IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.2966 of 2018 &

W.M.P. No.3619 of 2018

P.Vaidhiyalingam ... Petitioner

v.

1. The Commissioner
Corporation of Chennai
Rion Buildings
Chennai - 600 003.

2.The Asst. Revenue Officer
Zone 5, Ward No.49
Corporation of Chennai
Old WAshermenpet
Chennai - 600 021

3.The Revenue Officer
Corporation of Chennai
Revenue Department
Ripon Buildings
Chennai - 600 003 ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to final assessment order dated 08.05.2017 bearing Reference Zone No.5, Ward No.49 Bill No.00708 vide Notice 10/17-18/24942 by the 1st respondent and consequential final warrant notice in Che.Ma.A.Va.Thu/Sirapu/2017-18, dated 23.05.2017, by the 2nd respondent and quash the same for proper assessment and prospective effect and direct the respondents 1 to 3 to assess the property tax as per the method of assessment for marriage hall and issue fresh Assessment Notice for current period 2017 to 2018 giving prospective effect.

For Petitioner : Mr.K.S.Bharathy Anandraj

For Respondent : Ms.Karthikaa Ashok
Standing Counsel

ORDER

Heard Mr.K.S.Bharathy Anandraj, learned counsel appearing for the petitioner and Ms.Karthikaa Ashok, learned Standing Counsel appearing for the respondents.

2. The petitioner has filed this writ petition challenging the final assessment notice issued by the 1st respondent, by which, the half early property tax of the building owned by the petitioner has been increased to Rs.92,060/- with retrospective effect from 2nd half year 2009-10.

3. The petitioner would contend that there is absolutely no basis for revising the property tax from the existing amount of Rs.12,999/- for per half year, which has been paid by the petitioner without any default and retrospective revision of property tax cannot be done, as there is no escapement of assessment and the petitioner's building has to be assessed as a Marriage Hall, which have been categorized into three categorize, viz., A, B and C depending upon the location i.e., Bus Stand, Railway Station, Market, etc. The petitioner's Marriage Hall falls in 'B' category as assessed by the respondents themselves in the year 2007. Further, it is submitted that there is no additional construction except some minor maintenance work and there is no justification to revise the property tax.

4. The learned counsel for the respondents would vehemently contend that the writ petition is not maintainable, as the petitioner if aggrieved against the the impugned notice in Form No.10, has to file an appeal before the Appellate Authority and without exhausting such remedy, the petitioner is not justified in filing the writ petition. Further, it is submitted that in case of escapement of assessment to tax, the respondents-Corporation is entitled to re-assess the property as envisaged under section 137-B of the Chennai City Municipal Corporation Act, 1991. Further, it is submitted that in the ground floor portion, one area has been rented out for Medical Shop and in another area, there is a Sweet Stall. Therefore, the assessment of the building as a commercial property is proper.

5. After elaborate hearing of the learned counsel for the parties and carefully perusing the materials placed on record, it is seen that proper re-assessment proceedings were not conducted by the 1st respondent before passing the impugned final assessment order. That apart, the impugned final assessment order does not indicate as to why there should be revision of property tax, especially, when the petitioner's contention is that the building remain as such for all the 40 years and there is no additional construction and the building

should have been assessed as a 'Kalyana Mandapam'. Thus, if the respondent-Corporation has guidelines for classification of Marriage Hall, the said guidelines could have been adhered to. Before initiating such exercise, what is required to be done at the first instance is to inspect the petitioner's property. Unfortunately, inspection has not been done by the respondents. There is faint plea raised by the respondents stating that the petitioner did not permit the authorities to enter into the building. Be that as it may, this court is convinced that since the proper re-assessment proceeding has not been done in the matter, therefore, the assessment requires to be redone.

6. The learned counsel for the petitioner submits that the petitioner has been paying the half yearly tax at the rate of Rs.12,999/- per half year without default.

7. The learned Standing Counsel for the respondents-Corporation, on instructions, while admitting the said fact, would submit that since the property tax was revised, the same would have been adjusted towards the revised property tax and the balance is shown as arrears.

8. In any event, there appears to be no arrears of property tax at the pre-revised rate subsequent to Rs.12,999/- per half year.

9. For the above reasons, the writ petition is allowed and the impugned order is quashed and the matter is remanded to the 1st respondent for fresh consideration. The respondents shall conduct an inspection of the petitioner's building after notice to the petitioner and during the course of inspection, the property should be measured and the physical features to be noted and the petitioner's signature should be obtained in the inspection report. Based on the report, the respondents-Corporation shall issue a provisional assessment notice and give the petitioner 15 days time for filing their objections and on receipt of the objections, the respondents are directed to take note of all the facts, especially the fact that the major portion of the building as 'Kalyana Mandapam' and after considering all aspects in a proper manner, pass final assessment order. Till this exercise is completed, the respondents shall not initiate any coercive steps against the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Rj

To

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+1cc to Mr.A.KARTHIKAASHOK, Advocate, S.R.No.29922
+1cc to Mr.TKS.BHARTHY ANANDARAJ, Advocate, S.R.No. 30105

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SSV(CO)
TR(16/05/2018)