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.6012 of 2019
and
W.M.P.No.6838 of 2019

1.Mr.V.P.Venkatesan

Mr.V.P.Srinivasan .. Petitioners

Vs.

1.The Commissioner of Municipal Administration
Commissionerate of Municipal Administration
Chepauk, Chennai – 5.

2.The Commissioner
Poonamallee Municipality
Poonamallee.

3.The Revenue Inspector
Poonamallee Municipality
Poonamallee.

4.Tax Collector
Poonamallee Municipality
Poonamallee. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the 2nd respondent in relation to the demand notice dated NIL in respect of petitioners property namely Rani Thirumanamandapam and quash the same.

For Petitioner : Mr.V.Chandraprabu

For Respondents : Mr.R.P.Prathap Singh,
Government Advocate for R1.

Mr.P.Srinivas for R2 to R4.

ORDER

Mr.V.Chandraprabu, learned counsel on record for writ petitioners, Mr.R.P.Prathap Singh, learned Government Advocate on behalf of respondent No.1 and Mr.P.Srinivas, learned counsel on behalf of respondent Nos.2 to 4 i.e., Poonamallee Municipality are before this Court.

2. With consent of all the three learned counsel, main writ petition is taken up, heard out and is being disposed of.

3. Subject matter of instant writ petition is enhancement of property tax for immovable property owned by writ petitioners. In the instant writ petition immovable property owned by writ petitioners is 'Rani Thirumanamandapam, No.250, Ruckmani Nagar, Poonamallee - 600 056' (hereinafter 'said property' for brevity).

4.It is the case of the writ petitioners that said property was assessed to half yearly property tax of Rs.9,138/- (Rupees Nine Thousand One Hundred and Thirty Eight only) and the same is being paid by writ petitioners without any default. It is the further case of writ petitioners that while things stood as above, respondent, without any prior notice, suddenly, demanded half yearly property tax at the rate of Rs.13,707/- (Rupees Thirteen Thousand Seven Hundred and Seven only) for said property and that also has been paid.

5. When things stood as above, writ petitioners were visited with a notice captioned 'இறுதி அறிவிப்பு'. This undated notice demands property tax from writ petitioners for said property, at the rate of Rs.27,769/- (Rupees Twenty Seven Thousand Seven Hundred and Sixty Nine only) with effect from II/2017-18 i.e., second half year of 2017-18 or in other words on and from 01.10.2018.

6. After hearing all the aforesaid three counsel, what emerges clearly is that assessment, levy and enhancement of property tax for said property is governed by a statute which goes by the name 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)', which shall hereinafter be referred to as 'District Municipalities Act' for the sake of brevity, clarity and convenience.

7. From the arguments made in the hearing today, it emerges clearly that as part of District Municipalities Act, there is a set of rules, which go by the caption 'Taxation Rules'. This Taxation Rules is Part-I of schedule - IV of District Municipalities Act. The District Municipalities Act under Section 82 provides for assessment of property tax and some of the Rules under aforementioned Taxation Rules provides

for methodology for enhancement. Further undisputed position that emerges in the hearing is that the instant enhancement of property tax for said property to Rs.27,769/- (Rupees Twenty Seven Thousand Seven Hundred and Sixty Nine only) is by way of a special revision and therefore, the same is governed by Rule 9 of Taxation Rules. There is no disputation or disagreement that when there is such an enhancement of property tax / upward revision by way of special revision, Executive Authority of Municipality should cause an intimation to be made to the assessee and serve it on the assessee. Before this Court proceeds further, it is to be noted that the term 'Executive Authority' is a term of art as the same has been defined under Section 3 (8-C) of District Municipalities Act and with regard to being specified by State Government under this provision, Mr.P.Srinivas, learned counsel for Poonamallee Municipality submits that the Executive Authority now for Poonamallee Municipality is the Commissioner of Poonamallee Municipality. This submission, made on instructions, is recorded.

8. This takes us back to the first proviso to Rule 9 of Taxation Rules.

9. On being served with special notice under first proviso to Rule 9 of Taxation Rules, writ petitioner assessees have a right to file a revision under Rule 10 of Taxation Rules and such revision has to be made to the Executive Authority, who should dispose of the same after giving a reasonable opportunity to writ petitioner assessee to appear either in person or through an authorised agent. All these are encapsulated in Rules 10, 11, and 12 of Taxation Rules. Therefore, a combined reading of Section 3 (8-C) of District Municipalities Act and Rules 9 to 12 of Taxation Rules being Part-I of Schedule - IV of District Municipalities Act is necessary.

10. In the light of the undisputed scenario that has emerged in the hearing today, the further obtaining undisputed position is that writ petitioners were not served with any special notice, much less special notice within the meaning of first proviso to Rule 9 of Taxation Rules under District Municipalities Act prior to the impugned demand notice.

11. Therefore, procedure adumbrated in the Taxation Rules set out supra necessarily needs to be followed.

12. In the light of the undisputed obtaining position that emerged in the hearing today, the following order is passed:

a) undated impugned notice captioned 'இறுதி mwptpg;g[' is set aside. To be noted, this impugned notice is set aside without expressing any opinion or views on the merits of the matter. In other words, it is set aside for the purpose of enabling compliance with Rules 9 to 12 of Taxation Rules under District Municipalities Act.

b) The third respondent i.e., Revenue Inspector along with three assistants shall inspect the said property on 23.07.2019 any time between 10.00 a.m. and 5.00 p.m., take measurements and collect other site details that may be necessary for computation of enhancement of property tax by way of a upward revision which is a special revision. Learned counsel for writ petitioners, on instructions, submits that writ petitioners will facilitate such inspection without any obstruction and one representative of the writ petitioners shall be present along with the third respondent and his three assistants through out the inspection.

c) Post inspection in the aforesaid manner, second respondent shall serve a special notice on the writ petitioners under due acknowledgement within a fortnight from the date of inspection.

d) It is open to the writ petitioners to accept the numerical value in the special notice or file a revision under Rule 10 of Taxation Rules to the second respondent.

e) If the writ petitioners choose to file revision, the same shall be disposed of in accordance with law more particularly, in accordance with Rule 10 of Taxation Rules i.e., after giving a reasonable opportunity to writ petitioners to appear either in person or through an authorised agent and represent their case.

f) The order disposing of the revision petition shall be communicated to the writ petitioners under due acknowledgement within 7 working days from the date of such disposal.

g) Until the aforesaid exercise of either writ petitioners accepting the special notice or disposal of the revision in the aforesaid manner, there shall be no coercive action or no destrain proceedings against the writ petitioners with regard to property tax qua said property subject to the condition that writ petitioners continue to pay property tax for said property at the existing rate of Rs.9,138/-(Rupees Nine Thousand One Hundred and Thirty Eight only) per half year without any default.

13. Writ Petition is disposed of with the above direction. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vsm

To

1.The Commissioner of Municipal Administration
Commissionerate of Municipal Administration
Chepauk, Chennai - 5.

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Poonamallee Municipality
Poonamallee.

3.The Revenue Inspector
Poonamallee Municipality
Poonamallee.

4.Tax Collector
Poonamallee Municipality
Poonamallee.

+1cc to Mr.P.Srinivas, Advocate SR.No.59530

+1cc to Mr.V.Chandraprabu, Advocate SR.No.59005

+1cc to Government Pleader SR.No.59717

W.P.No.6012 of 2019 and
W.M.P.No.6838 of 2019

GJ II(CO)
GMY(26/08/2019)