In the High Court of Judicature at Madras

Dated : 22.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2536 of 2018 & CMP.No.20470 of 2018

B.V.Suresh Kumar ...Appellant

Vs

1.The Commissioner, Corporation of Chennai, Rippon Buildings, Chennai.

2.The Revenue Officer, Corporation of Chennai, Zonal Office II, No.47, Basin Bridge Road, Chennai.

3.The Assistant Revenue Officer, Corporation of Chennai, Zonal Office-II, No.47, Basin Bridge Road, Chennai. ...Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order made in W.P.No.7173 of 2013 dated 07.9.2018 and thereby allow the writ appeal. Writ petition filed under Art 226 of the constitution of India seeking for on issuance of writ of certiorarified Mandamus calling for the records pertaining to the impugned undated Attachment Notice vide Zone 5 Ward No.56 Tax Receipt No.01549 for sum of Rs.3 28 175 in furtherance to the undated Final Warrant Notice in Se.ma.a.va. thu/spl/200-0 issued by the 3rd respondent culminated in G.R.S.No.2025/ 00418 dated vide Bill No.0621 Division No.25issued by 3rd respondent and quash the same and consequentially direct the respondents herein to drop the entire proceedings for collecting the difference in property tax for the retrospective period as per the undated final warrant notice in Se.ma.a.va. thu/spl/200-0 without disposing the pending appeal filed by the petitioner.

For Appellant : Mr.R.Abdul Mubeen
For Respondents: Mr.T.C.Gopalakrishnan,

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.R.Abdul Mubeen, learned counsel for the appellant and Mr.T.C.Gopalakrishnan, learned Standing Counsel accepting notice for the respondents.

2. This appeal is directed against the order passed by the learned Single Judge in W.P.No.7173 of 2013 dated 07.9.2018.

3. The said writ petition was filed by the appellant challenging revision of property tax for the building owned by the appellant. The first revision of property tax was done in the year 1992 whereby the property tax was revised to Rs.7,653.55 Ps per half year. The appellant's father - one Mr.B.K. Viswanathan filed a suit in O.S.No.9699 of 1992 on the file of the City Civil Court, Chennai challenging the revision notice. In the said suit, though the respondent Corporation entered appearance through counsel, none appeared for the respondent Corporation when the said suit was taken up for trial. Consequently, the said suit was decreed ex parte by judgment and decree dated 10.9.1993.

4. The effect of the said decree being that the revision notice dated 16.10.1992 was held to be null and void and that the respondent - Corporation was restrained by way of decree of injunction from in any way demanding the enhanced property tax from the plaintiff therein. Further, the respondent - Corporation took no steps to fight against the said decree and allowed it to attain finality.

5. It appears that consequently, the appellant's father continued to remit the property tax at the rate of Rs.2,251.05 Ps, which being the pre-revised rate. It also appears that the respondent - Corporation slept over the matter and only in the year 1999 they woke up from the deep slumber and issued a notice in Form 1 dated 01.3.1999, in and by which, the property tax of Rs.2,251.05 Ps was proposed to be revised to Rs.3,987/- per half year with effect from II/1998-99. It also provided an opportunity to the appellant's father to file objections as against the proposed revision. Further, the appellant's father filed the objection on 30.8.1999, which was shown to have been received in the office of the respondent Corporation, as could be seen from the date seal. The said objection petition was not considered and disposed of and it was pending.

6. The appellant's father continued to pay the property tax at the rate of Rs.2,251.05 Ps. Subsequently, the appellant became entitled to the property in question and he had submitted the objections dated 25.2.2005 pointing out that the earlier objection given by his father was not considered and in the

meantime, a demand has been issued on 01.3.1999, which is not sustainable in the light of the said decree passed by the City Civil Court. No action was initiated on the said objections dated 25.2.2005 and the matter was left to lie over.

7. Thereafter, the respondent Corporation issued a fresh notice in Form 1 dated 05.5.2007 proposing to revise the property tax from Rs.4,926/- per half year to Rs.13,010/- with effect from II/2001-02. This notice also provided an opportunity to the appellant to raise objections. The appellant submitted his objections on 06.6.2007, which was acknowledged in the office of the respondent Corporation, as could be seen from the date seal. This objection was not considered and disposed of.

8. While so, the appellant was served with a final warrant notice demanding a total amount of Rs.3,17,932/-, which was shown to be the arrears of property tax from I/1993-94 to II/2011-12. On receipt of the said final warrant notice, the appellant submitted his objection dated 16.1.2012, which was sent by registered post and received in the office of the respondent Corporation on 18.1.2012, as could be seen from the postal acknowledgment card. However, no action was initiated on the said objection dated 16.1.2012.

9. But, the appellant was issued with a distraint notice showing the arrears of property tax as Rs.3,28,175/-. The appellant's father passed away on 18.7.2000 and it appears that the appellant is pursuing the matter. On receipt of the warrant notice, the appellant filed the said writ petition namely W.P.No.7173 of 2013 stating that the representations given by the appellant's father have not been considered, that the said decree passed by the City Civil Court had been ignored and that the warrant notice was illegal.

10. The said writ petition was entertained and an order of interim stay was granted subject to the condition that the appellant should pay 25% of the tax assessed. This condition has been complied with by the appellant. The said writ petition was pending from 2013 and it was finally disposed of on 07.9.2018 by the impugned order. The learned Single Judge, while rejecting the challenge to the warrant notice, directed the appellant to pay a sum of Rs.4,06,532/- within a period of four weeks and if the appellant was not able to comply with that condition, the respondent Corporation was directed to re-measure the entire property, pass an order of assessment and communicate the same to the appellant. Aggrieved by such order, the appellant is before us.

11. From the above facts, it is clear that the appellant's father and the appellant have been resisting the revision of

property tax from the year 1992. The respondent Corporation was not diligent enough to defend the said suit filed by the appellant's father, but allowed it to be decreed ex parte. Even after passing of the ex parte decree, no steps were taken to set aside the same nor any appeal was filed against the said ex parte decree. It is not known as to who is the officer responsible to defend the said suit during the relevant time. It is also not known as to why no action was initiated departmentally against the concerned officer.

12. Be that as it may, when the second revision notice dated 01.3.1999 was issued, the appellant's father had given objections and they were kept pending. Thereafter, the appellant gave his objections during the year 2005 and they were not considered. Subsequently, another revision notice dated 05.5.2007 was issued, for which also, the appellant had given objections within the time provided and they were also not considered. But, the respondent Corporation chose to initiate the distraint proceedings against the appellant.

13. In our considered view, the failure to consider the objections, which were submitted by both the appellant's father as well as the appellant, amounts to failure on the part of the respondent Corporation to adhere to the procedure stipulated under law. The revision notices clearly stated that the owner of the property is entitled to give objections since the notices issued were only pre-revision notices. Therefore, it is incumbent on the part of the respondent Corporation to consider and dispose of the objections in a lawful manner. Without doing so, the respondent Corporation was not justified in issuing the distraint notice/attachment notice.

14. However, we find that the property is located in a posh commercial area and it is stated to be consisting of ground floor + three floors. As of now, the respondent Corporation is in the process of revising the property tax for all the properties falling within its jurisdiction. The appellant, being the owner of the property, is bound to pay the proper property tax assessed at proper value for the building owned by him. Therefore, the appellant cannot fall back on the said decree and eternally continue to pay only Rs.2,251.05 Ps, but should pay the revised property tax.

15. Considering the above facts, we are of the considered view that a conditional order should be passed in the matter, which will protect the interest of the respondent Corporation. Equally, it will also give reprieve to the appellant. We find that the learned Single Judge, while disposing of the said writ petition, issued the following directions :

"This being the factum of the case, 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 arrears of property tax due amount of Rs.4,06,532/- 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 property tax arrears within the time stipulated above, the respondents are directed to initiate all further actions by following the procedure as contemplated under law within a period of four weeks thereafter.

(iv) The respondents are directed to re-measure the entire property belongs to the writ petitioner and accordingly issue an order of assessment and communicate the same to the writ petitioner within a period of four weeks from the date of receipt of a copy of this order."

16. We find that so far as direction (iv) is concerned, the same does not call for any interference. However, we are inclined to grant partial remedy to the appellant by slightly modifying the directions contained in paragraph 9(i) and (ii).

17. In the light of the above, the writ appeal is partly allowed and the distraint proceedings/warrant notice shall remain stayed subject to the condition that the appellant pays a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) within a period of eight weeks from the date of receipt of a copy of this judgment. If the appellant complies with this condition, the respondent Corporation shall issue notice to the appellant, conduct an inspection of the building, measure the property, note down the physical features and based on such inspection, issue a fresh pre-assessment notice, which will cover the entire block period. On receipt of the pre-assessment notice, the appellant shall be granted 15 days' time to submit his objections. After receipt of the objections, the Competent Authority of the respondent Corporation shall afford an opportunity of personal hearing to the appellant and pass fresh orders of assessment in accordance with law. In the event the appellant fails to comply with the condition imposed by this Court in this judgment within the time frame stipulated, the benefit of this order will not enure to the appellant and the appeal shall stand automatically dismissed without any further

reference to this Court. It is open to the appellant to canvass all the points, which shall be considered by the Competent Authority of the respondent Corporation. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CS -II)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commissioner, Corporation of Chennai,
Rippon Buildings, Chennai.

2.The Revenue Officer, Corporation of Chennai,
Zonal Office II, No.47,
Basin Bridge Road, Chennai.

3.The Assistant Revenue Officer,
Corporation of Chennai, Zonal Office-II,
No.47, Basin Bridge Road, Chennai.

+ 1 cc to Mr.R. Abdul Mubeen, Advocate Sr.79652
+ 1 cc to Mr. T.C. Gopalakrishnan, Advocate Sr.79445

WA.No.2536 of 2018 &
CMP.No.20470 of 2018

KS(CO)
EU(14/12/2018)