IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.9306 of 2019
And
W.M.P.No.9854 of 2019

Mahalakshmi Nursery School
rep. by its Secretary
Thiru K.Ravi
No.34, Mariamman Koil Street
Thiruppadhiripuliyur
Cuddalore - 607 002
Cuddalore District .. Petitioner

Vs.

The Commissioner
Cuddalore Municipality
Cuddalore
Cuddalore District .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings in Na.Ka.No.2472/2018/A1 relating to the property tax demand made by the respondent in Assessment No.093/025/00583 dated 27.11.2018 and quash the same and consequently direct the respondent to refix the property tax after following the procedure as required under the District Municipalities Act, 1920.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.N.K.Ponraj
for Mr.P.Srinivas
Standing Counsel
for Cuddalore Municipality

O R D E R

Mr.S.Kamadevan, learned counsel on record for writ petitioner and Mr.N.K.Ponraj, learned counsel representing Mr.P.Srinivas, learned Standing Counsel for Cuddalore Municipality are before this Court.

2. It is submitted by both the learned counsel without any disputation that this matter is covered by an earlier order dated 18.06.2019 made by this Court in WP Nos.13673 and 13679 of 2019.

3. Therefore, it would be appropriate to pass a similar order in this matter also.

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

5. Subject matter of this writ petition is, enhancement of half yearly property tax for the property owned by the writ petitioner.

6.Notwithstanding several factual averments that have been made in the affidavit filed in support of the writ petition and notwithstanding several grounds urged/contentions canvassed in the affidavit filed in support of the writ petition, at the hearing learned counsel for writ petitioner restricted his submissions and submitted that submissions made at the Bar on instructions give the correct picture qua factual matrix. Such facts projected at the hearing are given below as short facts shorn of elaboration. To be noted, there is no disputation by learned Standing Counsel for respondent municipality regarding these facts submitted at the Bar.

7. Short facts shorn of elaboration, particulars and details or in other words factual matrix imperative for disposal of instant writ petition are as follows:

> a) Writ petitioner is running a Nursery School the name and style 'Mahalakshmi Nursery School' and property tax assessment number for this property is 093/025/00583. This property shall be referred to as 'said property' for the sake of convenience and clarity.
>
> b) Writ petitioner was issued with a property tax demand notice dated 26.09.2018 demanding sum of Rs.9846/- per half year from II/2017-18 to II-2018-2019, totalling to Rs.29,538/-. Thereafter respondent issued a 'demand notice dated 27.11.2018' (hereinafter 'impugned demand notice' for brevity) for said property.
>
> c) In the aforesaid circumstances, instant writ petition has been filed assailing the impugned demand notice.

8. From the narrative of factual matrix supra, it would be clear that the case of the writ petitioner is that there has been upward revision / enhancement of property tax.

9. To be noted, it is submitted that with regard to said property, half yearly property tax has been enhanced to Rs.9,846/- (Rupees Nine Thousand Eight Hundred and Forty Six only).

10. To be noted, writ petitioner submits that payment of the existing rate upto current half year will be made within a fortnight from the date of receipt of a copy of this order, if not already made.

11. Be that as it may, learned Standing Counsel on behalf of sole respondent submits that there are Government Orders pertaining to general revision and that the said Municipality has embarked upon the exercise of enhancement of property tax only pursuant to such Government Orders as part of general revision.

12. The issue in the instant writ petition is not whether the said Municipality is entitled to enhance the property tax or not. The issue is, procedure for enhancement of Property tax has not been followed.

13. In this regard, there is no dispute or disagreement that this matter is governed by 'The District Municipalities Act, 1920' ('said Act' for brevity) as obtaining today. It is also not in dispute that the Commissioner of said Municipality will be the authority vested with powers for enhancement of property tax under said Act.

14. A perusal of structure and scheme of said Act reveals that procedure and methodology have been prescribed for assessment/enhancement of property tax. In the instant case, there is nothing on record to show that procedure has been followed.

15. In this regard, dealing with enhancement of Property Tax by Chennai Corporation, a Hon'ble single judge of this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019 following the principle laid down by a Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 has held that with regard to enhancement of property tax, there has to be a provisional

assessment, an opportunity has to be given to the assessee to object to the same and a final Assessment Order can be passed only after considering the objections of the assessee. It has been held as a sequitur that demand for property tax can be made only after final assessment.

16. In the light of the aforesaid narrative, this Court passes the following order:

a) Impugned demand notice dated 27.11.2018 with regard to said property is set aside. To be noted, the same is set aside solely on the ground that existing property tax has been enhanced suddenly and an opportunity to the assessee to object to the same is imperative and therefore, no opinion is expressed on merits of the matter;

b) Writ petitioner undertakes to pay half-yearly property tax at the existing rate for said property within the time frame prescribed under the rules in this regard under the said Act. If there is delay or default on the part of the writ petitioner in paying the property tax at the existing rate, it will be open to the said Municipality to proceed against the writ petitioner for recovery of the same.

c) With regard to enhancement of property tax for said property vide notices dated 04.05.2018 and 26.09.2018, which are now being treated as revisional notices, writ petitioner shall send objections/revision within a fortnight from the date of receipt of a copy of this order and the respondent, whom this Court is informed is the Executive Authority within the meaning of Section 2(8-C) of said Act, shall dispose of the objections / revision on their own merits and in accommodate with law, particularly, Rule 12 of Schedule IV to said Act.

d) The final assessment of property tax made in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement within seven working days from the date of final assessment being made.

e) Though obvious, it is made clear that it is open to the writ petitioner to seek statutory appellate remedy available under the statutes against the final assessment and this order will not impede this process, if the writ petitioner chooses to adopt such a course.

17. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gpa

To

The Commissioner
Cuddalore Municipality
Cuddalore
Cuddalore District

+1 cc to Mr.S.Kamadevan, Advocate, S.R.No.66381

W.P.No.9306 of 2019 and
W.M.P.No.9854 of 2019

MG(CO)
SSM(13/09/2019)