IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.9583 of 2019

Dr.Meenakshi Bharani Paluvai
Rep. by her Power of Attorney Agent,
Mr.Bharani R.Paluvai,
No.33/10, Vaidyarama Street,
T.Nagar, Chennai 600 017. ... Petitioner

.Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, E.V.R.Periyar Salai,
Chennai 600 003.

2.Zonal Officer-Zone X (Kodambakkam)
Greater Chennai Corporation,
No.64, NSK Salai, Kodambakkam,
Chennai 600 024.

3.The Assistant Revenue Officer,
Revenue Department,
Zonal Office - X,
Greater Chennai Corporation,
Chennai 600 021. ... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 25.02.2019 to carry out a re-assessment of the schedule mentioned property and consequently revise the rate of property tax levied in respect of the same.

For Petitioner : Mr.D.Ferdinand

For Respondents: Mr.T.C.Gopalakrishnan
Standing counsel

ORDER

The petitioner is before this Court seeking issuance of Writ of Mandamus to the respondents to consider the representation filed by the petitioner to carry out a re-assessment of the schedule mentioned property and to revise the rate of property tax levied in respect of the same.

2.Mr.T.C.Gopalakrishnan, learned standing counsel takes notice for respondents. At request and by consent of both counsel, the Writ Petition is taken up for final disposal 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 petition property in question is situated at No.2(2), Dr.Bhanumathy Ramakrishna Road, Bhanumathi Krishna Street, Bharani Colony, Saligramam, Chennai 600 093. Order dated 04.02.2019 passed in W.P.No.3248 of 2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu) and has passed orders as follows reads thus:-

> '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.'

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 a variety of objections to the enhancement, that enhancement was done without any provisional or final notice; that there is a discrepancy between the demand raised and the tax that the petitioner is liable to pay as per the calculator provided on the website of the Chennai Corporation, among others; that a portion of the property has been demolished and the usage of the property has been changed from commercial to residential. In any event, the petitioner has rightly filed her objections to the proposing revision.

5. In view of the aforesaid submission, the petitioner in the present case shall appear before the third respondent at the first instance on 25.04.2019 at 10.30 a.m. for a personal hearing along with a copy of the objection dated 25.02.2019 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. 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 notice. The facts stated by the petitioner will have to be verified by the respondent, after inspection in the presence of the petitioner. 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 and pass orders of assessment de novo, within a period of four (4) weeks from the date of conclusion of inspectioin and personal hearing.

6. The demand raised in the 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) 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Corporation of Chennai, Rippon Buildings,
E.V.R.Periyar Salai, Chennai 600 003.

2.Zonal Officer-Zone X (Kodambakkam)
Greater Chennai Corporation,
No.64, NSK Salai, Kodambakkam, Chennai 600 024.

3.The Assistant Revenue Officer,
Revenue Department, Zonal Office - X,
Greater Chennai Corporation, Chennai 600 021.

+1cc to the Government Pleader Sr.33426

W.P. Nos.9583 of 2019

srg 29/05/2019