IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.06.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.6915 & 6921 of 2019
and
W.M.P.Nos.7662 & 7665 of 2019

W.P.No.6915 of 2019

R.Sumathi ..Petitioner

vs

1.The Government of Tamil Nadu,
Rep.by the Secretary to Government
Department of Municipal Administration and
Water Supply Department,
Secretariat,
Fort St.George,
Chennai - 9.

2.Villupuram Municipality,
Rep.by its Commissioner,
Villupuram. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned demand notice dt.25.02.2019 issued to the Petitioner in respect of her property comprised in Door Nos.127 and 127-A, Thiru.Vi.Ka.Nagar, Villupuram with Property Tax Assessment Nos.21648 and 21618 and quash the same; consequently direct the 2nd Respondent to fix the property tax as per the Government Orders in G.O.(Ms) 73, Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018 and G.O.(Ms) 76, Municipal Administration and Water Suppyl (MA.IV) Department dated 26.07.2018 passed by the 1st Respondent.

W.P.No.6921 of 2019

Dr.T.R.Gobinath ..Petitioner

vs

1.The Government of Tamil Nadu,
Rep.by the Secretary to Government
Department of Municipal Administration and
Water Supply Department,
Secretariat,
Fort St.George,
Chennai - 9.

2.Villupuram Municipality,
Rep.by its Commissioner,
Villupuram. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned demand notice dt.25.02.2019 issued to the Petitioner in respect of her property comprised in Door Nos.128 and 128-B, Thiru.Vi.Ka.Nagar, Villupuram with Property Tax Assessment Nos.21636 and 21638 and quash the same; consequently direct the 2nd Respondent to fix the property tax as per the Government Orders in G.O.(Ms) 73, Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018 and G.O.(Ms) 76, Municipal Administration and Water Suppyl (MA.IV) Department dated 26.07.2018 passed by the 1st Respondent.

For Petitioners : Mr.C.Selvaraj
for M/s.R.Neelakandan
(in both W.Ps)

For Respondents: Mr.V.Jayaprakash Narayanan
Govermnent Pleader(in charge)
for R2
(in both W.Ps)
Mr.R.P.Pratap Singh for R1
Government Advocate
(in both W.Ps)

C O M M O N O R D E R

Both these writ petitions will be disposed of by this common order.

2. Mr.C.Selvaraj, learned counsel representing the counsel on record for the writ petitioners in both the writ petitions, Mr.R.P.Pratap Singh, learned Government Advocate on behalf of the 1st respondent and Mr.V.Jayaprakash Narayanan, learned Government Pleader in charge and standing counsel for Villupuram Municipality on behalf of 2nd respondent are before this Court.

3. With consent of all learned counsel, main writ petitions are taken up, heard out and are being disposed of.

4. Both these writ petitions pertain to enhancement of property tax for immovable properties owned by the writ petitioners.

5. With regard to the writ petitioner in W.P.No.6915 of 2019, property owned by the writ petitioner is Door Numbers.127 and 127-A (Ground Floor and 1st Floor), Thiru.Vi.Ka.Nagar, Villupuram. With regard to the writ petitioner in W.P.No.6921 of 2019, the immovable property owned by the writ petitioner is Door Nos.128 and 128-B, Thiru.Vi.Ka.Nagar, Villupuram. This Court is informed that both these properties fall under Ward No.17. This is mentioned only for specificity and otherwise it has no great relevance with regard to core disputation in these writ petitions.

6. Be that as it may, there is no disputation or disagreement before this Court that the entire procedure regarding levy, assessment and enhancement of property tax for the aforesaid properties of the writ petitioners are governed by the 'Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' (hereinafter 'said Act' for the sake of brevity, clarity and convenience). What is of relevance is also a set of rules made under the said Act, which goes by the caption 'Taxation and Finance Rules', which is contained in Schedule IV of said Act. This set of rules shall be referred to as 'said Rules' for the sake of convenience and clarity.

7. With regard to W.P.No.6915 of 2019, the details as can be culled out from the counter affidavit by the 2nd respondent is as follows:

S.No.	Door No.	New Assessment No.	Old Assessment No.	Old Half-yearly Property Tax	Revised Half-yearly Property Tax
1	127	044/017/00713	044/21648	1,281/-	16,172/-
2	127-A	044/017/00720	044/21618	1,784/-	12,252/-
			Total	3,065/-	28,424/-

With regard to the immovable property, which forms a subject matter of W.P.No.6921 of 2019, the details as can be culled out from the counter affidavit of the 2nd respondent, Villupuram Municipality is as follows:

S.No.	Door No.	New Assessment No.	Old Assessment No.	Old Half-yearly Property Tax	Revised Half-yearly Property Tax
1	128	044/017/00719	044/21636	6,371/-	11,468/-
2	128-B	044/017/00721	044/21638	1,960/-	11,647/-
			Total	8,331/-	23,115/-

8. Instant writ petitions have been filed, challenging the aforesaid upward revision of property tax for the aforesaid properties. Challenge to the upward revision is twofold and the two grounds are as follows:

a) The upward revision is not in conformity with G.O.Ms.No.73 dated 19.07.2018 and G.O.Ms.No.76, dated 26.07.2018 respectively.

b) The second ground of attack is that the respondent Municipality has not given an opportunity to the writ petitioners to object to the revision by making a provisional assessment and calling for objections from the writ petitioner.

9. With regard to, the aforesaid Government orders, it was submitted by learned counsel for respondents that writ petitioners have put up additional new construction in aforesaid properties, therefore instant case falls under the category of escaped assessment and therefore, it would qualify as fresh assessment resulting in the aforesaid Government orders becoming inapplicable. In the light of this controversy that surfaced at the hearing turning heavily on facts, this question is left open.

10. Be that as it may, with regard to the second ground of attack, it is not in dispute that a provisional assessment has not been made and the writ petitioners have not been given an opportunity to object to the provisional assessment.

11. An order of this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019 following an earlier order of Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 is of relevance and it

has been held that as far as the demand qua immovable properties and assessments are concerned, it is necessary that a provisional assessment is made, objections are called for from the assessee, a final assessment should be made after taking into account the objections and a demand can be made only thereafter. To be noted, this order of learned Single Judge was rendered in the light of 'Chennai City Municipal Corporation Act, 1919' ['CCMC Act' for brevity] but principles laid down by Hon'ble Division Bench that a levy and consequent demand should be preceded by a decision on assessee's objection cannot be given a go-by.

12. In the instant case, it is submitted that the property was inspected and it was found that the writ petitioners have made some extensions and additions to the properties besides the property having put to different use (non-residential).

13. If that be the case, it is necessary that the writ petitioners should have been given an opportunity to object to the proposed revision.

14. While considering the objections of the writ petitioners, the question as to whether there is escaped assessment at all will also be decided on facts. This is a factual dispute, which cannot be decided in a writ petition. Further, this decision will ultimately lead to the applicability of the aforesaid Government orders.

15. Therefore, this aspect of the matter is being left open for the present.

16. This takes us to said Act, more particularly, Section 82 of said Act. Section 82 of said Act captioned 'method of assessment' is adumbration of the modalities and methodologies to be adopted for assessment of property tax. It is imperative that the methodology adumbrated in Section 82 of said Act is adhered to.

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

a) With regard to W.P.No.6915 of 2019, the impugned demand notice dt.25.02.2019 issued to the Petitioner in respect of her property comprised in Door Nos.127 and 127-A, Thiru.Vi.Ka.Nagar, Villupuram with Property Tax Assessment Nos.21648 and 21618 and with regard to W.P.No.6921 of 2019, impugned demand notice dt.25.02.2019 issued to the Petitioner in respect of her property comprised in Door Nos.128 and 128-B, Thiru.Vi.Ka.Nagar, Villupuram with Property Tax Assessment Nos.21636 and 21638 are set aside. To be noted, they are set aside, solely on the ground that no opportunity was given to the writ petitioners and no opinion is expressed on merits of the matter.

b) The 2nd respondent Municipality, shall issue a provisional assessment notice to the writ petitioners within a fortnight from the date of receipt of this order, setting out the parameters and determinants for proposed assessment / revision and call for objections from the writ petitioners. Writ petitioners shall send objections / reply with supporting material, if any, within a fortnight therefrom.

c) Thereafter,the 2nd respondent shall pass a final assessment order in accordance with law, more particularly, in accordance with said Act and said Rules thereunder.

d) On passing final assessment orders, the same shall be communicated to each of the writ petitioners under due acknowledgment in a manner known to law within seven (7) working days from the date on which the final assessment orders are made.

e) Though obvious, it is made clear that all statutory remedies available to the writ petitioners to assail the final assessment orders will remain unimpeded by this order.

f) Be that as it may, it is made clear that there shall be no coercive action, subject to writ petitioners continuing to pay existing half-yearly property tax at the prevailing rates as culled out in the tabular column above until final assessment is made in the aforesaid order.

18. Both writ petitions are disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government
Department of Municipal Administration and
Water Supply Department,
Secretariat,
Fort St.George,
Chennai - 9.

2.The Commissioner,
Villupuram Municipality,
Villupuram.

+2 CCS to Mr.R.Neelakandan, Advocate sr 50432, 50433.
+1 CC to Govt. Pleader sr 50643.
+1 CC to Mr.V.Jayaprakash Narayanan, Advocate sr 50674.

W.P.Nos.6915 & 6921 of 2019
and
W.M.P.Nos.7662 & 7665 of 2019

SJ(CO)
SP(25/07/2019)