

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.6943 of 2019

& W.M.P.No.7683 of 2019

Mr.S.A.Razack

No.42.(48), Rajaji Salai,
Alias North Beach Road,
Clive Battery, V.O.C.Nagar
Chennai-600001

....Petitioner

--VS--

- 1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.
- 2.Assistant Revenue Officer, Zone-15,
Greater Corporation of Chennai,
Zone No.05, Ward No.060,
9, Chidambaram 7th St, Basin Bridge,
Chidambaram Nagar, Chennai
Tamil nadu 600001

....Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Demand Notice issued by the 1st respondent dated 21.01.2019, relating to the assessment order bearing No.S/1/18-19/1246638 of the property of the petitioner bearing No.42(48), Rajaji Salai, Alias North Beach Road, Clive Battery, V.O./C Nagar, Chennai-600001 and quash the same and directing the 2nd respondent to conduct an enquiry in case of assessment of Corporation taxes.

For Petitioners : Ms.K.Aparna Devi, Srenik S.Jain

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

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O R D E R

The petitioner has challenged the Demand Notice issued by the 1st respondent dated 21.01.2019, revising the property tax assessment for the half yearly tax of 2018-19 as against which objections have been filed by the petitioner on 21.02.2019. The grievance of the petitioner is that the objections filed by the petitioners have not been considered till date and no orders have been passed by the respondents.

2. Mr. T.C.Gopalakrishnan, learned standing counsel appearing for respondents has obtained instructions in the matter. Both learned counsel request that the writ petition may be disposed of finally even at the stage of admission.

3. I may refer to my order dated 07.02.2019 passed in W.P.No.3645 of 2019 wherein I have considered a case similar to the present one. The property in question is situated at bearing No.42(48), Rajaji Salai, Alias North Beach Road, Clive Battery, V.O./C Nagar, Chennai-600001. Order dated 04.02.2019 passed in W.P.No.3248 of 2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) and has passed orders as follows reads thus:-

'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.'

4. The observations and conclusions of this Court in the aforesaid matter are equally applicable in the present case as well and may be read as part and parcel of the present order. The petitioner in the present case has a variety of objections to the enhancement, that enhancement is 400% of the existing tax, which is in contravention of G.O.(Ms)No.73 dated 19.07.2018, which stipulates only 100% increase; that no computation sheet has been provided which will give the break up of the impugned demand; that there is a variation between the demand and the tax that the petitioner is liable to pay as per the calculator provided on the website of the Chennai Corporation, among others. In any event, the petitioner has rightly filed its objections to the Demand Notice dated 21.01.2019, on 21.02.2019. However, since the objections have been filed beyond the period provided for an appeal, I am of the view that the petitioner should be put to terms, if he is to be entitled to the benefit of the order passed in W.P. No.3248 of 2019, extracted above.

5. The petitioners shall appear before the Deputy Commissioner (Revenue and Finance), Greater Chennai Corporation, who is not arrayed as a party in the present writ petition, at the first instance on 03.06.2019 at 10.30 a.m. for a personal hearing along with the objection dated 21.02.2019 and proof of remittance of: (i) admitted tax and (ii) tax of 100% of existing tax as per G.O.Ms.No.76, Municipal Administration and Water Supply (MA.IV) Department, dated 26.07.2018 and (iii) 15% of the excess thereof. No further notice will be issued in this regard. The Officer shall furnish the petitioner with a working / computation sheet setting out the break-up of the demand raised under the impugned notice. Upon satisfaction that the amounts as set out in (i), (ii) and

(iii) aforesaid have been remitted, the Officer shall, after affording full opportunity to the petitioner and pass orders of assessment de novo, within a period of three (3) weeks from the date of conclusion of the personal hearing.

6. The demand raised in the impugned notice, in excess of the remittance stipulated in paragraph 5 above, shall be kept in abeyance till such time orders are passed by the Assessing Authority. It is also made clear that the amounts remitted under (ii) and (iii) in paragraph (5) above shall be received without prejudice to the objections of the petitioner and subject to a final determination of the demand in assessment.

7. The Writ Petition is disposed of in the above terms. No costs. Connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2. Assistant Revenue Officer, Zone-15,
Greater Corporation of Chennai,
Zone No.05, Ward No.060,
9, Chidambaram 7th St, Basin Bridge,
Chidambaram Nagar, Chennai
Tamil nadu 600001

3. Deputy Commissioner (Revenue and Finance),
Greater Chennai Corporation
Chennai

+1 CC to Mr.P.Subbureddy, Advocate Sr.No.36121

+1 CC to Mr. T.C.Gopalakrishnan, Advocate Sr.No.35914

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KJ(CO)

KE(31/05/2019)