IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.2601 of 2010

M/s.Ram Krishnan Kulwant Rai,
a Partnership Firm,
Rep.by its authorised signatory,
Mr.Joseph Philip,
No.403, Thiruvottiyur High Road,
Thiruvottiyur, Chennai - 600 019. ... Petitioner

Versus

1.The Commissioner,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai - 600 019.

2.The Revenue Officer,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai - 60. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Ref.Nos.Thiruvottiyur Municipal Ward No.WD-09, K.No.403/A, 403/A, 403/B and 403/1 in Tax Assessment Nos.4393 to 4396 respectively all dated 20.1.2010, quash the same and thereby direct the respondents to dispose off the appeals/representations given by the petitioner in furtherance of the order dated 6.2.2007 passed by the Hon'ble Court in W.P.No.7858 of 1999.

For Petitioner : Mr.S.R.Raghunathan

For Respondents : Mr.T.C.Gopalakrishnan

ORDER

The relief sought for in this writ petition is to call for the records in respect of the demand made by the 2nd respondent to pay the property tax dues to the Corporation and further a direction is sought for to dispose of the appeals / representations given by the writ petitioner on 06.02.2007.

2.The learned counsel for the writ petitioner states that a demand notice was issued by the 2nd respondent in respect of the property situated at 403, Thiruvottiyur High Road, Chennai - 600 090 and the said property belongs to a Partnership Firm, namely “Ram Krishnan Kulwant Rai”. The writ petitioners' have raised the ground that the notices impugned herein are highhanded, illegal and arbitrary.

3.It is contended that the respondents have failed to note that as per the directions of this Court in its order dated 06.02.2007 made in W.P.No.7858 of 1999, an appeal has been preferred and 50% of the amount of the demands made therein was remitted and therefore, the respondents ought to have disposed of the appeal and in the absence of passing final orders in the appeal, the respondents are not entitled to issue the impugned demand notices.

4.The grievances of the writ petitioner is that without passing any final order in the appeal preferred by the writ petitioner, the respondents had issued the impugned demand notices. Thus, the demand notices are illegal and liable to be scrapped.

5.It is contended by the petitioner that the impugned demand notice is defective and not in accordance with the procedures as contemplated.

6.The learned counsel appearing on behalf of the respondents opposed the contention raised on behalf of the writ petitioner by stating that the writ petitioner is a chronic defaulter of payment of property tax and the property tax arrears due in respect of the petitioner premises is Rs.32,00,000/-(Rupees Thirty Two Lakh only). The writ petitioner by filing the present writ petition and keeping it pending for long years is evading the payment of property tax and therefore, the case of the writ petitioner is to be rejected in limini.

7.The writ petitioner, being a continuous defaulter on payment of property tax is not entitled for any relief from the hands of this Court. This Court has passed an order on 27.09.2016, directing the writ petitioner to pay the entire arrears of property tax of Rs.32,00,000/-(Rupees Thirty Two Lakh only) on or before 31.10.2016. Further, this Court held that it is open to the writ petitioner to pay the amount within the said period in installments and the respondents shall receive it regardless of the amount and the matter was listed for reporting compliance on 02.11.2016.

8.The learned counsel for the respondents informed this Court that the said order of this Court dated 27^{th} September 2016 had not been complied with by the writ petitioner. The writ petitioner has failed to comply with the orders of this Court and thereafter, the matter was listed for further hearing on 20^{th} February 2018. In view of the fact that the writ petitioner has not paid the arrears of property tax even as per the orders of this Court, dated 27^{th} September 2016, this Court was inclined to dismissed the Stay Petition. Accordingly, the Stay Petition filed in M.P.No.1 of 2010 in W.P.No.2601 of 2010 was dismissed on 20^{th} February 2018.

9.After the dismissal of the Stay Petition, the respondents have initiated all further actions and issued fresh notices to the writ petitioner. Thus, the respondents may be permitted to proceed against the writ petitioner in accordance with law.

10.This Court is of an opinion that the writ petitioner even after the direction of this Court to pay the property tax, has failed to clear the same. The intention of the writ petitioner in non payment of the property tax due to the Chennai Corporation is deprecated. The writ petitioner, keeping the writ petition pending before this Court for the past eight years is evading the property tax. Such an attitude of the citizen in respect of the payment of property tax can never be encouraged by this Court. It is duty mandatory on the part of the residents of the Chennai City to pay the property tax in accordance with the procedures as contemplated and if at all any dispute arises in respect of the enhancement of property tax or assessment of property tax, they have to follow the procedures as contemplated by preferring an appeal to the competent authorities. Contrarily, they cannot evade the payment of property tax for years together with an ulterior motive to deny the property tax to the Chennai Corporation. When the citizen are utilizing the common infrastructure facilities, Roads and other facilities provided by the Chennai Corporation, the citizens are duty bound to respond to the same in the interest of the public at large by paying the property tax in time.

11.The Hon'ble Supreme Court of India also states that payment of tax to the State can never be compromised. The welfare activities to the people are to be provided from and out of the tax amount paid by the citizens. Thus, even in case of dispute, the benefit of doubt should be held in favour of the revenue and not in favour of the Citizen. The Constitution Bench of the Hon'ble Supreme Court of India, in a recent case held that any doubt in respect of the assessment or otherwise, must be held in favour of the revenue and accordingly, this Court is of an opinion that the writ petitioner is liable to pay the arrears of property tax as of now and in the event of any dispute in respect of enhancement or assessment, the same is to be adjudicated before the competent authorities. Mere non disposal of the appeal filed by the writ petitioner cannot constitute a ground for non payment of property tax. Undoubtedly, the appeal preferred by the writ petitioner has to be disposed of by the competent authorities. However, the delay will not provide any concession for the taxpayer to clear the property tax as per the procedures as contemplated. Thus, the writ petitioner cannot link the payment of property tax and the pendency of appeal, and both are independent.

12.In this view of the matter, this Court is of an opinion that the writ petitioner is a chronic defaulter of payment of property tax and even he is failed to implement the orders passed by this Court on 27th September 2016 and consequently, the Stay Petition was also dismissed. Thus, the writ petitioner deserves no leniency from this Court. The authorities of Chennai Corporation are bound to initiate appropriate action for recovery of the property tax without any further delay and by following the procedures as contemplated under law. Such huge property tax arrears has to be dealt with immediately by following the procedures as contemplated under law.

13.Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai - 600 019.

2.The Revenue Officer,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai - 60.

+1cc to Mr.T.C.Gopala krishnan, Advocate Sr.62344

W.P.No.2601 of 2010

srg 24/09/2018