

In the High Court of Judicature at Madras

Dated : 07.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2690 of 2018 & WMP.Nos.3333 & 3334 of 2018

1.Dr.N.Vijaya Sarathi

2.Dr.N.Sarojini

...Petitioners

Vs

1.The Commissioner, Greater Chennai Corporation, Ripon Buildings, No.1131, EVR Periyar Salai, Park Town, Chennai-3.

2.The Zonal Officer, Zone VII (Ambattur), Corporation of Chennai, Ambattur, Chennai-53.

3.The Assistant Revenue Officer, Zone VII (Ambattur), Corporation of Chennai, Ambattur, Chennai-53.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order namely Notice No.7: Revised Assessment bearing Order No. M/07/081/17-18/3001 dated 12.11.2017 from the 1st respondent and quash the said impugned order.

For Petitioners :

Mr.B.Deepak Narayanan

For Respondents :

Mrs.Karthika Ashok

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ORDER

Mrs.Karthika Ashok, learned Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioners are joint owners of the property bearing door No.426A, Model School, M.T.H.Road, Gupta School, Venkatapuram, Chennai-53. After having purchased the land in the

year 1984, they put up a construction for running a hospital.

3. The case of the petitioners is that the hospital has been in existence for over 30 years, that the building has been constructed as per the approved plan and that only a small addition has been made by the petitioner by putting asbestos roofing covering a part of the roof. According to the petitioners, they are residing in the first and third floors and the ground floor and the second floor are used for the purpose of running the hospital. The petitioners' property was assessed to tax by the Ambattur Municipality, within whose jurisdiction, the property fell before it was annexed to the jurisdiction of the Corporation of Chennai. As per the assessment made by the Ambattur Municipality, the petitioners were paying half yearly tax in a sum of Rs.17,622/- and there has been no default ever since the assessment is made.

4. The petitioners are now aggrieved by the notice issued in Form No.7 dated 12.11.2017, by which, there is a proposal to enhance the property tax by redetermining the annual value of the building at Rs.2,84,55,000/- and the half yearly tax has been arrived at in a sum of Rs.2,42,790/- with retrospective effect from 2/2011-12.

5. The learned counsel for the petitioners submits that the impugned proceedings is flawed on several grounds and that there are errors, which are apparent on the face of the record apart from the enhancement being wholly arbitrary, as it is more than 1500 times than the property tax, which is now being remitted by the petitioner. The learned counsel further points out that the petitioners alone have been singled out and that a fully commercial building adjacent to the petitioners' property has not been visited with any notice. It is further submitted that no inspection was conducted in respect of the petitioners' building and it is not known as to how the respondents determined the constructed area of the building and as to how they termed it as a non residential building. It is also submitted that the Ambattur Municipality calculated the property tax by correctly measuring the built up area of the building in question and that there is absolutely no ground to revise the property tax solely for the reason that the area where the petitioners' property is located stood annexed to the Greater Corporation of Chennai.

6. The learned Standing Counsel for the respondents seeks to justify the impugned notice by contending that the respondent Corporation is invoking their powers under Section 137B of the Chennai City Municipal Corporation Act wherein it has been provided that when there is an escapement of assessment or when there is improper assessment of tax, the Corporation of Chennai would be justified in re-assessing the property tax. The learned Standing Counsel would further submit that the impugned proceedings is only a show cause notice and that if the petitioners are aggrieved, they can submit their objections.

7. This Court finds that the petitioners submitted their objections on 21.1.2018 pointing out some of the grounds raised in this writ petition and requested the officials of the respondents to stop pressurizing and threatening the petitioners to pay the arbitrary increase in the property tax. The petitioners, by way of abundant caution, remitted a sum of Rs.35,244/- being the property tax payable for the assessment year 2017-18 well in advance.

8. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court finds that the procedure adopted by the respondent Corporation in issuing the impugned notice is incorrect. This is so because there was no record to show that an inspection was conducted in respect of the petitioners' property in the presence of the petitioners. That apart, the impugned notice does not disclose as to under what circumstances, the respondent Corporation has invoked their powers under Section 137B of the said Act and if there is an escapement of assessment or if the property has been under-assessed, the assessee is entitled to know about it.

9. In any event, if the alleged inspection was without proper notice to the petitioners, in their absence, such an inspection cannot be the basis of a proposal to revise the property tax assessment. That apart, it is not known as to why the petitioners' building alone has been targeted, when, according to the petitioners, the adjoining premises is a commercial building and that they have been assessed to only a sum of Rs.5,507/- per half year.

10. Furthermore, the learned counsel for the petitioners has drawn the attention of this Court to an information obtained from a third party under the Right to Information Act, which shows that there has been no general revision made in the area.

11. It is no doubt true that in respect of the properties, which have been under-assessed or improperly assessed, the Corporation is entitled to re-assess the property. However, this can be done only after following proper procedure. Thus, this Court is satisfied that the impugned notice cannot be sustained, as there has been no proper assessment procedure followed especially when the respondents seek to bring the case into one under Section 137B of the said Act.

12. For all the above reasons, the writ petition is allowed, the impugned notice is set aside and if there is any under-assessment or improper assessment, the respondent Corporation is directed to issue a notice to the petitioners clearly disclosing the reasons and after fixing a date for inspection of the property, the officials of the respondent Corporation shall inspect the same in the presence of the petitioners or their authorized representative and only after acknowledgment of the inspection report, the respondent Corporation would be entitled to proceed with the matter by issuing a pre-assessment notice and redo the assessment in

accordance with law. Since the petitioners have already paid the property tax initially assessed, that too, well in advance, no coercive action shall be initiated against the petitioners. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

To

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, No.1131,
EVR Periyar Salai, Park Town, Chennai-3.

2.The Zonal Officer,
Zone VII (Ambattur),
Corporation of Chennai, Ambattur,
Chennai-53.

3.The Assistant Revenue Officer,
Zone VII (Ambattur), Corporation of
Chennai, Ambattur, Chennai-53.

+1cc to Mr.B.deepak Narayanan, Advocate SR.No.9232
+1cc to Mr.Karthika Ashok, Advocate SR.No.9425

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GN(22/02/2018)

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