IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.9159 of 2019
and
W.M.P.Nos.9688, 9689 and 9691 of 2019

1.Mr.Perumal Sivarajah
2.Mr.Sivarajah Jagadeswaran
(both represented herein by their Power Agent
Mr.Sivarajah Lankeswaran)
3.Mr.Sivarajah Lankeswaran ....Petitioners

--Vs--

1.Greater Chennai Corporation,
Represented by its Commissioner,
Ripon Buildings, Chennai - 600 001.

2.The Assistant Revenue Officer,
Greater Chennai Corporation, Revenue Department,
Zone No.10, New No.117, Old No.64, N.S.K.Salai,
Kodambakkam, Chennai - 600 024. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the 1st Respondent culminating in its impugned proceedings, viz., Notice No.7 Revised Assessment bearing Notice : 7/18-19/124741, dated 18-12-2018, downloaded and handed over on 20.02.2019 by the staff of the 2nd Respondent, revising the half-yearly property tax as Rs.3,69,460/- for the petitioners property at New No.28, Old No.15, United India Colony I Main Road, Kodambakkam, Chennai - 600 024 situated in Zone No.10, Ward No.134 with Bill No.07566, Sub No.000(Old No.08-120-1912-000), quash the same and further forbear the Respondents from taking any steps to revise, levy, demand and/or collect any such increased property tax.

For Petitioners: Mr.N.L.Rajah
Senior Counsel for
Mr.Arun Anbumani

For Respondents: Mr.T.C.Gopalakrishnan

O R D E R

The petitioners have approached this Court challenging Notice No.7 being a Revised Assessment dated 18.12.2018, enhancing the levy of property tax in regard to the property at New No.28, Old No.15,. United India Colony, I Main Road, Kodambakkam, Chennai - 600 024 situated in Zone No.10, Ward No.134.

2.Heard Mr.N.L.Rajah, Senior Counsel for Mr.Arun Anbumani, learned counsel for the petitioners and Mr.T.C.Gopalakrishnan, learned counsel for the Chennai Corporation, duly assisted by the tax assessor for the relevant zone.

3.The short point on which the present writ petition is filed is that the petitioners have been remitting the admitted tax for the property in question, an amount of Rs.26,314/-, per half-year. The amount has been remitted till date in respect of the aforesaid property. While this is so, the petitioners came to know about the enhancement of the property tax for the aforesaid property and downloaded from the website of the Corporation, Notice No.7 giving details of the revised assessment of the property tax. It was only then found that the tax has been revised manifold and the present demand quantified at a sum of Rs.3,68,000/- (Approx). It is this assessment that is challenged on various grounds including that no opportunity has been extended to the petitioner prior to such revision of assessment, computation sheet or breakup details has not been provided and the revision itself is several times of the existing tax.

4. There is no dispute on the position that Notice No.7 has been downloaded only from the website. No notices have been issued to the petitioners prior to the impugned revision. The petitioners after downloading the details of revision, had approached the second respondent, the Assistant Revenue Officer of Chennai, with objections dated 21.02.2019, which he refused to accept.

5. The learned counsel for the respondents, objects to the aforesaid submissions made by the petitioners, contending that no such objection was ever placed for consideration of the authority.

6. Be that as it may, this Court, dealing with similar matters, has issued directions to treat the impugned notice as a show cause notice to which objections are to be filed by the petitioners and considered by the authority concerned in accordance with law, after hearing the petitioners.

7.Reference is made to the order of this Court in W.P.No.3248 of 2019 dated 04.02.2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) 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.
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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.'

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. '

8. 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. In these circumstances, I pass the following directions in the present case.

(i) The petitioners will appear before the second respondent on 22.04.2019 at 10.30 a.m. with written objections to the proposed assessment as well as the materials in support of their stand.

(ii) Prior to the same, the petitioners will deposit the admitted taxes as on date, in entirety and will also deposit another component of 100% of the admitted taxes as per G.O.(Ms). No.73 Municipal Administration and Water Supply Department dated 19.07.2018 and produce challan as evidence of the same before the Assessing Officer.

(iii) Upon being satisfied that the admitted as well as the enhanced tax as per G.O.(Ms).No.73 Municipal Administration and Water Supply Department dated 19.07.2018 have been remitted, the official concerned shall take up the matter for assessment, consider the written objections of the petitioners and pass appropriate orders, within a period of four weeks from conclusion of personal hearing. Calculation/working sheet shall be supplied to the petitioners upon their appearance on 22.04.2019, in order to enable the petitioners to make effective submissions challenging the proposed enhancements.

(iv) The remittance under the Government Order will be received without prejudice and subject to the final determination of property tax in the assessment.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.Greater Chennai Corporation,
Represented by its Commissioner,
Ripon Buildings, Chennai - 600 001.

2.The Assistant Revenue Officer,
Greater Chennai Corporation, Revenue Department,
Zone No.10, New No.117, Old No.64, N.S.K.Salai,
Kodambakkam, Chennai - 600 024.

+1cc to Mr.Arun Anbumani, Advocate Sr.30701
+1cc to Mr.T.C.Gopala Krishnan, Advocate Sr.30415

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and
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and 9691 of 2019

srg 7/5/2019