IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.9244 of 2019
& W.M.P.Nos.9785, 9787 & 9790 of 2019

1. Mrs. G.Sangeetha
2. Mrs. R.Bharathi
3. Mrs. J.Nirmala .. Petitioners

vs.

1. The Commissioner, Greater Chennai Corporation, Rippon Buildings, Sydenhams Road, Kannappar Thidal, Periyamet, Chennai 600 003

2. Deputy Commissioner (Revenue and Finance), Greater Chennai Corporation, Rippon Buildings, Sydenhams Road, Kannappar Thidal, Periyamet, Chennai 600 003

3. The Revenue Officer, Greater Chennai Corporation, Rippon Buildings, Sydenhams Road, Kannappar Thidal, Periyamet, Chennai 600 003

4. The Assistant Revenue Officer, Zone 5 / Revenue Department, Greater Chennai Corporation, No.61 Basin Bridge Road, Old Washermenpet, Chennai 600 021 .. 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 pertaining to the impugned order assessment in terms of Notice 7/ 18-19/ 118101 dated 30.10.2018 issued by the 1st and 4th respondent and impugned Notice No. Z.O.V.R.D.CNo.R1/ SPL/ 2019 dated 02.02.2019 issued by the 4th respondent and to quash the same for the property situated at No.2(8) Narayana Street, Periamet, Chennai - 600003.

For Petitioners : Mr. David Tyagaraj

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

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O R D E R

Mr.David Tyagaraj, learned counsel for the petitioners has raised a challenge on behalf of the petitioners to Notice No.7/18-19/ 118101 dated 30.10.2018 revising the property tax assessment for the first half of 2018-19 as against which objections have been filed by the petitioners on 03.12.2018. The grievance of the petitioners is that the objections filed by the petitioners 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 1 to 3 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 07.02.2019 passed in W.P.No.3645 of 2019 wherein I have considered a case similar to the present one. The property in question is situated at No.2 (8) Narayana Street, Periamet, Chennai - 600003, ad-measuring 1,608 sq.ft. Order dated 07.02.2019 passed in W.P.No.3645 of 2019 reads thus:-

> 'Mr.T.C.Gopalakrishnan, learned Standing Counsel takes notice for the respondents. At request and by consent of both sides, the Writ Petition itself is taken up for final disposal at the stage of admission.
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> 2. The petitioner in this writ petition challenges Notice No.1:Property Tax General Revision 2018-19 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 10.11.2018. Thereafter, demand notice dated 14.11.2018 was sent to the petitioner demanding payment of the arrears of tax, without reference to the objections filed by the petitioner.
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> 3. Learned counsel for the petitioner submits that taxes due as on date, prior to the general revision, have been paid, which position is not disputed by the learned counsel for the Corporation.
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> 4. Mr.Gopalakrishnan, learned counsel for the Corporation would submit that as per G.O.(Ms) 73, Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018 revision is to be restricted to 50% over and above the existing rates as far as residential units are concerned and 100% as far as non-residential units are concerned. The existing rate adopted in regard to the residential and non-residential units is Rs.1 and Rs.5.40 respectively, as against which, the revised rates are Rs.1.400 and Rs.9.720 respectively, which according to him, fall

within the parameters prescribed under the Government Order. In such circumstance, he points out that the demand raised as per Notice No.1, is correct.

5. This Court has considered a similar challenge in W.P.No.3248 of 2019 dated 04.02.2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) and has passed orders 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.
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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.'

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. '

4. 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 rightly filed their objections to the impugned notice proposing revision dated 30.10.2018, on 03.12.2018. However since the the objections have been filed belatedly, I am of the view that the petitioners should be put to terms, if they are to be entitled to the benefit of the order passed in W.P.No.3248 of 2019, extracted above.

5. The petitioners in the present cases shall appear before the fourth respondent at the first instance on 24.04.2019 at 10.30 a.m. for a personal hearing along with objections dated 03.12.2018 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; and (iii) 15% of the excess thereof. 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), (ii) and (iii) 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 (3) weeks from the date of conclusion of the personal hearing.

6. The demand raised in the impugned notice, in excess of the remittances 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 petitioners and subject to a final determination of the demand in assessment.

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

Sd/-
Assistant Registrar

//True Copy//

srk

Sub Assistant Registrar

To

1. The Commissioner, Greater Chennai Corporation,
Rippon Buildings, Sydenhams Road, Kannappar Thidal,
Periyamet, Chennai 600 003

2. Deputy Commissioner (Revenue and Finance),
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4. The Assistant Revenue Officer, Zone 5 / Revenue Department,
Greater Chennai Corporation,
No.61 Basin Bridge Road, Old Washermenpet,
Chennai 600 021

+1 cc to M/s.David Thyagaraj, Advocate, S.R.No.30181
+1 cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.30414

GJ-II(CO)
SSM(23/05/2019)

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