IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.03.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.No.8521 of 2019
and
W.M.P.No.9034 of 2019

1.M.Basheer Ahmed,
2.M.Mohammed Ismail,
3.M.Umar Farooq .. Petitioners

vs

1.The Commissioner,
Corporation of Greater Chennai,
Ribbon Buildings,
Chennai - 600 003.

2.The Regional Deputy Commissioner,
In-charge of George Town Area,
Corporation of Greater Chennai,
Ribbon Buildings,
Chennai - 600 003.

3.Assistant Revenue Officer : New Zone No.5,
Corporation of Greater Chennai,
Having his office at Basin Bridge,
Chennai. .. Respondents

PRAYER: WRIT PETITION filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records of the first respondent relating to the impugned notice dated 26.09.2017 in E/1/18-19/268077 relating to assessment No.05-060-03566-000 on the file of the first Respondent in respect of the property in New Door No.161(Old No.80), Thambu Chetty Street, George Town, Chennai - 600 001 and quash the same.

For Petitioners : M/s.S.Haja Mohideen Gisthi

For Respondents : Mrs.T.Padma Shalini
for Mr.T.C.Gopalakrishnan

O R D E R

The petitioners are individuals and own property to an extent of 17,990 sq.ft., in New Door No.161 (Old No.80), Thambu Chetty Street, George Town, Chennai together along with a building, comprising area of 15,872 Sq.ft. The property is being assessed regularly towards property tax. It appears that prior to the present impugned notice, the petitioners have challenged earlier property tax assessments and the matter has travelled to the Taxation Appeal Tribunal and thereafter to the Principal City Civil Court, Chennai in M.T.A.No.11 of 2010, that set aside the fixation of property tax.

2. The matter was remitted back to the 1st respondent for proper determination. Thereafter, the half yearly tax was fixed at an amount of Rs.98,855/- with effect from the 2nd half of 1999-2000. A representation was field challenging the same, which according to the petitioners, is yet not disposed of.

3. While this is so, notice dated 26.09.2018 has been received by the petitioners on 08.02.2017, proposing to revise the existing Half Yearly Tax of Rs.98,855/- and to re-fix the same at a revised rate of Rs.1,83,270/- It is this notice, which is under challenge in the Writ Petition.

4. Mrs.T.Padma Shalini for Mr.T.C.Gopalakrishnan, takes notice for the respondents and has obtained instructions. By consent of both parties, the writ petition is disposed of finally at the stage of admission.

5. 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 properties in question are situated at New Door No.161(Old No.80), Thambu Chetty Street, George Town, Chennai together along with a building comprising area of 15,872 Sq.ft.. Order dated 04.02.2019 passed in W.P.No.3248 of 2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) 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.
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> 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 ocunsel 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.'

6. 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 petitioners in the present case have a variety of objections to the enhancement; that the proposed enhancement is in excess of the percentage mentioned in G.O.(Ms)No.73 dated 19.07.2018; that no computation sheet has been provided which will give the

break up of the impugned demand; that no prior notice has been issued among other objections. In any event, the petitioners have rightly filed their objections to the impugned notice proposing revision on 15.09.2017.

7. In view of the aforesaid, the petitioners in the present case shall appear before the 2nd respondent at the first instance on 10.04.2019 for a personal hearing along with a copy of their objection to the proposals 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. No further notice will be issued in this regard. The Officer shall furnish the petitioners 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) and (ii) aforesaid have been remitted, the Officer shall, after affording full opportunity to the petitioners pass orders of assessment de novo, within a period of three (2) weeks i.e. on or before 23.04.2019 from the date of conclusion of the personal hearing.

8. The demand raised in the impugned notice, in excess of the remittances stipulated in paragraph (7) 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) in paragraph (7) above shall be received without prejudice to the objections of the petitioners and subject to a final determination of the demands in assessment. The writ petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To,

1.The Commissioner,
Corporation of Greater Chennai,
Ribbon Buildings,
Chennai – 600 003.

2.The Regional Deputy Commissioner,
In-charge of George Town Area,
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3.Assistant Revenue Officer : New Zone No.5,
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Having his office at Basin Bridge, Chennai.

+1 cc to M/s.S.Haja Mohideen Histi, Advocate Sr.No.30581
+1 cc to M/s.T.C.Gopalakrishnan, Advocate Sr.No.29969

W.P.No.8521 of 2019
and W.M.P.No.9034 of 2019

KAN(CO)
CSL/09.04.2019