

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.9577 of 2019

& W.M.P.No.10194 of 2019

L.Chidambaram

.. Petitioner

vs.

1. The Commissioner, The Greater Chennai Corporation,
Chennai

2. The Regional Deputy Commissioner,
Greater Chennai Corporation, Zone-09,
Ward - 119, Basin Bridge, Chennai 600 021

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the issuance of the impugned Order E/1/18-19/ 499852 dated 29.9.2018 on the file of the 1st respondent and quash the same as arbitrary illegal and unjustified and direct the 2nd respondent to consider and pass revised Assessment Order in terms of the appeal made by petitioner dated 06.02.2019.

For Petitioner : Mr. V.Elangovan
For Respondents : Mr. T.C.Gopalakrishnan,
Standing Counsel.

O R D E R

Mr.V.Elangovan, learned counsel for the petitioner has raised a challenge on behalf of the petitioner to 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 06.02.2019. 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 the 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 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 2/6 (15/6) Jegadhambal Colony, 1st Street, Mylapore, Chennai 600 014, ad-measuring 1,500 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.

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.

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.

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.

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.

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.'

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 counsel 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 petitioner in the present case has rightly filed his objections to the impugned notice proposing revision, dated 29.09.2018, on 06.02.2019. However, since the objections have been filed belatedly, I am of the view that the petitioner should be put to terms, if he is to be entitled to the benefit of the order passed in W.P.No.3248 of 2019, extracted above.

5. The petitioner in the present case shall appear before the second respondent at the first instance on 25.04.2019 at 10.30 a.m. for a personal hearing along with objections dated 06.02.2019 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 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 and after adjusting the excess 15% paid, 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 petitioner and 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 Petition is closed.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

srk

To

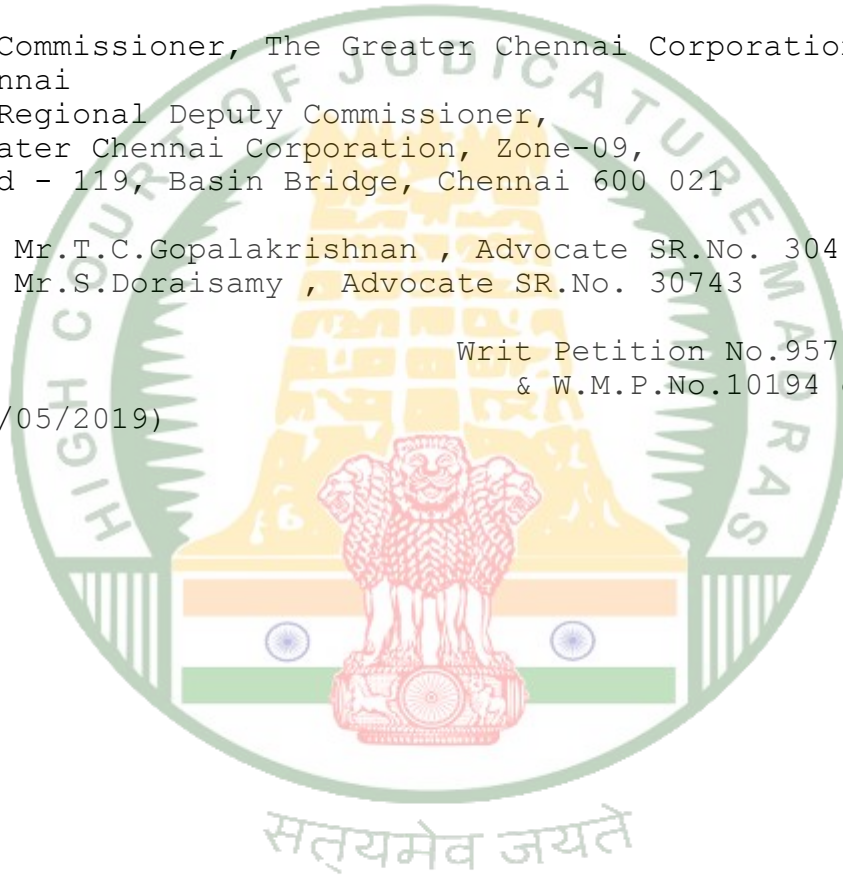
1. The Commissioner, The Greater Chennai Corporation,
Chennai
2. The Regional Deputy Commissioner,
Greater Chennai Corporation, Zone-09,
Ward - 119, Basin Bridge, Chennai 600 021

+lcc to Mr.T.C.Gopalakrishnan , Advocate SR.No. 30414

+lcc to Mr.S.Doraisamy , Advocate SR.No. 30743

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A.SK(14/05/2019)



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