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 Nos.2751 & 2783 of 2018 &
CMP.Nos.22688,22690 and 23011 of 2018

P.Usha ...Appellant in both WAs

Vs

1.The Chennai Metropolitan Water Supply & Sewerage Board, rep.by its Secretary, Chennai-2.

2.The Area Engineer-VII, Chennai Metropolitan Water Supply & Sewerage Board, No.25, Sathyamoorthy Road, Chennai-31. ...Respondents in WA.2751 of 2018

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

4.The Assistant Revenue Officer, Corporation of Chennai, Zone IX, Division No.110, 4th Street, Lake Area, Chennai-34. ...Respondents in WA.2783 of 2018

APPEALS under Clause 15 of the Letters Patent to set aside the common order dated 10.9.2018 made respectively in W.P.Nos.21702 and 21703 of 2012.

Prayer in W.P.No.21702 of 2012:

Writ Petition is filed under Article 226 of the Constitution of India, for writ of certiorarified Mandamus calling for the records of the 2nd respondent pertaining to the impugned letter No. Ref. CMC No.07/110/0273/W, dated 01.08.2012 and quash the same and further direct the respondents not to initiate any action for the water and sewer tax against the petitioner for the period up to first half of 2012-13.

Prayer in W.P.No.21703 of 2018:

Writ Petition is filed under Article 226 of the Constitution of India, for writ of certiorarified Mandamus calling for the records of the 2nd respondent pertaining to the impugned letter No. Z.O.7/R.D/Spl./2012-13 dt 30.7.2012 and quash the same and further direct the respondents not to initiate any action for property tax against the petitioner for the period up to first half of 2012-13.

For Appellant in both the WAs : Mr.V.Anand

For Respondents in WA.No. 2751 of 2018 : Mr.G.Janakiraman

For Respondents in WA.No. 2783 of 2018 :Mr.T.C.Gopalakrishnan

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals are filed by the appellant - writ petitioner challenging the common order passed in W.P.Nos.21702 and 21703 of 2012 dated 10.9.2018.

2. W.A.No.2783 of 2018 is taken as the lead case since it is directed against the order passed in W.P.No.21703 of 2012 wherein the appellant challenged a distraint warrant issued by the Corporation of Chennai demanding arrears of property tax with retrospective effect from II/2006-07. As a consequence of the said demand, the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) issued the notice dated 01.8.2012 demanding enhanced water and sewerage tax, which is pursuant to the revision of property tax. This demand was impugned in WP.No.21702 of 2012.

3. The learned Single Judge, while hearing the said writ petitions, found that the revision of property tax was done without following the procedure and without conducting inspection of the appellant's building and therefore, issued an interim direction on 07.9.2018 directing the officials of the Corporation of Chennai to measure the property owned by the appellant in her presence, make a proper assessment and serve a copy of the assessment order on the appellant and stipulated a time frame, within which time, the direction should be complied

with. Pursuant to the direction issued by the learned Single Judge, on 08.9.2018, the property was inspected in the presence of the appellant, measurement was taken, final assessment was made and a notice in Form No.10 dated 08.9.2018 was issued.

4. A perusal of the said notice in Form 10 dated 08.9.2018 shows that the constructed area, which was originally mentioned in Form 7 notice stood substantially reduced. The Corporation now determined the half yearly tax at Rs.5,78,965/- as against the existing tax of Rs.3,96,306/-. The learned Single Judge directed the appellant to pay the entire arrears of Rs.56,85,157/-, calculated at the rate of Rs.5,78,965/- per half year with effect from II/2005-06.

5. The appellant contended before the learned Single Judge that she had certain objections with regard to Form 10 notice dated 08.9.2018 pointing out that there were discrepancies in the method of calculation as done by the officials.

6. The learned Single Judge observed that this issue could be sorted out later on, that if there had been any excess payment, the same could be adjusted towards future property tax and that therefore, the appellant could not raise such a point in respect of calculation or otherwise. Having held so, the learned Single Judge directed the appellant to pay the entire arrears of property tax as well as the water and sewerage tax. The learned Single Judge further observed that in case of any discrepancy, the appellant could approach the Authority concerned for calculation or recalculation so as to resolve the discrepancies. Challenging the said common order, the appellant has filed these appeals.

7. We have heard Mr.V.Anand, the learned counsel for the appellant, Mr.G.Janakiraman, learned Standing Counsel accepting notice for the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) and Mr.T.C.Gopalakrishnan, learned Standing Counsel accepting notice for the Corporation of Chennai.

8. Admittedly, as against the final assessment made in Form No.10 notice dated 08.9.2018, the appellant has an alternate remedy of filing an appeal before the Taxation Appeal Tribunal constituted under the provisions of the Chennai City Municipal Corporation Act, 1919. In fact, the learned Standing Counsel for the Corporation of Chennai would fairly concede that such an appellate remedy is provided under the Statute. Therefore, in our considered view, the appellant cannot be foreclosed from challenging the said Form 10 notice on the ground of any discrepancy or on the ground that the appellant is not liable to pay the property tax, as the property was kept under lock and key by the tenant and that possession was handed over to the

appellant only pursuant to the orders of this Court.

9. Further, the appellant is entitled to canvass other grounds as to how the annual rental value of the building was computed, as, according to the appellant, the property is situated in a by lane from Anna Salai and the land value is much lower when compared to the properties abutting Anna Salai. Furthermore, the property was kept under lock and key and was not put to use. Because of that, arbitration proceedings were initiated, in which, the appellant succeeded. Such award was put to challenge by the tenant namely the ICICI Bank and the original petition is pending, in which, an interim direction has been granted and possession was secured by the appellant.

10. These are grounds, which can be canvassed by the appellant before the Taxation Appellate Tribunal. Therefore, we are of the considered view that the appellant, at this stage, cannot be compelled to pay the entire arrears of property tax computed at the rate of Rs.5,78,965/- per half year with effect from II/2005-06 and if it is done, it would amount to foreclosing the appellant's right to prefer an appeal before the Taxation Appeal Tribunal.

11. In terms of the provisions of the Statute, the appellant, to be entitled to pursue an appeal, is required to clear the entire arrears of property tax as per the pre-revised rate i.e. Rs.3,97,306/- per half year and pay 50% of the enhanced tax, which is a mandatory condition, which the appellant has to fulfill. Hence, we are of the considered view that the common order passed in the said writ petitions calls for interference though not in its entirety.

12. Accordingly, the writ appeals are partly allowed to the extent indicated below :

(i) The appellant is granted 30 days' time from the date of receipt of a copy of this judgment to prefer an appeal before the Taxation Appeal Tribunal by complying with the mandatory condition of pre-deposit;

(ii) If the appellant complies with the condition of pre-deposit and files an appeal within the time stipulated, the Taxation Appeal Tribunal shall consider the appeal petition on merits and in accordance with law. It is well open to the appellant to seek for vacancy remission in terms of the provisions of the Statute duly supported by documents by raising such a plea before the Tribunal.

(iii) The appellant shall also pay the water and sewerage tax at the pre-revised rate to the CMWSSB together with 50% of the enhanced water and sewerage tax within three months from the date of receipt of a copy of this judgment.

(iv) On payment of the water and sewerage tax at the pre-revised rate and together with 50% of the enhanced water and sewerage tax within the time stipulated, the demand for the remaining amount shall be kept in abeyance and await the decision in the appeal to be filed by the appellant before the Taxation Appeal Tribunal.

(v) As could be seen from the Demand, Collection and Balance (DCB) maintained by the Corporation of Chennai, whatever payments made by the appellant have been adjusted as against the enhanced tax. It is made clear that this adjustment is subject to orders to be passed by the Taxation Appeal Tribunal.

No costs. Consequently, the connected CMPs are closed.

13. The learned counsel for the appellant submits that on account of severe pressure from the officials of the Corporation of Chennai, the appellant was compelled to issue two cheques dated 15.12.2018 and 31.12.2018 for a sum of Rs.25 lakhs and Rs.31,85,157/-. However, the appellant does not have sufficient funds in her bank account.

14. The learned Standing Counsel for the Corporation submits that the cheques were returned without encashment.

15. In the light of the directions issued by us in this judgment, the Corporation of Chennai shall not take any precipitative action on account of dis-honour of the cheques since the dispute relating to enhancement of the property tax is to be decided by the Taxation Appeal Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Secretary,
Chennai Metropolitan Water Supply & Sewerage Board,
Chennai-2

2.The Area Engineer-VII,
Chennai Metropolitan Water Supply & Sewerage Board,
No.25, Sathyamoorthy Road, Chennai-31.

3.The Commissioner,
Corporation of Chennai, Chennai-3.

4.The Assistant Revenue Officer,
Corporation of Chennai, Zone IX,
Division No.110, 4th Street, Lake Area, Chennai-34.

+1 cc to M/s.T.C.Gopalakrishnan, Advocate Sr.No.88256
+2 cc to M/s.V.Anand, Advocate Sr.No.88473,88474

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VSN-II(CO)
CSL/22.01.2019