IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Appeal No.2405 of 2018 and
CMP No.19357 of 2018

1.V.Gajarajan
2.V.Kasthuri
3.V.Indumathi
4.N.Veerasamy ..Petitioners 1 to 4 rep by their Power Agent Dr.V.Kalanidhi

5.Dr.V.Kalanidhi

6.Vee Care Hospital
Represented by its Managing partner
Dr.V.Kalanidhi
No.106, Gandhi Street,
Old Thirumangalam, Anna Nagar West,
Chennai - 600 101. ...Appellants/Petitioners

Vs

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003.

2.The Revenue Officer,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

3.The Presiding Officer,
Tax Appellate Tribunal,
Corporation of Chennai
Ripon Buildings, Chennai-600 003. ...Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 10.09.2018 in W.P.No.6778 of 2015.

W.P.No.6778 of 2015:

Writ Petition is 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 3rd respodent culminating in his Order dated 30.12.2014 in T.A.T No.7 of 2013 and quash the same and to direct the 2nd respondent to reconsider the entire matter after considering the comparative annual rental value for the nearby hospital and etc. and to fix the reasonable annual Tax for the hospital.

For Appellant : Mr. V.Raghupathi

For Respondents: Ms.Narmadha Sampath,
Addl.Advocate General
Assisted by
Mr.T.C.Gopalakrishnan
Standing Counsel

J U D G M E N T

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the petitioners in the writ petition against the order dated 10.09.2018 in W.P.No.6778 of 2015.

2. By the said writ petition, the appellants had challenged the order passed by the Taxation Appellate Tribunal, Corporation of Chennai in T.A.T.No.7 of 2013 dated 30.12.2014 enhancing the property tax with effect from second half year 2009-10 from Rs.52,558.99 to Rs.6,45,325/-. The Taxation Appellate Tribunal by order dated 30.12.2014 granted partial relief to the appellants by fixing the half yearly tax at Rs.6,24,967/- with effect from second half year 2009-2010. This order was put to challenge by filing writ petition during the year 2015, which was entertained and an order of interim stay was granted.

3. From the records placed before this Court, it is seen that the respondent Corporation did not file counter affidavit. However, Ms.Narmadha Sampath, learned Additional Advocate General instructed by Mr.T.C.Gopalakrishnan, learned Standing Counsel for the respondent Corporation submits that counter affidavit was filed and has produced an office copy of the same. However, we find that the Writ Court has not recorded any counter affidavit being filed by the respondent Corporation.

4. Be that as it may, the writ petition filed by the appellants itself is not maintainable for the simple reason that as against the order passed by the Taxation Appellate Tribunal, an appeal would lie to the Principal Judge, City Civil Court in terms of Rule 15 of Part V of Chennai City Municipal Corporation Act and the period of limitation for filing appeal is 30 days. We find that the writ petition was filed during February 2015. The order passed by the Taxation Appellate Tribunal is dated

30.12.2014 and was communicated though Zonal Officer, Zone- 8, Corporation of Chennai, Chennai -30 to the appellants on 05.02.2015, wherein, they were instructed to pay the tax as fixed by the Tribunal. Thus, the writ petition was filed less than 30 days from the said demand notice dated 05.02.2015.

5. In the light of the fact that appellate remedy is available to the appellants, we do not propose to foreclose the appellants from availing such remedy and in fact, it is the submission of the learned counsel for the appellants that the Court may grant leave to the appellants to file an appeal before the Principal Judge, City Civil Court, as according to the appellants during the relevant time in 2015, the post of Principal Judge was vacant. Be that as it may, the Writ Court could have granted liberty to the appellants to file appeal. In fact, the writ Court in Paragraph 12 of the impugned order has made an observation that is is open to the writ petitioners to file appeal in the manner known to law. Having made such an observation, the appellants have been directed to pay the entire arrears of property tax within four weeks. The appellants are aggrieved by this portion of the order.

6. In our considered view, when we hold that the writ petition is not maintainable and when the Court finds that there is an alternative remedy, the litigant should be permitted to avail such remedy and in the mean time, if entire payment has to be paid in one lump sum, the rights of the appellants will be prejudiced.

7. Thus, taking note of the facts and circumstances as mentioned above, we partly allow this appeal and direct the appellants to file appeal before the Principal Judge, City Civil Court, Chennai, within 30 days from the date of receipt of a copy of this judgment and the respondent Corporation shall not initiate any coercive action against the appellants for recovery of arrears of property tax till appeal is filed by the appellants within the period prescribed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

svki

To

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003.

2.The Revenue Officer,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

3.The Presiding Officer,
Tax Appellate Tribunal,
Corporation of Chennai
Ripon Buildings, Chennai-600 003.

4. The Principal Judge
City Civil Court, Chennai.

+2 Ccs to Mr.V. Raghupathi, Advocate sr 88248.
+1 CC to Mr.T.C.Gopalakrishnan,Advocate sr 88257.

W.A.No.2405 of 2018

SKV(CO)
SP(21/12/2018)