

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.7105, 7113 and 7117 of 2019
and
W.M.P.Nos.7827, 7833, 7835, 7842 & 7843 of 2019

Oriental Enterprises

Represented by its Partner,

Mr.S.M.A.J.Abdul Haleem,

4 (144), Mahatma Gandhi Salai,

Nungambakkam, Chennai 600 034.

... Petitioner in W.P.No.7105 of 2019

1.S.M.A.J.Habeeb Mohamed Sadaktullah

6/1, (144/1), Mahatma Gandhi Salai,

Nungambakkam,

Chennai 600 034.

2.S.M.A.J.Abdul Haleem,

6/1, (144/1), Mahatma Gandhi Salai,

Nungambakkam,

Chennai 600 034.

... Petitioners in W.P.No.7113 of 2019

1.S.M.A.J.Habeeb Mohamed Sadaktullah

6/2, (144/2), Mahatma Gandhi Salai,

Nungambakkam,

Chennai 600 034.

2.S.M.A.J.Abdul Haleem,

6/2, (144/2), Mahatma Gandhi Salai,

Nungambakkam,

Chennai 600 034.

... Petitioners in W.P.No.7117 of 2019

Vs.

1.The Commissioner,

Corporation of Chennai,

Rippon Buildings,

E.V.R.Periyar Salai, Chennai.

2.The Regional Deputy Commissioner,

Greater Chennai Corporation,

Ripon Building, Chennai 600 003.

3.The Assessor,
Revenue Department,
Zonal Office-V,
Corporation of Chennai, Chennai 600 021.

4.The Assistant Revenue Officer,
Revenue Department,
Zonal Office - V,
Corporation of Chennai, Chennai 600 021.

... Respondents in all the Writ Petitions

PRAYER in W.P. No.7105 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 4th respondent in Demand Notice No.1, dated 24.09.2018 bearing S/1/18-19/112194 and quash the same.

PRAYER in W.P. No.7113 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in Demand Notice No.1, dated 08.10.2018 bearing S/1/18-19/609857 and quash the same.

PRAYER in W.P. No.7117 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 4th respondent in Demand Notice No.1, dated 11.10.2018 bearing S/1/18-19/871875 and quash the same.

For Petitioners: Mr.K.M.Aasim Shehzad
(in all the Writ Petitions)

For Respondents: Mr.T.C.Gopalakrishnan
Standing counsel
(in all the Writ Petitions)

C O M M O N O R D E R

The writ petitioners in the three Writ Petitions have challenged Notices No.1:Property Tax General Revision for the first and second half of 2018.

2.Mr.T.C.Gopalakrishnan, learned standing counsel takes notice for the respondents.

3.By consent of both learned counsel and upon hearing detailed submissions advanced by them, this Court takes up and disposes the Writ Petitions finally even at the stage of admission.

4.The petitioners have challenge the impugned notices primarily on two grounds; firstly, that no opportunity has been afforded prior to the impugned assessment and secondly, that the enhancement is itself exorbitant and no break/computation sheet has been provided in regard to the same.

5.This Court has had occasion to deal with a similar set of facts and consideration in WP.No.3248 of 2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) and has passed orders on 04.02.2019 as follows:

"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.'

7. In the present case, the impugned document is styled as a Notice bearing No.S/1/18-19/1095813 dated 31.10.2018 and states in conclusion, that an appeal is to be filed before the Regional Deputy Commissioner if the demand is not accepted by an assessee. However, since the notice imposes a demand upon the petitioner it should be

in conformity with the principles of natural justice and ought to have afforded an opportunity of hearing to the petitioner prior to issuance of the same.

8. The Taxation Rules in Schedule IV of the Chennai City Municipal Corporation Act, 1919 ('Act') provide for the procedure to be adopted in regard to the assessments of property tax. Part IA of the Taxation Rules provides for assessment of property tax and Rule 1 thereof requires the Commissioner to give due publicity in the local media calling upon the owner or occupier of land/building to file a return containing various particulars of the property. In the event of failure to file such return, Rule 2 authorises a person not below the rank of Bill Collector to enter and inspect the assessable property and prepare the return.

9. Rule 3 provides for the methodology for such assessment, Rule 4(1) for the issuance of a property tax card and Rule 4(4) states that the property tax card shall be valid till such time the assessment is revised by way of general revision or as the Government may direct. Rule 4(5) states that the Commissioner shall make arrangements for the verification of the return filed by the owner/occupier of every assessable property immediately after a general revision and before the next general revision.

10. Rule 4(6) is relevant for the purpose of this Writ Petition and is extracted below:

'4.(6) Consequent on the verification made under rule 5, if any discrepancy is noticed in the particulars furnished in the return filed by the owner or occupier, the Commissioner may, after giving such owner or occupier a reasonable opportunity, of being heard and after considering the objection, if any, received from him, modify the assessment from the date on which the assessment was made and collect the arrears of tax.'

11. The impugned notice is one for General Revision and, in terms of Rule 4(6) of the Taxation Rules, a reasonable opportunity is to be granted to the owner/occupier of being heard on the objections for the proposed revision of the assessment. This has, admittedly, not been done in the present case.

12. In the light of the above discussion, the impugned notice shall be treated as a show cause notice upon receipt of which an assessee shall be entitled to file objections, if any. Thereafter, a final appealable

order shall be passed by the Assessing Authority after due consideration of the objections filed."

6. The sole distinction on facts in the present cases is that no objections have been filed by the petitioners to the impugned notices despite having received the same on 24.09.2018 (WP.No.7105 of 2019), 08.10.2018 (W.P.No.7113 of 2019) and 11.10.2018 (W.P.No.7117 of 2019). Moreover, the limitation for filing of objection is only fifteen (15) days from date of receipt of the notice and as on date there is a significant delay in the matter.

7. In these circumstances, I am of the view that the petitioners should be put to terms insofar as the notices issued by the authorities as early as in September & October 2018 have not elicited any response from the petitioners till filing of the present Writ Petitions in March, 2019. The petitioners are thus directed to deposit 20% of the demanded amount as a pre-condition to avail of the timelines set out below.

8. The petitioners in all the three cases shall appear before the Officer at the first instance on 22.03.2019 at 02.30 p.m. for a personal hearing before the concerned authority along with their objections to the notices, and proof of remittance as per paragraph (7) above without any further notice in this regard. The officer shall pass an order computing the final demand within three (3) weeks from the date of conclusion of the assessment proceedings after affording due opportunity of hearing to the petitioners.

9. The Writ Petitions are disposed of in all the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To
1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R. Periyar Salai, Chennai.

2.The Regional Deputy Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003.

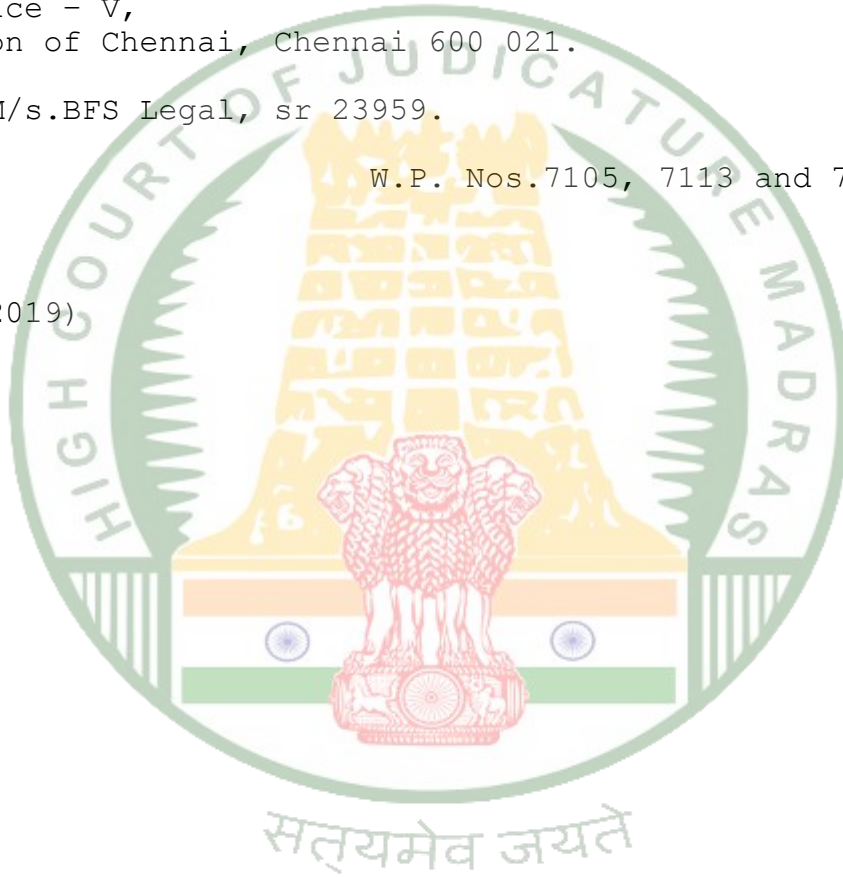
3.The Assessor,
Revenue Department,
Zonal Office-V,
Corporation of Chennai, Chennai 600 021.

4.The Assistant Revenue Officer,
Revenue Department,
Zonal Office - V,
Corporation of Chennai, Chennai 600 021.

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W.P. Nos.7105, 7113 and 7117 of 2019

RSY(CO)
SP(15/03/2019)



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