BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.11.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.3067 of 2015
and
M.P.(MD)No.1 of 2015

PLA.Subramanian ... Petitioner

Vs

Tiruchirappalli City Municipal Corporation,
represented by its Commissioner,
Cantonment, Trichy-1. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned proceedings of order dated 12.03.2013 in C.M.A(Tax) No.51 of 2005 on the file of Principal District Judge, Tiruchirappalli in confirming the order dated 13.03.2005 in Tax Appeal No.189 of 2004 on the file of the Tax Appellate Tribunal, Tiruchirappalli Corporation, Trichy in confirming the property Tax Assessment Order No.31530 dated .09.2002 of the respondent and quash the same.

For Petitioner : Mr.AR.Ramanathan
For Respondent : Mr.N.S.Karthikeyan

ORDER

The petitioner is running a Petroleum Outlet within the limits of Trichy City Municipal Corporation. By order dated 27.09.2002, the property tax payable by the petitioner was revised and enhanced. Questioning the same, the petitioner moved the tax appeal Tribunal also. The appeal was dismissed on 13.03.2005. He also filed C.M.A.(Tax)No.51 of 2005 before the Principal District Judge, Trichy. The said appeal was also dismissed. Challenging the said order, this writ petition has been filed.

2.The learned counsel for the petitioner raised only two contentions. His first contention is that the open area which have not been enclosed have also been included for the purpose of computing the property tax. His second contention is that eventhough the order was passed on 27.09.2002, it had been made retrospectively applicable from 1999 onwards.

3.I am of the view that the Commissioner City Municipal Corporation does not have the power to retrospectively enhance the property tax payable by the property owners. The learned Standing Counsel appearing for the corporation would place reliance on

Section 168 of Coimbatore City Municipality Act, 1981 which applies to the Trichy corporation also. The said provision reads as under.

> *"168. Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year or has been assessed in any half-year or year at a rate lower than the rate at which he is assessable, or in the case of property tax has not been duly assessed in any half-year of year consequent on the building or land concerned having escaped proper determination of its annual value, the commissioner may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made thereunder shall so far as may be apply as if the assessment was made in the half-year or year to which the tax or fee relates."*

4.Even as the title of section would indicate, it is only a power to assess in case of escape from assessment. I am conscious that the title of the section cannot afford any legitimate aid to the construction of the section. The provision authorizes the authority to call upon the assessee to pay up, where there has been escape from assessment. Omission to revise assessment will not amount to escape from assessment. Therefore, the said provision will not confer power on the Commissioner to retrospectively raise and enhance the property tax.

5.Since open area which have not been enclosed have also been included, I am of the view that the respondent will have to re-do the exercise. It is to be noted that the enhancement was made without notice to the petitioner. For all these reasons the orders impugned in this writ petition stand set aside. The matter is remitted to the file of the respondent who shall pass orders afresh and in accordance with law after giving notice to the petitioner.

6.It is made clear that after remission also, the respondent cannot retrospectively enhance the property tax payable by the writ petitioner. The Commissioner while passing the revised order can make it applicable only from 27.09.2002.

7.With this liberty this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(records)

/True Copy/

Sub Assistant Registrar(CS)

To

Tiruchirappalli City Municipal Corporation,
represented by its Commissioner,
Cantonment, Trichy-1

+1.CC. To Mr.AR.Ramanathan, Advocate in SR No.98074
+1.CC. To Mr.N.S.Karthikeyan, Advocate in SR No. 97970

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