

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.02.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos. 3183, 3190 and 3199 of 2019
and
WMP.Nos.3440,3445, 3446,3450 & 3452 of 2019

1. M/s. Indarma Prime Industries Ltd,
Formerly Known as Indo Dutch Leder Ltd,
Represented by its Director,
Dr. M.P. Shashidharan
No.6 (48 & 49),
Kumarasamy Nagar Cross Road,
Kumarasamy Nagar, Villivakkam,
Chennai- 600 049.

...Petitioner in W.P.No.3183 of 2019

2. A. Lukman
3. Ahmed Imran
4. Syed Qamaran
5. Thaha Burhan
6. Lamrath Sadia
7. Fathima Basharith

...Petitioners in W.P.No.3190 of 2019

8. Kurrath Nisa
9. Fathima Zahra
10. Idris Mohideen

...Petitioners in W.P.No.3199 of 2019

Vs

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R. Periyar Salai,
Chennai.

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2. The Assistant Revenue Officer,
Revenue Department,
Zonal Office-VIII
Corporation of Chennai
No.36B, 2nd Street,
Pulla Avenue, Shenoy Nagar,
Chennai- 6000030

.... R2 in WP.No. 3183 of 2019

3. The Assistant Revenue Officer
Revenue Department
Zonal Office-V
Corporation of Chennai
Chennai-600 021

..... R2 in WP.Nos. 3190 & 3199 of 2019

Prayer in W.P.No.3183 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ to call for the records of the 2nd respondent in notice dated 29.09.2018 bearing No.S/1/18-19/415130 and quash the same.

Prayer in W.P.No.3190 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ to call for the records of the 2nd respondent in Demand Notice No.1 dated 26.09.2018 bearing E/1/18-19/217788 and quash the same.

Prayer in W.P.No.3199 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ to call for the records of the 2nd respondent in Demand Notice bearing E/1/18-19/227883 dated 26.09.2018 and quash the same.

For Petitioner : Mr. K.M. Aasim Shehzad
for M/s. BFS Legal

For Respondents : Mr. T.C. Gopalakrishnan, Standing Counsel
in all the three W.Ps.

C O M M O N O R D E R

Mr.T.C.Gopalakrishnan, learned Standing Counsel takes notice for the respondents. At request and by consent of both sides, the Writ Petitions are taken up for final disposal at the stage of admission.

2. The petitioners in these writ petitions challenge Notices No.1:Property Tax General Revision 2018-19 dated 29.09.2018, 26.09.2018 and 26.09.2018 respectively revising the property tax assessments for the first half of 2018-19.

3. This Court has considered a similar challenge in W.P.No.3248 of 2019 dated 04.02.2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) and has passed orders as follows:

'3. The main contentions advanced by the learned counsel for the petitioner are that no show cause notice has been issued by the respondents prior to the issuance of the impugned notice and that no break up of the amount has been set out in the notice itself. The revision thus is contrary to G.O.(Ms) 73, Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018, which provides for a revision upto only 100% of the existing tax.

4. Per contra, learned Standing Counsel appearing for the Corporation states that the impugned document is only a provisional notice and a final demand would be raised after consideration of the objections of the assessee/petitioner.

5. The notice, on the face of it, states 'Within 15 days of receipt of this Notice, appeal if any, may be preferred to the concerned Regional Deputy Commissioner, Greater Chennai Corporation as per the delegation provided, or else it will be assumed that the Half Yearly Tax is accepted.'

6. A Division Bench of this Court in the case of Sanjai Gupta V. The Commissioner, Corporation of Chennai (2009(2)CTC465) has considered a similar case holding that an occasion to file an appeal would arise only after a final order has been passed. The decision of the Bench reads as follows:

'1.

2. This Appeal arises out of an interlocutory order passed by the learned Single Judge in W.P.No.4237 of 2009. By consent of both the counsel, the Writ Petition itself is taken in the causelist of the Division Bench. Both the counsel are heard.

'3. The submission of Mr.K.V.Babu, learned counsel for the appellant/petitioner is that the Municipal Corporation sent a

notice dated 25.4.2007 to the appellant asking him to show cause as to why the property tax should not be revised in the manner indicated in that notice. The notice was supposed to be replied within 15 days. The appellant received that notice on 16.6.2007 and sent a reply to the same on 23.6.2007 pointing out amongst others that there was no alteration or addition in any manner in the building in which the appellant was running a lodging house. That apart, the grievance in the Writ Petition is that without deciding the objections, a subsequent order/notice dated 28.1.2009 has been issued calling upon the appellant/petitioner to pay the balance amount, as per the calculation of the respondents, to the tune of Rs.20,69,393/-. Being aggrieved by this order, the Writ Petition has been filed, wherein the learned Single Judge has directed the deposit of Rs.11 lakhs for granting a stay.

4. Mr.K.V.Babu, learned counsel submits that the demand notice, dated 28.1.2009 is not based on any order passed by the Commissioner and, therefore, the order of the learned Single Judge, asking the appellant to deposit an amount of Rs.11 lakhs for granting a stay, is unjustified.

5. Mr.L.N.Praghasam, learned counsel appearing for the Municipal Corporation submits that the appellant has a remedy to go to the Taxation Appellate Tribunal under Part V of the Taxation Rules read with Section 138 of the Chennai City Municipal Corporation Act, 1919.

6. In our opinion, this submission is misconceived. The occasion to file an Appeal will arise only after an order is passed and based thereon a demand is made. In the present case, the appellant having filed the objections, they were expected to be decided. Without deciding the same, this levy has been calculated and the balance amount of Rs.20,69,393/- has been demanded.

7. In the circumstances, we set aside the order passed by the learned Single Judge. The demand notice dated 28.1.2009, which is impugned in the Writ Petition is also set aside. The Writ Appeal as well as

Writ Petition are allowed. Consequently, the connected M.Ps. are closed. There shall be no order as to costs.'

7. In the present case, the impugned document is styled as a Notice bearing No.S/1/18-19/1095813 dated 31.10.2018 and states in conclusion, that an appeal is to be filed before the Regional Deputy Commissioner if the demand is not accepted by an assessee. However, since the notice imposes a demand upon the petitioner it should be in conformity with the principles of natural justice and ought to have afforded an opportunity of hearing to the petitioner prior to issuance of the same.

8. The Taxation Rules in Schedule IV of the Chennai City Municipal Corporation Act, 1919 ('Act') provide for the procedure to be adopted in regard to the assessments of property tax. Part IA of the Taxation Rules provides for assessment of property tax and Rule 1 thereof requires the Commissioner to give due publicity in the local media calling upon the owner or occupier of land/building to file a return containing various particulars of the property. In the event of failure to file such return, Rule 2 authorises a person not below the rank of Bill Collector to enter and inspect the assessable property and prepare the return.

9. Rule 3 provides for the methodology for such assessment, Rule 4(1) for the issuance of a property tax card and Rule 4(4) states that the property tax card shall be valid till such time the assessment is revised by way of general revision or as the Government may direct. Rule 4(5) states that the Commissioner shall make arrangements for the verification of the return filed by the owner/occupier of every assessable property immediately after a general revision and before the next general revision.

10. Rule 4(6) is relevant for the purpose of this Writ Petition and is extracted below:

'4.(6) Consequent on the verification made under rule 5, if any discrepancy is noticed in the particulars furnished in the return filed by the owner or occupier, the Commissioner may, after giving such owner or occupier a reasonable opportunity, of being heard and after considering the objection, if any, received from him, modify the assessment from the date on which the assessment was made and collect the arrears of tax.'

11. The impugned notice is one for General

Revision and, in terms of Rule 4(6) of the Taxation Rules, a reasonable opportunity is to be granted to the owner/occupier of being heard on the objections for the proposed revision of the assessment. This has, admittedly, not been done in the present case.

12. In the light of the above discussion, the impugned notice shall be treated as a show cause notice upon receipt of which an assessee shall be entitled to file objections, if any. Thereafter, a final appealable order shall be passed by the Assessing Authority after due consideration of the objections filed. '

4. The sole distinction on facts in the present cases is that no objections have been filed by the petitioners despite having received the Demand Notices in Form I on 26.09.2018 (WP.Nos.3190 and 3199 of 2019) and 29.09.2018 (W.P.No.3183 of 2019), Final Warrant Notice for payment of the amount on 26.12.2018 in W.P.Nos.3190 of 2019 and a further Demand Notice dated 19.11.2018 in W.P.No.3199 of 2019.

5. I am of the view that the petitioners should be put to terms insofar as the notices issued by the authorities as early as in September, 2018 did not elicit any response from the petitioners till filing of the present Writ Petitions in January, 2019. The petitioners are thus directed to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) jointly as a pre-condition to avail of the order and timelines set out below.

6. The petitioners shall file their objections to the notices in all the three cases before the concerned authority on or before 18.02.2019 and shall appear before the Officer at the first instance on 25.02.2019 at 10.30 a.m. for a personal hearing without any further notice in this regard. The officer shall pass an order computing the final demand that is an appealable order within three (3) weeks from the date of conclusion of the assessment proceedings after affording due opportunity of hearing to the petitioners. The demand raised in the impugned notices, in excess of 100% of the existing rates, shall be kept in abeyance till such time orders are passed by the Assessing Authority, as aforesaid.

7. The Writ Petitions are disposed of in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner, Corporation of Chennai,
Rippon Buildings,E.V.R. Periyar Salai,
Chennai.

2. The Assistant Revenue Officer, Revenue Department,
Zonal Office-VIII Corporation of Chennai No.36B, 2nd Street,
Pulla Avenue, Shenoy Nagar, Chennai- 6000030

3. The Assistant Revenue Officer
Revenue Department Zonal Office-V Corporation of Chennai
Chennai-600 021

+3cc to Mr.B.F.S.Legal, Advocate, S.R.No.9190 to9192

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.9103

W.P.Nos. 3183, 3190 and 3199 of 2019
and
WMP.Nos.3440,3445, 3446,3450 & 3452 of 2019

GSP (05/02/2019)



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