IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.9173 of 2019

Mr.T.S.Mohamed Yousuf Jamal .. Petitioner

vs.

1. The Principal Commissioner
   Municipal Administration Department
   6th Floor, Ezhilagam Annex
   Chepauk, Chennai - 600 005.

2. The Regional Director
   Municipal Administration
   Vellore Region
   Kakithapatrai
   Vellore - 632 012.

3. The Municipal Commissioner
   Municipal Office
   Vaniyambadi - 635 751. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to rectify the Revised Property Tax demand note by following the guidelines given in the Government Order (Municipal Administration and Water Supply (MA IV) Department G.O. (MS) 76 dated 27.07.2018) and consequently direct the respondents to issue fresh property tax demand notes and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.B.Ramprasath

For Respondents : Mr.R.P.Pratap Singh
Government Advocate for R1 and R2

Mr.V.Elango for
Mr.V.Jayaprakash Narayanan,
Standing Counsel for R3

ORDER

Mr.B.Ramprasath, learned counsel on record for writ petitioner, Mr.R.P.Prathap Singh, learned Government Advocate on behalf of respondents 1 and 2 and Mr.V.Elango, learned counsel on behalf of Mr.Jayaprakash Narayanan, learned Standing counsel for respondent No.3 are before this Court.

2. Subject matter of instant writ petition is enhancement of property tax for a property owned by writ petitioner.

3. Writ petitioner's property is at 31/A6, Teachers Colony, 3rd Street, Vaniyambadi, Vellore District, Pin-635 751 (hereinafter referred to 'said property' for brevity). Learned counsel for writ petitioner submitted that said property is a residential property of writ petitioner.

4. It is the specific case of learned counsel for writ petitioner that said property has been assessed for property tax by Vellore Municipality and that the half yearly property tax is Rs.958/- (Rupees Nine Hundred and Fifty Eight only). It is also the specific case of writ petitioner that property tax at the existing rate is being paid without any default.

5. Writ petitioner submitted that there was a demand notice dated 16.04.2018 from the third respondent and as per demand notice, tax for said property was demanded at the rate of Rs.3,668/- (Rupees Three Thousand Six Hundred and Sixty Eight only) per half year. Learned counsel for writ petitioner submits that prior to the demand notice, writ petitioner had not received any notice and no opportunity to object to the proposed enhancement was given to writ petitioner.

6. Learned counsel also submitted that the enhancement is nearly 380%. Learned counsel submitted that this is impermissible in the light of Government Orders in this regard.

7. Be that as it may, learned counsel for writ petitioner also submitted that with regard to similarly placed persons on representation being made by the assesses/property owners, the enhancement has been brought down. In the light of the order, which this Court proposes to pass, this Court refrains itself from expressing any opinion or view on these submissions made on behalf of writ petitioner.

8. On behalf of respondents, Mr.Prathap Singh, learned Government Advocate and Mr.V.Elango, adverting to the counter affidavit dated 24.04.2019 submitted that assessment qua said property has been made on the ground that it had escaped assessment. It is the specific submission of State counsel that

assessment has been made by exercise of powers under Section 117-A of 'Tamil Nadu District Municipalities Act, 1920' ('said Act' for brevity). Learned State Counsel also points out that writ petitioner has only sought for a mandamus.

9. With consent of learned counsel on both sides, main writ petition itself is taken up and is being disposed of.

10. This Court has carefully considered the rival submissions which have been set out supra.

11. On a careful consideration of rival submissions, it comes to light that the question is not assessment of property tax which has escaped assessment or enhancement of property tax. The question is the procedure to be followed for assessment when it comes to light that some property has escaped assessment or the procedure to be followed for enhancement of existing assessment. This procedure has been adumbrated in the set of rules captioned 'Taxation and Finance Rules' which is part of Schedule-IV.

12. This Court vide order dated 04.02.2019 in W.P.No.3231 of 2019 has held that in cases of this nature, it is imperative that a provisional assessment is made, an opportunity is given to the assesses to raise objections, the objections should be considered and then final assessment order should be made. This Court has also held that demand can be raised only after final assessment being made in such a manner. This order passed by a Hon'ble single Judge was made by drawing inspiration from Division Bench Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. To be noted, this order of Hon'ble Single Judge made in W.P.No.3231 of 2019 arises under 'Chennai City Municipal Corporation Act, 1919' ('CCMC Act' for brevity), but the principle laid down by Hon'ble Division Bench in Sanjai Gupta case from which learned Single Judge drawn inspiration cannot be given a go-by. To be noted, the principle is, a levy and consequential demand has to be preceded by a decision on objections of assessee.

13. A perusal of the counter affidavit reveals that no such opportunity has been given to writ petitioner, though the third respondent has powers under the aforesaid statute for assessment of tax for said property which has escaped assessment as well as for enhancement of property tax.

14. In other words, 'natural justice principles' ('NJP') has been violated.

15. To be noted, in the instant case, writ petitioner has sought for a simple mandamus without assailing the demand notice. However, with regard to similarly placed persons, this Court has passed orders granting an opportunity to the property owners/assesses to object to the proposed assessment. Therefore, to avoid parity, notwithstanding the prayer in the writ petition, this Court passes the following order:

a) Third respondent shall issue a provisional assessment order together with parameters and computation for proposed enhancement to writ petitioner within 15 days from the date of receipt of a copy of this order calling for objections;

b) Writ petitioner shall submit his objections within 15 days therefrom along with supporting documents.

c) Specific plea of writ petitioner that the enhancement has been brought down for similarly placed persons shall be considered as one of the objections.

d) After considering the objections of writ petitioner, the third respondent shall pass a final assessment order within four weeks from the date of objections.

e) Final assessment order passed by the third respondent shall be communicated to writ petitioner under due acknowledgement within seven working days from the date of final assessment.

f) There shall be no coercive action against writ petitioner until final assessment is made in the aforesaid manner, subject to the condition that writ petitioner continues to pay half yearly property tax for said property at the existing rate of Rs.958/- (Rupees Nine Hundred and Fifty Eight only) per half year.

g) Though obvious it is made clear that it is open to writ petitioner to assail the final assessment order in a manner known to law, if writ petitioner is not satisfied with the final assessment.

16. With the above direction, instant writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Principal Commissioner
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   6th Floor, Ezhilagam Annex
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+1 cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.52183

+1 cc to the Government Pleader, S.R.No.52840

W.P.No.9173 of 2019

NRL(CO)
SSM(31/07/2019).