IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.8166 of 2019
and
W.M.P.Nos.8739 & 8740 of 2019

V.K.Baskar ..Petitioner

vs

The Commissioner,
Kancheepuram Municipality,
Kancheepuram,
Kancheepuram District. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records pending on the file of the respondent in pursuant of the demand notice bearing tax No.008/041/00806 dated 02.02.2019 issued by the respondent enhancing the property tax for the year 2017-2018 and 2018-2019 by enhancing nearly 1300% instead of 50% for the house situate at No 49/B, Periyar Nagar, Little Kancheepuram-631 501 and quash the same.

For Petitioner : Mr.Umapathy
for Mr.S.Siva shanmugam

For Respondent : Mr.G.B.Rajesh
Standing counsel

O R D E R

Mr.Umapathy, learned counsel representing the counsel on record for writ petitioner and Mr.G.B.Rajesh, learned standing counsel for Kancheepuram Municipality on behalf of lone respondent in the instant writ petition are before this Court.

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

3. Subject matter of writ petition is enhancement of property tax for writ petitioner's immovable property which is at 'No.49/B, Periyar Nagar, Little Kancheepuram - 631 501' [hereinafter 'said property' for brevity and clarity]

4. It is the case of the writ petitioner that said property has been assessed to property tax by the respondent Municipality at Rs.880/-(Rupees Eight Hundred and Eighty only) and that the writ petitioner has been paying the same.

5. It is the further submission of writ petitioner that under such circumstances, he was visited with a demand notice being a notice dated 02.02.2019 [hereinafter 'impugned demand notice' for brevity], wherein property tax for said property at enhanced rates of Rs.5,113/- and Rs.11,106/- for Financial years 2017-2018 and 2018-2019 respectively have been demanded besides surcharge.

6. On the aforesaid basis, the impugned demand notice also calls upon the writ petitioner to pay what according to the respondent Municipality is arrears.

7. It is submitted by learned counsel for writ petitioner that the impugned demand notice was not preceded by any other notice, proposing enhancement and that the respondent municipality has slapped the demand notice on writ petitioner straightaway.

8. In this regard, Mr.G.B.Rajesh, learned standing counsel for Kancheepuram Municipality, brings to the notice of this Court that enhancement of property tax for said property is governed by 'Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' [hereinafter 'District Municipalities Act' for brevity and clarity]

9. A perusal of the District Municipalities Act reveals that relevant provision is Section 82 captioned 'Method of Assessment of property'. Besides Section 82, the District Municipalities Act also contains a separate dedicated Schedule in this regard. This Schedule is Schedule IV, which is captioned 'Taxation and Finance Rules'. Under this Schedule IV, one part of the Schedule is Taxation Rules and the same is Part I, which goes by the caption 'Taxation Rules.' A perusal of the Taxation Rules under District Municipalities Act reveals that Rule 9 is of relevance and the same reads as follows:

> '[9. When assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the [executive authority] shall give public notice stating that revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government, a railway administration or a company, and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of the municipal office and

on the same day be published in the municipality by beat of drum]

[Provided that in every case where there is an enhancement in the assessment, the executive authority shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned:

Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso, the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice.]'

10. Be that as it may, in the light of several Government orders which were issued regarding enhancement of property tax pertaining to revisions, it is brought to the notice of this Court that guidelines had been issued by the Commissioner of Municipal Administration, Government of Tamil Nadu with regard to enhancement of property tax, more particularly, with regard to principles, parameters and computation for levy / enhancement of property tax under the District Municipalities Act.

11. A Circular dated 20.08.2018 bearing R.O.C.No.20555/2018/R1 has been brought to the notice of this Court and it is submitted that this circular applies to the subject matter of instant writ petition as said property is situate in Kancheepuram Municipality for which levy and enhancement of property tax is governed by the District Municipalities Act.

12. In the aforesaid backdrop, it follows as an inevitable sequitur that it is imperative on the part of the respondent Municipality, to follow the procedure adumbrated in Section 82 of District Municipalities Act, besides the rules enumerated in Part I of Schedule IV of District Municipalities Act being a part captioned 'Taxation Rules' and make enhancement in accordance with the aforesaid circular / government orders / guidelines.

13. A perusal of the aforesaid provision of District Municipalities Act, rules and the circular brings to light that it is necessary to put the writ petitioner on notice about the proposed enhancement.

14. In this regard, an order passed by a Hon'ble Single Judge of this Court being order dated 04.02.2019 made in W.P.No.3231 of 2019 assumes significance. This order is to the effect that there should be provisional assessment, assessee should be given an opportunity to object to the same and then

final assessment has to be made before a demand is raised on the assessee. To be noted, this order has been passed by drawing inspiration from a Hon'ble Division Bench judgment in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. Principles in 'Sanjai Gupta case' is before demand of tax, objections of the assessee have to be considered and final orders have to be passed.

15. Also to be noted, aforesaid order of Hon'ble Single Judge was rendered under 'Chennai City Municipal Corporation Act, 1919' ['CCMC Act' for brevity]. However, Sanjay Gupta principle would apply in all force as sauce to the goose is sauce to gander too. To be noted, aforesaid order of Hon'ble Single Judge has admittedly been given legal quietus.

16. Therefore, the following order is passed:

a) Impugned demand notice bearing tax No.008/041/00806 dated 02.02.2019 is set aside. It is made clear that impugned demand notice is set aside solely for the purpose of facilitating enhancement of property tax in accordance with the various provisions, guidelines, government orders and circular and no opinion is expressed on the merits of the matter.

b) Respondent Municipality, shall issue notice to the writ petitioner giving details of the proposed enhancement within 15 days regarding proposed enhancement and new assessment if any, for additional construction if any giving details of determinants and parameters for enhancement.

c) Writ petitioner shall send objections to the same within a fortnight from the aforesaid notice.

d) Thereafter, the respondent shall examine the objections of the writ petitioner and pass final assessment, after considering all the objections raised by the writ petitioner.

e) Though obvious, it is made clear that it is open to the writ petitioner to assail the final assessment in a manner known to law(if the writ petitioner is not satisfied with the final assessment). It is also made clear that after final assessment, it is open to the respondent to issue fresh demand notice depending on the final assessment and the numerical values therein.

17. This writ petition is disposed of with above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Kancheepuram Municipality,
Kancheepuram,
Kancheepuram District.

+1cc to Mr.Siva Shanmugam, Advocate, S.R.No. 58206

W.P.No.8166 of 2019
and
W.M.P.No.8740 of 2019

PPA(CO)
GN(21/08/2019)