IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.7633 of 2019
and
W.M.P.Nos.8270 & 8271 of 2019

Selva Vinayagar Modern Rice Mill,
rep.by its Partner,
R.Kamatchi Ammal
W/o W.G.S.Ramachandran,
Rep.by Power Agent, W.G.S.Ramachandran,
No.M/67, NO.105/A Gandhi Nagar Road,
Virupatchipuram,
Vellore-632 002. ...Petitioner

Vs

The Commissioner,
Vellore City Municipal Corporation
Vellore. ....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 relating to the impugned demand notice issued by the respondent dated 11.10.2018 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.Silambanan, Senior Counsel
for Ms.P.Shanthi, Standing Counsel

O R D E R

Mr.C.Prakasam, learned counsel on record for the writ petitioner and Mr.S.Silambanan, learned Senior Counsel instructed by Ms.Shanthi, learned Standing counsel for the sole respondent are before this Court.

2. With consent of counsel on both sides, main writ petition is taken up, heard out and is being disposed of. Entire writ petition turns on a very narrow compass, more so owing to the trajectory of the hearing today.

3. Writ petitioner is the owner of the property in Survey No.105, Gandhi Nagar Road, Virupatchipuram, Vellore (hereinafter 'said property'' for the sake of brevity, clarity and convenience).

4. Learned counsel for writ petitioner, adverting to the affidavit filed in support of the writ petition, submitted that said property was assessed to Property Tax by the Vellore Municipality and the yearly property tax was paid without any default. It is the case of the writ petitioner that a half yearly property tax was being paid for all assessment years without any delay or default.

5. Under the aforesaid circumstances, the writ petitioner was visited with a Demand Notice dated 11.10.2018. Vide this Demand Notice, writ petitioner has been called upon to pay a sum of Rs.2,06,560/- (Rupees Two Lakh Six Thousand Five Hundred and Sixty only) towards arrears of property tax for the assessment year 2018-2019 within 15 days of receipt of notice. This notice shall herein be referred as 'impugned notice' for brevity.

6. Vide impugned notice, writ petitioner was also put on notice that if the aforesaid sum of money (which according to respondent is due towards property tax arrears of the writ petitioner qua said property) is not paid within 15 days, legal action will be taken under Rule 30 to 34 in Schedule IV of Tamil Nadu District Municipalities Act, 1920.

7. From a reading of the impugned notice, it also comes to light that the purported arrears of property tax is for assessment year namely 2018-2019.

8. Adverting to a affidavit filed in support of this writ petition, learned counsel for writ petitioner submits that property tax as per the existing rate has been duly paid and there is no disputation or disagreement before this Court in this regard.

9. It is the specific case of the writ petitioner that the writ petitioner was not put on notice about any enhancement of property tax and they were suddenly visited with the impugned notice. Notwithstanding this position, without prejudice to the rights and contentions of writ petitioner, writ petitioner paid the aforesaid tax of Rs.440/- (Rupees Four Hundred and Forty only) for every half year.

10. In the aforesaid circumstances, learned Senior Counsel for the respondent submits that the Act that is applicable to the instant case is 'Vellore City Municipal Corporation Act,

2008 (Tamil Nadu Act 26 of 2008)', hereinafter 'said Act' for brevity and vide Section 8 of the said Act, the provisions of Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981) have been made applicable to Vellore Municipality.

11. Learned Senior Counsel in his usual fairness drew the attention of this Court to Section 118 of the 'Coimbatore City Municipal Corporation Act, 1981' (hereinafter 'Coimbatore Act 1981' for brevity) and submitted that before imposing tax for first time or increasing the rate of existing tax, a publication has to be made in a Tamil Newspaper.

12. Learned Senior Counsel submitted though it is the specific stand of the respondent that said publication has been made, the respondent is not averse to issuing a notice individually to the writ petitioner regarding the proposed enhancement. To be noted, this therefore is a consent order, in the light of the aforesaid stated position of the respondent Municipality which has been articulated before this Court by learned Counsel on instructions.

13. On instructions, it is submitted on behalf of the Vellore Municipality that they would give a notice to the petitioner giving details of the proposed assessment together with parameters / determinants and mode of computation for the proposed enhancement (which will be a provisional assessment) call for objections from writ petitioner, thereafter pass a final assessment order after taking into account the objections of writ petitioner and after giving an opportunity of personal hearing to the writ petitioner.

14. Therefore, it follows as a natural sequitur that the impugned notice is to be set aside, as there cannot be any demand of property tax at the enhanced rate until further final assessment order is passed. In this regard, Sanjai Gupta principle laid down by Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 that any demand should be preceded by a final assessment after taking into account the objections of the assessee is relevant.

15. In the light of the narrative supra, by consent of both sides, the following order is passed:

(a) Impugned order bearing New Assessment No 035/043/00866 dated 11.10.2018 is set aside.

(B) The respondent shall send a notice to the writ petitioner within a fortnight from the date of receipt of the order along with details of proposed enhancement of the property tax for the said property along with the parameters / determinants mode of computation which are used to arrive at the proposed enhancement. This notice will call for objections from the writ petitioner and shall be bound on the writ petitioner under due acknowledgment.

(C) Writ petitioner shall send their objections to the aforesaid proposed enhancement / provisional assessment within a fortnight thereafter i.e., from date of receipt of aforesaid notice.

(D) On receipt of objections from writ petitioner, the respondent Municipality shall consider all the objections of the writ petitioner, give an opportunity of personal hearing to the writ petitioner and then pass a final assessment order in accordance with law as expeditiously as possible, in any event within 8 weeks from the date of receipt of the objections from the writ petitioner.

(E) The final assessment order so passed by the respondent shall be communicated to the writ petitioner under due acknowledgment within seven (7) working days from the date of the final assessment order.

(F) Until final assessment order is made, there will be no coercive action against the writ petitioner subject to the condition that the writ petitioner continues to pay property tax at the existing rate.

(G) Though obvious, it is made clear that it is open to the writ petitioner to assail aforesaid final assessment order in a manner known to law (if writ petitioner is not satisfied with final assessment order). If writ petitioner chooses to assail the final assessment order, this order will not impede such legal proceedings.

16. Accordingly, this writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
Vellore City Municipal Corporation
Vellore.

W.P.No.7633 of 2019

ppa[co]
srg 21/08/2019