IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.1237 & 1242 of 2019
and
W.M.P.Nos.1385 & 1389 of 2019

Saifuddin Ahmad ..Petitioner in both W.Ps

vs

1.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

2.The Assistant Revenue Officer,
Zone-IX
Greater Chennai Corporation,
Chennai – 600 005. ..Respondents in both W.Ps

Prayer in W.P.No.1237 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent comprised in Form No.7 dated 30.09.2016 of Revised Assessment for the said property bearing No.7/16-17/17779 and quash the same as illegal, arbitrary, nonest in law and directing the respondents to revise the property tax in accordance with law of the provisions of the Chennai City Municipal Corporation Act, 1919, by refunding the excess tax collected by them or adjust the same towards future tax.

Prayer in W.P.No.1242 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent comprised in Demand Notice dated 14.11.2018 bearing No.1/DN-119/270/2018 and quash the same as illegal, arbitrary, nonest in law and directing the respondents to revise the property tax in accordance with law of the provisions of the Chennai City Municipal Corporation Act, 1919, by refunding the excess tax collected by them or adjust the same towards future tax.

For Petitioner : Ms.Arva Merchant
(in both W.Ps)

For Respondent : Mr.T.C.Gopalakrishnan
Standing counsel
(Chennai Corporation)
(in both W.Ps)

C O M M O N O R D E R

Ms.Arva Merchant, learned counsel on record for writ petitioner in both the writ petitions and Mr.T.C.Gopalakrishnan, learned Standing counsel for Chennai Corporation on behalf of both the respondents in both the writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. Subject matter of instant writ petitions, is levy / enhancement / revision of property tax for petitioner's immovable property under 'Chennai City Municipal Corporation Act, 1919' ['CCMC Act' for brevity]. This Court is informed that the writ petitioner owns immovable property in the city of Chennai at '2(11), T.V.K.Road (Royapet Highroad), Royapettah, Chennai - 600 014' [hereinafter 'said property' for brevity, clarity and convenience]. This Court is also informed that said property is an independent building situate at aforesaid address. This Court is informed that the superstructure stands on plot admeasuring 6,000 Sq.ft or thereabouts. Considering the nature of the lis in the instant writ petitions and the order, which this Court proposes to pass in the light of the trajectory of the hearing today, it may not be necessary to delve with those details any further.

4. Suffice to say that said property was assessed to property tax under CCMC Act and the half yearly tax was Rs.20,076/-(Rupees Twenty Thousand and Seventy six only) with effect from first half year of 2010-2011 or in other words with effect from 01.04.2010.

5. When things stood as above, a notice dated 30.09.2016 was issued by the Chennai Corporation, this notice is captioned 'Revised Assessment', wherein and whereby, half yearly property tax for said property was proposed to be enhanced from aforesaid Rs.20,076/- to Rs.44,480/- with effect from I/2010-2011.

6. Learned standing counsel for Chennai Corporation submits that this revisional notice dated 30.09.2016 is under Section 137-B of CCMC Act. Writ petitioner objected to the aforesaid revisional notice dated 30.09.2016 and after considering the objections, Commissioner of Chennai Corporation, passed an order dated 02.07.2018. By this order, Chennai Corporation, after considering the objections did two things. One is the proposed enhancement from Rs.20,076/- to Rs.44,480/- was scaled down and the enhancement was restricted to Rs.35,575/-. The other thing or other aspect so to say is that instead of giving effect to the enhancement from first half year of 2010-11, it was given effect to with effect from I/2016-2017.

7. Up to this point, there is no disputation or disagreement. To encapsulate with clarity and specificity, there is no disputation or disagreement that half yearly property tax for said property of the writ petitioner is Rs.20,076/- from I/2010-2011 upto II/2015-2016. With effect from I/2016-2017, it is Rs.35,575/-.

8. When the undisputed position stood as above, Chennai Corporation has issued a general revision notice for 2018-2019, proposing enhancement of half yearly property tax for said property from Rs.35,575/- to Rs.68,020/- vide notice dated 24.09.2018 bearing reference 'S/1/18-19/113154', which shall hereinafter be referred to as said provisional assessment notice for the sake of convenience and clarity.

9. In the interregnum, a demand notice dated 14.11.2018 bearing reference 'No.1/DN-119/270/2018' [hereinafter referred to as 'impugned demand notice' for the sake of brevity] came to be issued claiming a sum of Rs.2,46,612/- (Rupees Two Lakhs Forty Six Thousand Six Hundred and Twelve only) from the writ petitioner.

10. Writ petitioner has come to this Court, assailing the aforesaid revised assessment notice dated 30.09.2016 as well as the impugned demand notice by way of these two writ petitions.

11. At the hearing, on instructions, it is submitted by learned counsel on record for the writ petitioner that the aforesaid rate of property tax for the aforesaid periods is not in dispute. From the narrative thus far, it also comes to light that the 30.09.2016 revisional notice which this Court is informed is under Section 137-B of CCMC Act has culminated in aforesaid order dated 02.07.2018 bearing reference No:10/18-19/101401 made by Chennai Corporation, wherein the property tax for said property has been frozen at Rs.35,575/- with effect from I/2016-2017. This puts an end to the writ petitioner's

campaign qua a challenge to 30.09.2016 revised assessment notice.

12. With regard to the impugned demand notice, learned counsel for writ petitioner submits that the Chennai Corporation has issued the impugned demand notice by computing half yearly property tax at Rs.44,480/- adopting the same as a uniform rate across the board i.e., across aforementioned half years and therefore, challenge to the same.

13. However, from the narrative thus far, it emerges / comes to light that there is also a provisional revision notice, which has been issued, proposing enhancement from Rs.35,575/- to Rs.68,020/-. Faced with this situation, learned counsel for writ petitioner, on instructions, submitted that the writ petitioner will submit objections qua proposed general revision from Rs.35,575/- to Rs.68,020/- vide the said provisional assessment notice.

14. This takes us to the legal position.

15. This Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019, had held that it is imperative that in cases of this nature, a provisional assessment order is served on the writ petitioner, writ petitioner is given opportunity to object to the same and a final assessment order is passed after considering all the objections before a demand is made. To be noted, this order was made by a Hon'ble Single Judge of this Court, by drawing inspiration from Hon'ble Division Bench judgment in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. This Sanjay Gupta principle is to the effect that objections of a assessee shall be considered and final assessment should be made before a demand is raised. In other words, the principle in Sanjay Gupta case is that any demand for tax should be preceded by objections of the assessee being considered and final assessment being made.

16. It is not in dispute that aforesaid learned Single Judge's order has been given legal quietus.

17. In the light of the narrative thus far, the following order is passed:

a) Impugned demand notice dated 14.11.2018 bearing No.1/DN-119/270/2018 is set aside. It is set aside for the purpose of processing the general revision for which provisional assessment notice has now been issued.

b) Writ petitioner shall submit objections to the provisional assessment notice dated 24.09.2018 bearing reference 'S/1/18-19/113154' within a fortnight from the date of receipt of a copy of this order.

c) The aforesaid objections shall be sent to the jurisdictional Regional Deputy Commissioner. This Court is informed that the Regional Deputy Commissioner (Central) is the jurisdictional Regional Deputy Commissioner in this case and has office at Greater Chennai Corporation office, Pulla Avenue, Shenoy Nagar, Chennai - 600 040. On receipt of objections in the aforesaid manner, aforesaid authority i.e., jurisdictional Deputy Regional Commissioner shall consider all objections and pass final assessment order in accordance with law and in a manner known to law.

d) The final assessment order so passed shall be communicated to the writ petitioner, under due acknowledgment within seven(7) working days from the date of the final assessment order.

e) Until final assessment order is made by the aforesaid jurisdictional Regional Deputy Commissioner and until it is served on the writ petitioner in the aforesaid manner, there shall be no coercive action / distraint proceedings qua writ petitioner / said property subject to the condition that writ petitioner continues to pay half yearly property tax for said property at the rate of Rs.20,076/- with effect from 1/2010-2011 and at the rate of Rs.35,575/- with effect from 1/2016-2017. To be noted, this Court is informed that writ petitioner has made excess payment in this regard and though obvious it is made clear that Chennai Corporation shall give credit to the same.

f) If the writ petitioner is not satisfied with the final assessment order, it is open to the writ petitioner to assail the final assessment order in a manner known to law and this order will not impede such a legal process.

17. These two writ petitions are disposed of with the above set of directions. No costs. Consequently, connected miscellaneous petitions are closed.

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

True Copy

Sub-Assistant Registrar

To
1.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

2.The Assistant Revenue Officer,
Zone-IX
Greater Chennai Corporation,
Chennai - 600 005.

+2 CCS to Mr. Amarnath, Advocate sr 62602.
+1 CC to Mr.Gopalakrishnan, Advocate sr 62518.

W.P.Nos.1237 & 1242 of 2019
and
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MG(CO)
SP(05/08/2019)