IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.15647 of 2018
and W.M.P.No.18583 of 2018

Orders reserved on	Orders pronounced on
02.08.2018	24.08.2018

S.Srikanth .. Petitioner

vs.

1.The Commissioner.
   Corporation of Chennai,
   Ripon Buildings,
   No.1131, EVR Periyar Salai,
   Park Town, Chennai – 600003

2.Zonal Officer,
   Zone VII (Ambattur),
   Corporation of Chennai,
   Ambattur, Chennai – 600 053.

3.Assistant Revenue Officer,
   Zone VII (Ambattur),
   Corporation of Chennai,
   Ambattur, Chennai – 600 053.

.. Respondents

Petitions filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for records pertaining to the impugned order namely Notice No.7:Revised Assessment, dated 27.01.2018, for Assessment No.07-080-02819-000 bearing Notice No.7/17-18/50311 and order No.M/07/080/17-18/3788 issued by first respondent and to quash the said impugned order and to pass such further or other orders including legal costs.

For Petitioner : Mr.B.Deepak Narayanan

For Respondents : Mrs.Karthika Ashok

O R D E R

The petitioner, owner of an immovable property, situated at No.150/14, 15, Pudur bus stop, Chengundram Salai, Redhills Road, Pudur, Chennai 600053, has filed this Writ Petition challenging the notice issued by the respondent Corporation in Form No.7, dated 27.01.2008, proposing to revise the annual value of the building, and consequently revise the half yearly property tax of the petitioner's building. The property owned by the petitioner is a commercial property consisting of 10 shops. The property fell within the jurisdiction of Ambattur Municipality and assessed by the Municipality was taxed in 10 assessment numbers. In other words, each of the shop was assessed as a separate premises and individual assessment numbers, were assigned and assessed to property tax at different rates. It is not in dispute that the petitioner has remitted property tax at the rates fixed by the Municipality and there are no arrears. The area, where the property is situated, stood annexed to the jurisdiction of the Greater Chennai City Municipality Corporation. Pursuant to which, the respondent has issued the impugned notice revising the half yearly property tax from Rs.432/- to Rs.1,48,075/-, with retrospective effect from second half year 2014-15.

2. Mr.B.Deepak Narayanan, learned counsel appearing for the petitioner submitted that the impugned notice is bad in law as no show cause notice was issued prior to issuing the impugned order as to why the property tax of the petitioner's building should be revised and the same is in violation of principles of natural justice. Further it is submitted that the respondents have not assigned any reason as to why 10 individual assessments as done by the Ambattur Municipality, has been changed into a single assessment for the entire building without notice and consent of the petitioner, hence, the impugned notice is unlawful and arbitrary. It is submitted that the respondents though having combined the assessment of property tax, for all the 10 assessments into a single assessment through the impugned order, parallelly, they have been collecting property tax for the other nine assessments, which amounts to double taxation. Further, the impugned order does not provide the essential details such as mode of fixing and calculating the annual rental value, depreciation, cost of amenities, measurement of property, type of building, the basic rate, monthly rental value, deductions and discounts etc., as mandated under the Chennai City Municipal Corporation head. Further, it is submitted that

there was no proper inspection of the property as mandated under the Act and the details in the impugned order are incorrect. It is further submitted that though the petitioner had raised objection vide letter dated 03.03.2018, the respondents have failed to consider the same and take note of the objection. The opportunity of personal hearing was not properly afforded inspite of the petitioner visiting the office of the respondent on 17.03.2018. Further, it is submitted that from the information obtained under the Right to Information Act, it is seen that there has been no increase or enhancement of property tax for Ambattur area from 2010 and suddenly to increase the property tax for the petitioner's building exorbitantly is unjustified, illegal and discriminatory. It is submitted that the proposed increase is 34200%, which is excessive and completely bad in law. Further, it is submitted that the property tax has to be determined in accordance with Section 4 of the Tamil Nadu Buildings and Lease and Rent Control Act and Schedule IV of the CCMC Act. The learned counsel placed reliance on the decisions of this Court in Sultan Abdul Khader vs. Corporation of Madras, 1992-2-MLJ-63; P.J.Sudhakar vs. The Commissioner & Anr., [W.P.No.26575 of 2015, dated 21.09.2015],, and Ravindra Chand Chordia vs. The Commissioner, Corporation of Chennai, [2017 SCC Online Mad 17966]; and Dr.B.Mahender & Anr., vs. The Commissioner, Corporation of Chennai & Anr., [W.P.No.10174 of 2018, dated 25.04.2018]. On the above grounds, the learned counsel seeks for quashing the impugned order.

3. Mrs.Karthika Ashok, learned Standing counsel for the respondent Corporation submitted that the petitioner's building consisting of ground, first floor and the head room in the second floor and commercial activities are going on fully and fetching a good annual rent. It is submitted that the petitioner's property falls within the jurisdiction of Zone VII Ambattur, which was earlier a Municipality. During 2011, the limits of the Corporation of Chennai were extended to the adjoining Municipalities and those areas were merged with the Corporation of Chennai and therefore, the petitioner's property falls within the jurisdiction of Zone-VII of the respondent Corporation. It is submitted that once the property falls within the jurisdiction of the respondent Corporation, the provisions of the CCMC Act, would apply and according to the said Act, it is the practice that the property is assigned a single door number, unless it is an apartment, particularly when it is owned by a single owner, there can be only one assessment and the single bill will be issued. It is submitted that on a request made by the petitioner, the property was inspected by the officers of the respondent on 25.09.2017 and it was found that the property measuring an extent of 18649sq ft., was assessed at a very ridiculously low rate. It is further submitted that in terms of Section 414A of the CCMC Act, when an

area is extended, all properties and all rights of whatever kind vested in the Municipal Council concerned of the extended area as well as liabilities legally subsisting against the Municipal Council vested with the respondent Corporation. By virtue of the said provision, the respondent is entitled to collect arrears of tax and other payments. It is submitted that the impugned notice in form No.7, shows the details of the measurement of the properties in various floors and usage of the building and the petitioner has been granted 15 days time to submit their objection. The petitioner filed an objection questioning the enhancement of the property tax from Rs.432/- to Rs.1,48,075/-, clubbing of the bills and that the property tax of the neighbouring properties have not been revised. It is further submitted that the principles of natural justice was followed; personal hearing was accorded to the petitioner and after detailed enquiry, on 20.03.2018, the petitioner opted for re-measurement of the building and therefore by letter dated 11.06.2018, the Corporation rejected all his submissions, but the petitioner's request for re-measurement was considered and proposed to be carried out on 22.06.2008. At that juncture, the petitioner has filed this Writ Petition.

4. Further, it is submitted that in terms of Section 137B of the CCMC Act, the respondent Corporation is empowered to effect reassessment with retrospective effect when there is an escapement of assessment or in cases of under assessment and the period of limitation is six years. In the instant case, the impugned revised assessment is within the said period of six years. It is submitted that on account of interim order granted in this Writ Petition, the officials of the respondent are not in a position to measure the building and hence, it is submitted that the respondent may be given an opportunity to remeasure the building, which would benefit both. Along with counter affidavit, the learned counsel has filed annexures to substantiate their averments made in the counter affidavit that enquiry was conducted. Further, it is submitted that the proper working has been done for the levy of property tax and a working sheet filed as an annexure to the counter affidavit was relied upon to substantiate the same. Further, it is submitted that wherever there is escapement of assessment, in the very same area, where the petitioner's building is situated, have been subjected to revision of assessment. On the above grounds the learned counsel for the respondent seeks to sustain the action initiated by them and requested that an opportunity may be granted to re-measure the building and proceed further.

5. Heard Mr.B.Deepak Narayanan, learned counsel for the petitioner and Mrs.Karthika Ashok, learned standing counsel for the respondent and perused the materials placed on record.

6. The petitioner has challenged the impugned proceedings by terming the same as an 'order'. On a perusal of the impugned proceedings, it is seen that it is a notice in form No.7 for revision of assessment and it is a provisional notice. The notice shows the area of the plot as 9200 sq.ft., the previous assessment number or the old assessment number is AMB-7872 and previous half yearly tax is Rs.432/-. The impugned notice contains a tabulated statement giving details of the building in square feet. As could be seen from the said tabulated statement, the building consists of ground floor plus first floor and head room in the second floor of which a portion of the ground floor and head room in the second floor are shown as 'owner occupied' and the remaining 'tenant occupied'. The revision of property tax is w.e.f., second half year 2014-15, i.e., retrospectively. The annual value of the building mentioned in the impugned notice is Rs.17,35,440/- and half yearly tax proposed to be fixed is Rs.1,48,075/-. The notice states that within 15 days of the receipt of the same, an appeal can be preferred to the Commissioner, Greater Chennai Corporation. As an annexure to the notice, the details of payments effected and the arrears payable as downloaded from the official website of the respondent Corporation has been furnished. Under normal circumstances, this Court would have accepted the plea of the respondent that the impugned proceedings is only a notice and not an order. However, the peculiar facts and circumstances of the case prompts this Court to take a different view. The impugned proceedings though termed as a provisional notice has to be reckoned as a final order in so far as it seeks to reassess the petitioner's building as a single assessment. The respondent Corporation have not denied the fact that when the property was within the jurisdiction of the Ambattur Municipality, the property has 10 assessment numbers i.e., 10 shops were individually assessed to property tax at varying rates. As could be seen from the impugned proceedings, only one of the old assessment number has been referred to and the remaining 9 have not been mentioned. Secondly, the respondents have, by the impugned proceedings, virtually cancelled the 9 assessments, which was done by the Ambattur Municipality. The action of the respondent in cancelling nine assessments and assessing the petitioner's building in a single assessment number cannot be traced to Section 414A of the CCMC Act, which is a transition provision of the extension of the area of the city. In the counter affidavit, the respondent would submit that once the property falls within the jurisdiction of the Corporation of Chennai, the CCMC Act is applicable and in accordance with the Act, it is a practice that the property has to be considered as a single property, unless it is an apartment, particularly when the property is owned by single owner. Thus, what has been stated in the counter affidavit is that this is done as a practice and

there is no specific Rule or Regulation or notification produced by the respondent Corporation, which empowers them to cancel 9 erstwhile assessments and assess the property to a single assessment. It is no doubt true that if the area, where the property is located fell within the jurisdiction of the respondent Corporation, the provisions of the CCMC Act would apply. Thus, if the respondent seeks to assess the property afresh by assigning a single assessment number, the same could have been done only after issuing notice to the petitioner and giving the petitioner adequate opportunity to putforth their objections. This having not been done is a serious error in the decision making process. It should not be misunderstood that the respondent Corporation cannot make a single assessment in respect of a building owned by one individual especially when all shops from a single unit. However, if the same is required to be done by cancelling the individual assessments done by the erstwhile Municipality, then the assessee is entitled to be heard in the matter.

7. One more aspect which is to be noted is that only one of the old assessment numbers have been referred to and the property tax collected under the said assessment alone has been mentioned Rs.432/-. As noted earlier, the property tax for all the 10 assessment numbers is not uniform. Seven assessments have been assessed to Rs.432/- per half year, one assessment at Rs.476/- and two assessments at Rs.270/- per half year. This aspect has not been noted in the impugned proceedings. Further, along with the impugned proceedings, the only annexure is the extract from the official website of the respondent Corporation, but not the manner in which the annual value was determined and as to how the half yearly tax was arrived at. This is an essential requirement, so that the assessee has an effective opportunity to putforth their objections. The petitioner seriously disputes the measurement of the building as mentioned in the impugned proceedings. The learned counsel for the respondent would vehemently contend that the petitioner was present at the time of inspection, he has attended the personal hearing and has been informed of all proceedings and the present attempt of the petitioner is only to defeat the interest of the respondent Corporation in recovering the correct rate of property tax. Though it may be true that an inspection was conducted, nevertheless post such inspection, the assessee is entitled to know not only the measurements of the property, but also as to how the annual value was determined and consequently, how half yearly tax was fixed. This basic requirement is absent in the impugned proceedings.

8. The learned Standing counsel for the respondent, by referring to the annexures to the counter affidavit, submitted that a working sheet has been prepared, which clearly shows as

to how the annual value of the building and the half yearly tax was determined. However, I find that the working sheet is an internal communication and has not been furnished to the petitioner and therefore, the respondent cannot rely upon the same to sustain the impugned notice, that too, by way of substituting fresh reasons in the form of a counter affidavit. Furthermore, the petitioner would state that the report of the Assistant Revenue Officer, Zone-VII, as found in the page 17 of the annexures, dated 11.06.2018, was not communicated to the petitioner. The annexures show that the objection was given by the petitioner on 03.03.2018, after which the petitioner was directed to appear before the respondent on 17.03.2018 and produce documents. A letter written by the petitioner dated 20.03.2018, disputing the measurement and requesting for re-measurement also forms part of the documents placed before the Court. In the counter affidavit, the respondent admits that they are ready and willing to remeasure the property and when they proposed to do so, on 20.02.2018, the petitioner had filed this Writ Petition.

9. The above facts will clearly disclose that there appears to have been some haste shown in the matter, which has resulted in issuance of the impugned proceedings without adhering to the principles of natural justice.

10. The learned counsel appearing for the petitioner submitted that the property tax has been revised by 34200% from the existing tax paid by the petitioner. The explanation of the counsel for the respondent is that if in a case of escapement of assessment, the respondent is entitled to revise the property tax with retrospective effect, the period of limitation is six years. The escapement of the assessment will arise when a property or portion thereof has not been assessed which in common parlance is stated as 'escapement of assessment'. The respondent Corporation cannot deny the fact that the property was assessed by the Ambattur Municipality in 10 assessment numbers and there is no record to show that any one of the shops was not assessed to property tax. Therefore, it will be incorrect on the part of the respondent Corporation to say that the petitioner's case is one of escapement of assessment.

11. The learned counsel for the respondent sought to sustain the revision of property tax by contending that it is a case of under assessment. If the respondents state that the petitioner's property or any portion thereof has been under assessed, then the petitioner should be furnished with full details and adequate opportunity before an assessment is revised. Therefore, on this ground also, there is a violation of principles of natural justice.

12. Therefore, at best the case of the petitioner can be pitched as a case of an 'under assessment' and not a case of an 'escapement of assessment'. However, the onus is upon the respondent Corporation to establish that there has been under assessment of the property during the past six years, when the property fell within the jurisdiction of Ambattur Municipality.

13. In the light of the above reasons, I am of the clear view that serious errors have occurred in the decision making process warranting exercise of jurisdiction of this Court to interfere with the impugned proceedings.

14. Accordingly, the Writ Petition is allowed and the impugned notice is quashed with a direction to the respondent to re-measure the property after notice to the petitioner and initiate fresh action in accordance with law taking note of the observations made in the preceding paragraphs. The petitioner shall continue to pay the property tax at the old rates without default. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
1.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
No.1131, EVR Periyar Salai,
Park Town, Chennai - 600003

2.Zonal Officer,
Zone VII (Ambattur),
Corporation of Chennai,
Ambattur, Chennai - 600 053.

3.Assistant Revenue Officer,
Zone VII (Ambattur),
Corporation of Chennai,
Ambattur, Chennai - 600 053.

+1cc to Mr.A.Karthika Ashok, Advocate, S.R.No.58027
+1cc to Mr.B.Deepak Narayanan, Advocate, S.R.No.58040

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GSP(07/09/2018)