IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.8505 of 2019
and
W.M.P.Nos.9023 & 9025 of 2019

K.M.Pradheeba ..Petitioner

vs

1.The Commissioner,
Salem Municipal Corporation,
Navalar Nedunchezian Salai,
Fort, Salem - 636 001.

2.The Assistant Commissioner,
Salem Municipal Corporation,
Hasthampatty Ward Office,
Division No.17, Salem. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings dated 03.12.2018, passed in Na.Ka.No.J2/7070/2018, on the file of the second respondent and the consequential Special Notice dated 12.02.2019, on the file of the first respondent and to quash the said Orders and directing the respondents to grant exemption from the revision of property tax, for the financial years 2017-2018 and 2018-2019 and subsequently, with respect to Assessment No.2218214, for the building bearing Door.No.19/4, Perumal Koil Street, Salem - 636 001, and pass such other or further orders as this Honourable Court may deem fit and proper in the circumstances of the case.

For Petitioner : Ms.Elizabeth Ravi

For Respondent : Mr.S.Sathish
Standing counsel for
Salem Municipal Corporation

O R D E R

Ms.Elizabeth Ravi, learned counsel on record for writ petitioner and Mr.S.Sathish, learned Standing counsel for Salem Municipal Corporation are before this Court. To be noted, learned standing counsel for Salem Municipal Corporation is before this Court on behalf of both the respondents in the instant writ petition.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. In the light of what unfurled in the hearing today, entire writ petition now turns on a very narrow compass.

4. Though several grounds have been raised and several averments have been made in the affidavit filed in support of the writ petition, learned counsel for writ petitioner, at the hearing projected one pivotal ground.

5. Before dealing with that pivotal ground, it is necessary to set out short facts shorn of elaboration and particulars. Short facts are that subject matter of writ petition pertains to enhancement of property tax of a property at 'Door No.19/4, Perumal Koil Street, which this Court is informed is situated within Division No.17 of Salem Municipal Corporation and in Hasthampatty Ward office therein'. [hereinafter 'said property' for brevity], that writ petitioner received a communication dated 03.12.2018 from Salem Municipal Corporation, that this communication from Salem Municipal Corporation is in response to a representation dated 10.10.2018 made by the writ petitioner pertaining to property tax enhancement for said property that in this communication which shall hereinafter be referred to as 'impugned communication-I', writ petitioner was informed that property tax for said property was enhanced with effect from second half year of 2015-2016, that Special Notice in this regard has been served on Ms.R.Krithika and that enhancement is now being made as per Government orders being G.O.Nos.73 and 76 dated 01.04.2017 and 31.03.2018 respectively.

6. Writ petitioner was visited with a notice captioned 'Special Notice' (referred to supra) issued by the Commissioner of Salem Municipal Corporation. This Special Notice is dated 12.02.2019 and the same shall hereinafter be referred to as 'impugned notice-II'.

7. Vide impugned notice-II, writ petitioner was informed that half yearly property tax for said property has been enhanced from Rs.5,267/-(Rupees Five Thousand Two Hundred and Sixty Seven only) to Rs.10,534/-(Rupees Ten Thousand Five Hundred and Thirty Four only)

8. Assailing impugned communication-I and impugned notice-II, instant writ petition has been filed.

9. This Court now reverts to the pivotal and primordial submission made by learned counsel for writ petitioner. As already alluded to supra, though several grounds have been raised and several averments have been made in the affidavit filed in support of the writ petition, one pivotal ground was projected in the hearing. That pivotal ground for assailing impugned communication-I and impugned notice-II is that general revision is permissible only once in five years, whereas in the instant case, the last revision was admittedly with effect from second half year of 2015-16 (II/2015-2016) i.e., with effect from 01.10.2015 and therefore, the present enhancement with effect from first half year of 2018-2019 or in other words, with effect from 01.04.2018 (I/2018-19) is not permissible.

10. This lone pivotal submission was predicated on Section 125 of 'The Coimbatore City Municipal Corporation Act, 1981' (Tamil Nadu Act XXV of 1920) [hereinafter 'Coimbatore Corporation Act' for brevity]

11. Before adverting to the same, it is necessary to briefly trace the manner in which Coimbatore Corporation Act becomes applicable for Salem Municipal Corporation.

12. There is no disputation or disagreement before this Court that for Salem city, which is now a Municipal Corporation, the applicable statute is 'The Salem City Municipal Corporation Act, 1994 (Tamil Nadu Act 29 of 1994)', which shall hereinafter be referred to as 'Salem Corporation Act' for the sake of convenience and clarity. Salem Corporation Act received the assent of Governor on 17.05.1994 and it was published in the Tamil Nadu Government Gazette on the next day i.e., on 18.05.1994. Therefore, Salem Corporation Act came into force on and with effect from 18.05.1994. What is of relevance is, Section 8 and more particularly Sub Section (2) of Section 8 of Salem Corporation Act. For the purpose of convenience and clarity, Section 8 of Salem Corporation Act is extracted / reproduced infra and the same reads as follows:

> '8. Application of the provisions of the 1981 Act to the Corporation. — (1) Save as otherwise expressly provided herein, all the provisions of the 1981 Act, including the provisions relating to the levy and collection of any tax or fee, are hereby extended to and shall apply mutatis mutandis to the Corporation and the 1981 Act shall, in relation to the corporation, be read and constituted as if the provisions of this Act had formed part of the 1981 Act.
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> (2) For the purpose of facilitating the application of the provisions of the 1981 Act to the corporation, the Government may, by notification, make such adaptations and modifications of the 1981 Act and

the rules and by-laws made thereunder whether by way of repealing, amending or suspending any provision thereof, as may be necessary or expedient and thereupon, the 1981 Act and the rules made thereunder, shall apply to the Corporation subject to the adaptations and modifications so made.

3) Notwithstanding that no provision or insufficient provision has been made under sub-section (2) for the adaptation of the provisions of the 1981 Act, or the rules and by-laws made thereunder, any Court, tribunal or authority required or empowered to enforce these provisions may, for the purpose of facilitating their application to the Corporation, construe these provisions in such manner, without affecting the substance, as may be necessary or proper having regard to the matter before the court, Tribunal or Authority.

(4) In the 1981 Act as extended and applied to the City of Salem, —

(a) any reference to the City of Coimbatore, and Coimbatore Municipality, shall by reason of this Act, be construed as a reference to the City of Salem and Salem Municipality, respectively; and

b) any reference to the Coimbatore Corporation, Corporation of Coimbatore and Municipal Corporation of Coimbatore, shall by reason of this Act, be construed as a reference to the Salem Corporation, Corporation of Salem and Municipal Corporation of Salem, respectively.'

13. A perusal of Section 8 of Salem Corporation Act reveals that provisions of 'Coimbatore Corporation Act' have been made applicable to Salem Corporation with suitable adaptations and modifications.

14. Therefore, while dealing with the City of Salem and Salem Corporation Act, one has to necessarily look at the Coimbatore Corporation Act.

15. As already alluded to supra, the lone pivotal submission of learned counsel for writ petitioner is predicated on Section 125 of Coimbatore Corporation Act, which reads as follows:

'125.General revision of property tax. - The general revision of the assessment of property tax in relation to the building and land situated within the City limit shall be made from such as the Government may, by notification, appoint. The Commissioner may revise the property tax in accordance with the provisions of this Act and the rules made thereunder:

> Provided that there shall be an interval of five years between one general revision and another general revision.'

16. Placing reliance on the proviso to Section 125, it was submitted that there shall be an interval of five years between one general revision and another general revision.

17. Responding to the aforesaid lone pivotal submission of the learned counsel for writ petitioner, learned standing counsel for Salem Corporation, submitted that Section 125 of Coimbatore Corporation Act is no longer in the Statute books.

18. Learned standing counsel for Salem Corporation, brought to the notice of this Court that there was an amendment to Coimbatore Corporation Act by amending Act, which goes by the name 'Tamil Nadu Municipal Laws (Second Amendment Act), 1997' which is Act No.65 of 1997. A perusal of the relevant Government publications in this regard reveals that this aforesaid amending Act namely Act No.65 of 1997 came into force on and with effect from 17.11.1997. A further perusal of this amending Act No.65 of 1997, reveals that with regard to Coimbatore Corporation Act, in place of existing Sections 121 to 132, a new set of Sections namely Sections 121 to 129 were inserted, but what is of utmost significance is, this entire amending Act namely Act No.65 of 1997 itself has been repealed subsequently on 06.08.2009 in and by amending Act No.15 of 2009 which goes by the name, 'Tamil Nadu Municipal Laws (Amendment Act), 2009'. Therefore, as of today, Sections 121 to 132 as amended by the amending Act No.65 of 1997 are not available and are not there in the statute books is learned standing counsel's say.

19. This takes us to impugned notice-II.

20. A perusal of impugned notice-II, reveals that it mentions that it has been issued under Sections 122, 125 besides Sections 168, 169 and Rules 1 and 2 of the Second Schedule of Salem Corporation Act. Salem Corporation Act consists of only 12 Sections in all and there is no Schedule to the same. Therefore, the reference to the aforesaid Sections is obviously an error and the reference is to said Sections as in Coimbatore Corporation Act. It is necessary that such errors are avoided in future.

21. In any event as the Salem Municipal Corporation has power to issue Special Notice, this is treated only as a mere quoting of erroneous provisions of law. In any event, these erroneous provisions of law need to be avoided in future.

22. Be that as it may, this Court treats the Special Notice i.e., impugned notice - II as a notice under Sections 168, 169 and Rules 1 and 2 of Schedule-II of Coimbatore Corporation Act. If that be the case, the impugned notice-II, is appelable and an appeal is available to the writ petitioner by way of an appeal to the Taxation Appeal Tribunal (TAT, Salem). This is provided inter-alia under Rules 20 and 22 of the Rules forming part of Schedule-II of Coimbatore Corporation Act.

23. It may not be necessary to delve further into these aspects as absent Section 125 of Coimbatore Corporation Act pivotal point urged by writ petitioner pales into insignificance and vanishes in thin air.

24. There is no disputation or disagreement before this Court that an appeal lies to TAT against the impugned general revision notice being a Special Notice dated 12.02.2019.

25. Faced with the above situation, learned counsel for the writ petitioner, on instructions, submitted that the writ petitioner will avail the appeal remedy. If the writ petitioner is to avail the statutory appeal remedy, writ petitioner will stand bound by the pre deposit provisions therein.

26. Be that as it may, a perusal of the scheme of Rules under Part V of Schedule II of Coimbatore Corporation Act reveals that there is no time limit provided for appeals to TAT though certain time limits have been prescribed with regard to other kinds of appeals i.e., appeal from Commissioner's orders to Standing Committee. This is vide Sections 452 and 453 of Coimbatore Corporation Act. That is not applicable herein as the appeal is to TAT.

27. As the writ petitioner has now chosen to avail the appeal remedy, this Court deems it appropriate to relegate the writ petitioner to the appeal remedy.

28. With regard to alternate remedy, it is also to be made clear that alternate remedy and limited exercise of writ jurisdiction on the teeth of alternate remedy is a self imposed restraint which is not a rule of compulsion, but a rule of discretion. Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110], has held that alternate remedy though a self imposed restriction and not a rule of compulsion i.e., a rule of discretion has to be applied with utmost rigour when it comes to matters pertaining to cess, Tax etc., In other words, when it comes to fiscal statutes, these rules have to be applied with greater rigour and it is to be applied very strictly with regard to recovery of taxes, CESS, fess etc.,. To be noted,

Satyawati Tondon principle was reiterated by Hon'ble Supreme Court in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
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> > "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
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> > 55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their

discretion in such matters with greater caution, care and circumspection.'

29. Therefore this Court, is of the considered view that alternate remedy rule though a rule of discretion, should be applied with utmost rigour when it comes to fiscal statutes. More importantly, cases of this nature turn heavily on facts and on computation which is based on numerical values, which are the determinants and parameters for arriving at the quantum of enhancement. Such issues should best be left to specialized Tribunals rather than this Court embarking upon the exercise of examining these issues more so in writ petitions, which are decided on affidavits and counter affidavits.

30. As the writ petitioner, has chosen to avail alternate remedy, no further orders are required and suffice to say that it does not call for any interference qua impugned communication-I and impugned notice-II (Special Notice-II).

31. Before parting with the case, this Court places on record appreciation of the assistance rendered by learned counsel in this case in tracing the provisions of law and the amendments besides projecting the same, particularly by learned standing counsel for Salem Corporation.

32. This writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Salem Municipal Corporation,
Navalar Nedunchezian Salai,
Fort, Salem – 636 001.

2.The Assistant Commissioner,
Salem Municipal Corporation,
Hasthampatty Ward Office,
Division No.17, Salem.

+1cc to Mr.Ms.Elizabeth Ravi, Advocate SR.No.61575

+2cc to Mr.S.Sathish, Advocate SR.No.60796

W.P.No.8505 of 2019
and
W.M.P.Nos.9023 & 9025 of 2019

VBA(CO)
GMY(20/08/2019)