

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.09.2018

CORAM :
THE HONOURABLE Mr.JUSTICE S.M. SUBRAMANIAM

W.P.No.24021 of 2010 and
M.P.No. 1 of 2010

MERU Consultants and Technologies Pvt. Ltd.
Rep. by its Director V. Subramanian,
No.37 (Old No.16) College Road, III Floor,
Chennai - 600 006.

... Petitioner

Vs

1. The Commissioner,
Chennai City Municipal Corporation,
Ripon Buildings, Chennai - 600 003.
2. The Revenue Officer (Property Tax),
Chennai City Municipal Corporation,
Ripon Buildings, Chennai - 600 003.
3. The Assistant Revenue Officer,
Zone VII,
Chennai City Municipal Corporation,
Ripon Buildings,
Chennai - 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to Order No.Nil dated 04.03.2009 passed by the 3rd respondent and Order No.Che.Ma.Aa.Va.Thu/Sirappu/2010-11, dated 07.07.2010, passed by the 3rd respondent and quash the same.

For Petitioner : Mr.P.V.S.Giridhar
for M/s.P.V.S.Giridhar & Sai Assoc

For Respondents: Mr.R.Arunmozhi

O R D E R

The final warrant notice issued by the Assistant Revenue Officer, Corporation of Chennai, in his Proceedings dated 07.07.2010, is under challenge in this writ petition.

2. The final warrant notice impugned in the present writ petition states that the writ petitioner should pay the property

tax arrears amount of Rs.1,14,981/- (Rupees One Lakh, Fourteen Thousand, Nine Hundred and Eighty One only) within a period of one weeks, failing which further action will be initiated under provisions of the Chennai City Municipal Corporation Act. The writ petitioner has filed the present writ petition, challenging the said final warrant notice on the ground that the petitioner purchased the immovable property at Door No.16/8, College Road, Chennai - 600 006, from their vendor, Mr.M.K.Giri through the sale deed dated 14.12.2005.

3. The learned counsel appearing on behalf of the writ petitioner for the petitioner states that the assessment of property tax was improperly made by the respondent Corporation. The arrears of property tax is calculated without reference to any proper assessment order. The enhancement of property tax effected by the Corporation is also irregular and not based on the factual circumstances prevailing in respect of the premises belongs to the writ petitioner. The writ petitioner was a subsequent purchaser of the property and therefore, the writ petitioner cannot be compelled to pay the property tax imposed prior to the purchase of the property by the writ petitioner.

4. It is contended that the revised property tax assessment for the years 1998-1999 was erroneous and the same cannot be inflicted on the writ petitioner in view of the fact that the petitioner purchased the said property only during the year 2005.

5. The learned counsel for the respondents opposed the contentions of the writ petitioner by stating that the enhancement of property tax was informed to the writ petitioner and the writ petitioner has failed to pay the revised property tax. Thus, the final warrant notice was issued to the writ petitioner on 07.07.2010 itself. The enhanced property tax for the years 1998-1999 was also informed to the writ petitioner. Thus, the writ petitioner is a defaulter of payment of property tax and therefore, the present writ petition is to be rejected.

6. This Court is of an opinion that if at all, the petitioner claims that he is not liable to pay the enhanced property tax in respect of the years 1998-1999 or thereafter, the same has to be recovered from the previous vendor or it is left open to the writ petitioner to claim the same with his vendor or otherwise. However, the Corporation cannot be made to suffer, so also, the tax payers', who are paying their respective property tax promptly.

7. This Court is of an opinion that the enhancement of property tax was done in respect of the premises belonging to the writ petitioner, in the year 1998-1999. However, the property value has increased exorbitantly and the property belonging to the petitioner is situated in the prime locality of the Chennai city. Thus, the enhancement of property tax, done

in the year 1998-1999 cannot be revised now, after the lapse of 19 years. Further revision are also done by the Corporation of Chennai and therefore, the writ petitioner is liable to pay the entire arrears of property tax amount.

8.The learned counsel for the respondents now states that the arrears of property tax as of now, in respect of the premises belonging to the writ petitioner is Rs.2,40,525/-. Thus, the writ petitioner is liable to pay the entire property tax arrears amount, as per the current demand.

9.The learned counsel for the writ petitioner states that the final warrant notice is in violation of the provisions of the Taxation Rules in Schedule IV of the Chennai City Municipal Corporation Act. The returns prepared by the respondents had not been furnished to the writ petitioner, which is mandatory under Section 99 of the Act. Though it is stated in ground (E), the petitioner is willing to pay any legitimate revised assessment from the date of his purchase in December 2005, the same has not been paid by the petitioner and the petitioner is of an opinion that the procedures followed by the respondents for revised assessment is improper and in violations of the provisions of the Act.

10.All the grounds raised in this regard, which all are factual in nature, cannot be adjudicated directly in the present writ petition in view of the fact that statutory remedies are available to the writ petitioner under the provisions of the Act. Against the warrant notice, if at all the petitioner was aggrieved, he is at liberty to prefer an appeal to the Appellate Authority and thereafter, before the Taxation Appellate Tribunal and then before the Municipal Tax Cases, Principal District Judge, City Civil Court, Chennai. The writ petitioner has not exhausted the appeal remedies provided under the statute, this Court cannot adjudicate such factual and other disputes in respect of not serving the copies and other aspects in the present writ petition under Article 226 of the Constitution of India. Complex facts and circumstances shall be adjudicated before the competent forums by submitting original documents and by adducing evidences. Merely raising a ground that the copy of the assessment has not been served to the petitioner and the same cannot be verified in a writ jurisdiction. All these grounds are to be established by the writ petitioner by submitting documents or by adducing evidences.

11.This Court is of an opinion that the statutory remedies provided, ought to have been exhausted by the writ petitioner. This apart, the writ petitioner cannot take a stand that he purchase the property in the year 2005 and therefore, he is not liable to pay the escaped assessment in respect of the property tax. The escaped assessment if at all made by the respondent

Corporation, the same must be paid by the writ petitioner at the first instance and it is for him to recover the same from his vendor or from other persons or from the occupier, who was in occupation of the premises owned by the writ petitioner after the year 2005. The Corporation cannot verify the transactions between the vendor and the purchaser. These all are the transactions, which all are unconnected with the Corporation of Chennai. Thus, there is no irregularity in respect of imposing escaped assessment tax under the provisions of Chennai City Municipal Corporation Act. In respect of the appeal remedy, the writ petitioner has to approach the Appellate authorities and also the Tribunal.

12. Citizen in general are using the infrastructure facilities and other common amenities, including roads etc., provided by the local authority and the State. When the citizen are using such common amenities and infrastructural facilities, they are bound to pay the property tax, within the time limit prescribed by the authorities concerned.

13. Payment of property tax is to be cleared in the interest of public at large. Non-payment of property tax would be treated as an infringement on other's right. For instance, if few citizen refused to pay property tax to Chennai Corporation though utilising the infrastructural facilities and other amenities from and out of the tax payers' money, then they are infringing the rights of all other citizen. It is the duty cast on the part of the authorities concerned to ensure that every citizen is paying the property tax in the interest of the public at large.

14. Evasion of the property tax is to be construed as an offence. Evasion of property tax will result in denial of rights to others. When equality in law and the constitutional rights are ensured to every citizen, this Court is of an opinion that the same is to be ensured by uniform implementation of law in respect of all concerned. Thus, the payment of property tax and recovery of such tax by the competent officials are the important functions of the State stipulated under the Constitution of India. Any inaction on the part of the officials are also to be viewed seriously. The officials, who are duty bound to collect the property tax from the persons concerned, also should face departmental proceedings on the hands of the Disciplinary Authorities.

15. Thus, it is made clear that if the property tax and the arrears are not collected promptly by the officials concerned, then the Commissioner of Chennai Corporation is bound to initiate appropriate disciplinary proceedings against all such officials for their inaction, negligence and dereliction of duty. In this view of the matter, it is made clear that the writ

petitioner cannot evade payment of property tax.

16. Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014 : If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.
- (2) Republican and Democratic form of government and sovereignty of the country.
- (3) Secular and federal character of the Constitution.
- (4) Demarcation of power between the Legislature, the executive and the judiciary.
- (5) The dignity of the individual secured by the various freedoms and basic rights in

Part III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made

demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs-legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such

a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

17. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

18. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

19. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In City and Industrial Development Corporation vs. D. S. Aardeshir Bhiwandiwalla and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai vs. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. ChhabilDass Agarwal, MANU/SC/0802/2013 : 2014

(1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. Where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) :

MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India vs. Satyawati Tandon and others*, 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others*, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. *State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd.* reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms : Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the

matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089, Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short

Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. And Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add

that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

20. In view of the legal principles settled above, the following orders are passed:-

(i) The relief, as such, sought for in the present writ petition stands rejected;

(ii) The writ petitioner is directed to pay the entire arrears of property tax amount of Rs.2,40,525/- within a period of four weeks from the date of receipt of a copy of this order.

(iii) In the event of failure on the part of the writ petitioner in paying the arrears of property tax amount, within the time limit stipulated above, the respondent-Chennai Corporation is directed to initiate appropriate action to recover the entire arrears of property tax amount by following the procedures contemplated under law.

21. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mkn/kak

To

1. The Commissioner,
Chennai City Municipal Corporation,
Ripon Buildings, Chennai - 600 003.
2. The Revenue Officer (Property Tax),
Chennai City Municipal Corporation,
Ripon Buildings, Chennai - 600 003.
3. The Assistant Revenue Officer,
Zone VII,
Chennai City Municipal Corporation,
Ripon Buildings, Chennai - 600 003.

+1cc to Mr.R.Arunmozhi, Advocate, S.R.No.63348

W.P.No.24021 of 2010

MR(CO)
rrs10/10/2018