IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.8525 of 2019
and
W.M.P.No.9046 of 2019

ACK Educational Trust
Rep. by its Trustee
Mr.H.Vishweshwar .. Petitioner

vs.

1.The Commissioner,
Corporation of Chennai,
"Rippon Building",
E.V.R. Periyar Road,
Chennai 600 003.

2.The Assistant Commissioner,
Greater Chennai Corporation,
Zone IX, Revenue Department,
No.1, Lake Area IV Cross Street,
Nungambakkam, Chennai 600 034. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the 1st respondent vide Notice No.1, Property Tax General Revision Notice No.E/1/18-19/484576 dated 29.09.2018 and quash the same.

For Petitioner : Mr.P.C.Harikumar

For Respondents : Mr. T.C.Gopalakrishnan, Standing Counsel

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O R D E R

Mr.P.C.Harikumar, learned counsel for the petitioner has raised a challenge on behalf of the petitioner to Notice No.E/1/18-19/484576 dated 29.09.2018 revising the property tax assessment for the first half of 2018-19, as against which objections have been filed by the petitioner on 16.11.2018, 21.12.2018 and 21.01.2019. The grievance of the petitioner is that the objections filed by the petitioner have not been considered till date and no orders have been passed by the respondents.

2. Mr. T.C.Gopalakrishnan, learned standing counsel appearing for respondents has obtained instructions in the matter. Both learned counsel request that the writ petition may be disposed of finally even at the stage of admission.

3. I may refer to my order dated 04.02.2019 passed in W.P.No.3248 of 2019 wherein I have considered a case similar to the present one. The property in question situated at 358 (239), T.T.K.Road, Teynampet, Chennai 600 018 comprises of ground, first and second floors. 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.
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> 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.'
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> 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.'

4. The observations and conclusions of this Court in the aforesaid matter are equally applicable to the present case as well and may be read as part and parcel of the present order. The petitioner in the present case has a variety of objections to the enhancement, that enhancement is in excess of G.O.(Ms) No.73 dated 19.07.2018, which stipulates only 50%, in case of residential property and 100%, in the case of commercial property, and that no computation sheet has been provided which will give the break-up of the impugned demand. In any event, the petitioner has rightly filed its objections to the Demand Notice dated 29.09.2018, on 16.11.2018, 21.12.2018 and 21.01.2019. However, since the objections have been filed beyond the period provided for an appeal, I am of the view that the petitioner should be put to terms, if it is to be entitled to the benefit of the order passed in W.P. No.3248 of 2019, extracted above.

5. Admittedly an extent of 1469 sq.ft. in the ground floor is residential and an extent of 1945 sq.ft. in the ground floor, 3845 sq.ft. in the first floor and 151 sq.ft. in the second floor are non-residential. The petitioner has paid the admitted tax as on date and there is no dispute in this regard. The petitioner is thus entitled to the benefit of above order, upon satisfaction of the condition imposed as below.

6. The petitioner, in the present case shall appear before the Regional Deputy Commissioner, Central, who is not arrayed as a respondent in this Writ Petition, at the first instance on 03.06.2019 at 10.30 a.m. for a personal hearing along with the objections dated 16.11.2018, 21.12.2018 and 21.01.2019 and proof of remittance of: (i) admitted tax and (ii) tax of 100% of existing tax in respect of non-residential and 50% of existing tax in respect of residential as per G.O.Ms.No.76, Municipal Administration and Water Supply (MA.IV) Department, dated 26.07.2018 and (iii) 15% of the excess thereof. No further notice will be issued in this regard. The Officer shall furnish the petitioner 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), (ii) and (iii) aforesaid have been remitted, the Officer shall, after affording full opportunity to the petitioner pass orders of assessment de novo, within a period of two (2) weeks from the date of conclusion of the personal hearing.

7. The demand raised in the impugned notice, in excess of the remittance stipulated in paragraph 5 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) and (iii) in paragraph (5) above shall be received without prejudice to the objections of the petitioner and subject to a final determination of the demand in assessment.

8. The Writ Petition is disposed of in the above terms. No costs. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rkp

To

1.The Commissioner,
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"Rippon Building",
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2.The Assistant Commissioner,
Greater Chennai Corporation,
Zone IX, Revenue Department,
No.1, Lake Area IV Cross Street,
Nungambakkam, Chennai 600 034.

3.The Regional Deputy Commissioner,
  Central.

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.36435
+1cc to Mr.P.C.Harikumar, Advocate, S.R.No.36663

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and
W.M.P.No.9046 of 2019

PVS (CO)

RRS(24/04/2019)