IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.07.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.5932 of 2019
&
W.M.P.No.6760 of 2019

Bertin @ Raju .. Petitioner

Vs.

1. The Commissioner
   Greater Chennai Corporation
   Rippon Buildings, Chennai

2. The North Regional Deputy Commissioner
   Greater Chennai Corporation
   Zone - V, No.61, Basin Bridge Salai
   Chennai - 21

3. The Assistant Revenue Officer
   Zonal Office-V
   Greater Chennai Corporation
   No.61, Basin Bridge Salai
   Old Washermenpet
   Chennai - 21 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent issued vide proceedings in Z.O.V.R.D.C No.R1/SPL/2019 dated 02.02.2019 and quash the same and consequently direct the respondents herein to consider the appeal dated 10.01.2019 filed by the petitioner on merits and issue the revised property tax assessment order as per the G.O.Ms.No.73, Municpal Administrations and Water Suipply Department dated 19.07.2018.

For Petitioner : Mr.G.Arul Murugan

For Respondents: Mr.T.C.Gopalakrishnan
Standing Counsel

O R D E R

Mr.G.Arul Murugan, learned counsel on record for writ petitioner and Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation on behalf of three respondents 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 instant writ petition pertains to enhancement of property tax for petitioner's immovable property. Such enhancement of property tax is under 'Chennai City Municipal Corporation Act, 1919' ('CCMC Act' for brevity). Writ petitioner's property, which is subject matter of instant writ petition is at 'No.13/1(7/1), Gandhi Irwin Road, Egmore, Chennai - 600 008', which shall hereinafter be referred to as 'said property' for the sake of convenience and clarity.

4.It is the case of the writ petitioner that said property has been assessed to property tax under CCMC Act and the property tax was Rs.20,233/- (Rupees Twenty Thousand Two Hundred and Thirty Three only) upto second half year of 2017-18 i.e., II-2017-18. It is the case of the writ petitioner that writ petitioner was suddenly visited with 'a demand notice dated 02.02.2019 bearing reference Z.O.V.R.D.C No.R1/SPL/2019', (hereinafter 'impugned demand notice' for brevity) wherein property tax for said property has been shown as Rs.2,52,900/- (Rupees Two Lakhs Fifty Two Thousand Nine Hundred Only) per half year and from a reading of the impugned demand notice it appears that the property tax for said property which stood at Rs.20,233/- has been enhanced to Rs.2,52,900/- with effect from first half-year of 2018-19 i.e., I-2018-19 or in other words with effect from 01.04.2018. It is the specific and pointed case of the writ petitioner that said property was not inspected, no provisional assessment notice was given and the writ petitioner was not given an opportunity to send objections.

5. Responding to the aforesaid submissions, learned Standing Counsel for Chennai Corporation submitted, on instructions, that the provisional Assessment Order has been despatched to the writ petitioner albeit by ordinary post on 29.11.2018. As it has

been despatched by ordinary post, obviously there will be no postal receipt evidencing despatch and/or acknowledgement for the same, but writ petitioner counsel, on instructions, submits that provisional Assessment order has not been received.

6. This Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019 has held that in cases of this nature, there should be a provisional Assessment order, Assessee should be called upon to send objections, objections have to be considered and a final assessment order has to be passed. To be noted, there is no disputation before this Court that this order of a Hon'ble single Judge has become final and has been given legal quietus. It is also to be noted that this view of the Hon'ble single Judge by drawing inspiration from Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465, is to the effect that demand for tax has to be made only after taking into account all the objections of the assessee. It may be appropriate to have the same procedure followed in the instant case. Therefore, it is not necessary to embark upon the exercise of resolving the factual dispute regarding whether the provisional assessment notice said to have been despatched on 29.11.2018 by ordinary post by the Chennai Corporation has been received by the writ petitioner or not. In any event, such a factual dispute cannot be resolved in a writ petition.

7. In the light of the narrative thus far, this Court passes the following order:

a) Impugned demand notice dated 02.02.2019 bearing reference Z.O.V.R.D.C No.R1/SPL/2019 is set aside. It is made clear that impugned demand notice is set aside only for the purpose of facilitating an assessment qua enhancement of property tax. In other words, it is made clear that setting aside of the impugned demand notice is not by expressing any opinion or view on merits of the matter.

b) A photocopy of the provisional Assessment Order dated 29.11.2018 bearing reference proposing enhancement of property tax for said property has been served today by the learned Standing Counsel for Chennai Corporation on the counsel for writ petitioner and counsel for writ petitioner has received the same as per the directions of this Court.

c) Writ petitioner shall send objections to the aforesaid provisional assessment notice within fifteen days from today. It is open to the writ petitioner to raise all objections available in law including the grounds raised in the writ petition.

d) On receipt of objections as above from the writ petitioner, second respondent shall consider the objections and pass a final Assessment Order in accordance with law

e) Though obvious, it is open to the writ petitioner to assail the final Assessment Order in a manner known to law if the writ petitioner is not satisfied with the final Assessment Order.

f) Final Assessment Order made in the aforesaid manner shall be served by Chennai Corporation on the writ petitioner under due acknowledgement within seven working days from the date of final Assessment Order.

g) If the writ petitioner does not file objections within 15 days to the provisional notice as mentioned above, it is open to the second respondent to proceed with the final assessment on available records.

h) There shall no coercive action or any distraint proceedings against the writ petitioner/said property until final Assessment Order is made in the aforesaid manner and until the same is served on the writ petitioner under due acknowledgement subject to the condition that the writ petitioner continues to pay property tax for said property at pre-revisional rate of Rs.20,233/- per half year without any default. Though obvious, it is made clear that though the provisional assessment notice /order refers to an appeal, in the light of Sanjai Gupta principle and the principle of this Court what would be filed by the writ petitioner is objections and the same shall be considered for final Assessment Order.

i) It is submitted by learned counsel for writ petitioner that writ petitioner has paid certain sums of money pursuant to interim orders of this Court in the instant writ petition. While computing payment of property tax, monies so paid by the writ petitioner shall be given due credit.

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

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gpa

To

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   Rippon Buildings, Chennai

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+1cc to Mr.T.C.Gopalakrishnan, Advocate sr.59299
+1cc to Mr.G.Arul Murugan, Advocate sr.59001

W.P.No.5932 of 2019 &
W.M.P.No.6760 of 2019

nr 20/08/2019