In the High Court of Judicature at Madras

Dated : 29.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2618 of 2018 &
CMP.Nos.21338, 21341 & 21342 of 2018

M/s.Raptakos Brett & Co. Ltd.,
Chennai-42 ...Appellant

Vs

1.The Corporation of Chennai, rep.
By its Commissioner, Ripon
Building, Chennai-3.

2.The Assistant Revenue Officer,
Revenue Department, Corporation
of Chennai, Zone IX, Chennai-15. ...Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order in W.P.No.2928 of 2011 dated 01.10.2018 Praying to call for the records of the 2nd respondent comprised in the order bearing No.Z.O. IX.R.D.C.No.R1/5717/2010 dt.29.11.2010, the Assessment Orders dt.8.11.2010 and 22.11.2010 and consequent Warrant Notice dt.24.1.2011 bearing and quash the same as being arbitrary, illegal and in violation of law .

For Appellant : Mr.Rahul Balaji
For Respondents : Mr.T.C.Gopalakrishnan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal is directed against the order passed by the learned Single Judge in W.P.No.2928 of 2011 dated 01.10.2018.

2. Mr.T.C. Gopalakrishnan, learned Standing Counsel accepts notice for the respondents. We have heard the learned counsel for the appellant.

3. The writ petitioner is the appellant before this Court and the said writ petition was filed challenging an order passed by the second respondent dated 29.11.2010 as well as the assessment orders dated 08.11.2010 and 22.11.2010 and also the consequential warrant notice dated 24.1.2011. By the impugned order dated 01.10.2018, the learned Single Judge dismissed the said writ petition directing the appellant to exhaust the appeal remedy available under the Chennai City Municipal Corporation Act, 1919 (hereinafter called the Act). The appellant is not aggrieved by such a direction, but is aggrieved by the direction contained in paragraph 16(2) of the impugned order dated 01.10.2018, which directed the appellant to pay the entire arrears of property tax amounting to Rs.58,10,746/- within a period of eight weeks in two equal instalments. The first instalment had to be paid on or before 31.10.2018 and the second instalment has to be paid on or before 30.11.2018 i.e. Tomorrow.

4. The learned counsel for the appellant submits that in terms of the provisions of the Act, if an aggrieved person is to file an appeal before the Taxation Appeal Tribunal, the pre-condition is that such an appellant should pay the admitted property tax and 50% of the enhanced property tax. Therefore, it is submitted that the condition imposed by the learned Single Judge directing the appellant to pay the entire enhanced property tax is onerous and is beyond the statutory prescription.

5. We have heard Mr.T.C.Gopalakrishnan, learned Standing Counsel for the respondents on the above submissions.

6. In our considered view, the submissions made by the learned counsel for the appellant is justified. Admittedly, the appellant, if aggrieved by the assessment order, has to prefer an appeal before the Taxation Appeal Tribunal and the Statute mandates only 50% of the enhanced property tax to be paid. Therefor, we are of the view that the direction issued in the said writ petition requires to be modified.

7. The learned counsel for the appellant has produced proof of payment of 50% of property tax on 31.10.2018 well within the time stipulated by the learned Single Judge and the receipt dated 31.10.2018 shows that the appellant paid Rs.29,05,373/-. It is seen that the said amount has been paid to the Corporation of Chennai vide cheque dated 30.10.2018. Thus, this amount, which has been paid by the appellant, can be taken as due compliance of the condition stipulated under the Act for the appellant to be able to pursue the appeal remedy before the Taxation Appeal Tribunal.

8. In the light of the above discussion, the writ appeal is partly allowed, the direction issued in paragraph 16(2) of the impugned order is modified to the extent that the appellant is directed to pay 50% of the enhanced property tax, which the appellant has already paid on 30.10.2018. We direct the appellant to prefer an appeal before the Taxation Appeal Tribunal within two weeks from the date of receipt of a copy of this judgment. If the appeal is presented, the Tribunal shall consider the same on merits and in accordance with law after affording an effective opportunity of personal hearing to the authorized representative of the appellant. In the light of the fact that the appellant already paid 50% of the enhanced property tax, no coercive action shall be taken against the appellant by the Corporation of Chennai to demand the remaining amount. No costs. Consequently, the connected CMPs are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
1.The Commissioner, Corporation of Chennai, Ripon Building, Chennai-3.
2.The Assistant Revenue Officer, Revenue Department, Corporation of Chennai, Zone IX, Chennai-15.

+1cc to Mr.Parthasarathy , Advocate SR.No. 81818
+1cc to Mr.T.C.Gopalakrishnan , Advocate SR.No. 82146

W.A.No.2618 of 2018 and
CMP.Nos.21338, 21341 &
21342 of 2018

ASK(03/12/2018)