IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM :

THE HON'BLE DR. JUSTICE ANITA SUMANTH

W.P. No.9349 of 2019
& W.M.P.No.9915 & 9916 of 2019

K.Meena ... Petitioner

Vs.

The Commissioner,
Kancheepuram Municipality,
Kancheepuram,
Kancheepuram District ... Respondent

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records pending on the file of the Respondent in pursuant of the demand notice bearing Tax No.008/010/00568 issued by the respondent, enhancing property tax for the year 2017-2018 and 2018-2019 by enhancing nearly 900% instead of 50% for the house situate at No 30- A Sapani Pillayar Koil Street, Kancheepuram- 631 502 and to quash the same.

For Petitioner : Mr. S.Siva Shanmugam
For Respondent : Mr. G.B.Rajesh, Standing counsel.

O R D E R

The writ petitioner in this Writ Petition has challenged demand notice bearing Tax No.008/010/00568 issued by the respondent for the first and second halves of 2018.

2. Mr.G.B.Rajesh, learned standing counsel takes notice for the respondent. By consent of both learned counsel appearing for both sides, this Court takes up and disposes the Writ Petition finally even at the stage of admission.

3. The petitioner has challenged the impugned notice primarily on two grounds; firstly, that no prior opportunity has been afforded and secondly, that the enhancement is itself exorbitant in so far as the tax has been increased by more than 10 times of the existing rate and no break/computation sheet has been provided in regard to the same.

4. This Court has had occasion to deal with a similar set of facts in W.P.No.3248 of 2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) and has passed orders on 04.02.2019 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.
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>> `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.'

5. The sole distinction on facts in the present case is that no objections have been filed by the petitioner to the impugned notice proposing revision dated 18.02.2019. The limitation before the Executive Authority for filing of

objections is 30 days from date of receipt of the notice. No objections have been filed thus far.

6. In these circumstances, I direct the petitioner to remit the entire admitted tax in addition to 100% of the existing tax in terms of G.O.Ms.No.73, Municipal Administration and Water Supply Department, dated 19/07/2018, and another 100% of the existing tax on or before 24.04.2019. There shall be an order of status-quo of recovery of the amount, in excess of the same in respect to the balance.

7. The petitioner shall appear before the Assistant Revenue Officer, Kancheepuram Municipality, Kancheepuram, at the first instance on 24.04.2019 at 02.30 pm, for a personal hearing along with her objections and proof of remittance of: (i) admitted tax; and (ii) tax of 100% of existing tax as per G.O.Ms.No.73, 19.07.2018. 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. Upon satisfaction that the amounts as set out in (i) and (ii) aforesaid have been remitted, the Officer shall, after affording full opportunity to the petitioner, pass orders of assessment de novo within a period of three (3) weeks from the date of conclusion of the personal hearing.

8. The demand raised in the impugned notice, in excess of the remittance stipulated in paragraph (7) above, shall be kept in abeyance till such time orders are passed by the Assessing Authority.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk
To

1. The Commissioner, Kancheepuram Municipality, Kancheepuram, Kancheepuram District
2. The Assistant Revenue Officer, Kancheepuram Municipality, Kancheepuram

W.P. No.9349 of 2019
& WMP No.9915 & 9916 of 2019

VBA(CO)
SSM(21/05/2019)