. Along with the said

notice, Form-7 notice, a working sheet and a copy of the DCB have been appended.

3. The petitioner sent a reply dated 09.5.2018 through his counsel requesting for withdrawal of the proposal to enhance the property tax. The petitioner contended that the demand is highly improper, illegal and uncalled for. The said legal notice sent by the petitioner has been received in the office of the Assistant Revenue Officer, Greater Chennai Corporation, Zone-VII, M.T.H.Road, Opp. to Dunlop, Ambattur, Chennai-58 on 11.5.2018, as could be seen from the postal acknowledgment card. The petitioner immediately filed this writ petition.

4. When the writ petition came up for hearing on 23.5.2018, this Court directed the learned Standing Counsel for the respondents to take notice and also to file counter and listed the matter on 06.6.2018. On 07.6.2018, an adjournment was sought for. Again on 14.6.2018, the matter was again adjourned to 19.6.2018 at the instance of the respondents. On 19.6.2018, when the case was heard, the learned Standing Counsel for the respondents sought time for filing counter and therefore, this Court adjourned the matter to 29.6.2018 directing the third respondent not to take any coercive action against the petitioner. A counter affidavit was filed on 29.6.2018 and the matter was heard on 12.7.2018 and today i.e. 13.7.2018.

5. During the pendency of this writ petition, since there were no interim orders granted till 19.6.2018, the third respondent proceeded and issued final assessment order in Form No.10 on 06.6.2018. On receipt of the same, the petitioner's power of attorney agent and father appeared before the third respondent and made his submissions. However, since the writ petition has been pending before this Court, the third respondent could have waited for a decision in this writ petition or could have sought for leave of this Court to proceed with the matter especially when the case has been adjourned at the instance of the respondents. This Court is also of the view that the petitioner did not have effective opportunity to object to the revision of assessment, that too with retrospective effect.

6. The learned Standing Counsel for the respondents has vehemently contended that as against the notice in Form No.10, if the petitioner is aggrieved, he could have filed an appeal before the Taxation Appeal Tribunal. Apart from that, the petitioner, having not challenged the notice in Form No.10 by filing a separate writ petition, is not entitled to any relief.

7. This Court has carefully considered the submissions made by the learned counsel on either side. This Court is of the view that both the contentions raised by the learned Standing Counsel for the respondents do not merit consideration.

8. Firstly, the notice in Form No.10 was issued during the pendency of this writ petition presumably due to the fact that there was no interim order. However, the order sheet shows that the case has been adjourned from 23.5.2018 awaiting the counter affidavit of the respondents. Therefore, the petitioner did not have effective opportunity to put forth his case. Hence, the petitioner need not be directed to file an appeal against the final assessment in Form No.10.

9. With regard to the technical plea raised by the learned Standing Counsel for the respondents that a separate writ petition ought to have been filed, this plea is also to be rejected for the simple reason that when the writ petition has been pending, the third respondent passed the final assessment order in Form No.10 without seeking the leave of this Court, though the case has been adjourned at the instance of the respondents. Thus, such a technical plea cannot be raised to defeat the rights of the petitioner. For the above reasons, this Court is inclined to mold the relief in this writ petition.

10. In the result, the writ petition is disposed of by setting aside the final assessment order in Form No.10 dated 06.6.2018 passed by the third respondent and restoring the notice in Form No.7 dated 05.3.2018. The petitioner is directed to give their objections to the notice in Form No.7 within 15 days from the date of receipt of a copy of this order. On receipt of the objections, the third respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and pass final assessment orders in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commissioner, Greater Greater Chennai Corporation, Rippon Buildings, Chennai-3.
2.The Revenue Officer, Greater Chennai Corporation, Rippon Buildings, Chennai-3.
3.The Zonal Officer, Zone-VII, Greater Chennai Corporation, M.T.M.Road, Opp. to Dunlop, Ambattur, Chennai-58.

+ 1 cc to Mr.J.C.Gopalakrishnan, Advocate Sr.46278
+ 2 ccs to Mr.P.M.Bakthavatchalam, Advocate SR.46269

WP.No.12743 of 2018&
WMP.No.14931 of 2018

BR(CO)
EU(30/07/2018)