IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.06.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.10429 of 2019
&
W.M.P.Nos.10964 and 10965 of 2019

R.A.Dakshinamoorthy .... Petitioner

Vs

1) The Principal Secretary to Government
Municipal Administration & Water Supply Department
Fort St. George
Chennai - 600 009

2) The Commissioner
Municipal Administration
Chepauk
Chennai - 600 005

3.The Commissioner
Tiruvannamalai Municipality
Tiruvannamalai - 606 201 .... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records comprised in Special Demand Notice of the third respondent in respect of the Assessment No.040-038-00188 dated -nil- on the file of the third respondent, enhancing the property tax from Rs.134/- to Rs.6998/- per half year in respect of the property at door No.38/32-C, Vediappan Koil, 2nd Street, Tiruvannamalai Town and District, quash the same.

For Petitioner : Mr.R.Karthikeyan

For Respondents: Mr.R.P.Pratap Singh
Government Advocate for R1 and R2

Mr.V.Elango
for Mr.V.Jayaprakash Narayanan
Government Pleader for R3

O R D E R

Mr.R.Karthikeyan, learned counsel on record for writ petitioner, Mr.R.P.Pratap Singh, learned Government Advocate on behalf of Respondents 1 and 2, Mr.V.Elango, learned counsel representing Mr.V.Jayaprakash Narayanan, learned Government

Pleader in-charge, learned Standing Counsel for Tiruvannamalai Municipality i.e., third respondent, are before this Court.

2.With the consent of all the aforesaid counsel, the main writ petition itself is taken up, heard out and is being disposed of.

3.Factual matrix that is imperative for appreciating this order are as follows:

a) Writ petitioner is owner of an immovable property being a residential house at Door No.38/32-C, Vediappan Koil 2nd Street, Tiruvannamalai Town situated in Ward No.38, Tiruvannamalai Municipality.

b) The land extent of immovable property is 1350 sq.ft and the superstructure standing thereon consists of ground and first floors. The superstructure in the ground floor ad-measures 550 sq.ft and the first floor ad-measures 650 sq.ft or thereabouts. In other words, the total superstructure is 1200 sq.ft standing on a land extent of 1350 sq.ft. This residential house of the writ petitioner, shall hereinafter be referred to as 'said property' for the sake of convenience and clarity.

c) It is submitted that superstructure in the said property is more than 30 years old.

d) Said property has been assessed to property tax and the current half-yearly property tax is Rs.134/-.

e) There is no dispute that the writ petitioner is paying the current half-yearly property tax regularly.

f) Under the aforesaid circumstances, it is the case of the writ petitioner that when he approached the third respondent Municipality in the month of June 2018 to pay property tax, he was called upon to pay property tax at the rate of Rs.6,998/- (Rupees Six Thousand Nine Hundred and Ninety Eight only) from II/2017-18 or in other words from 01.10.2017. When the writ petitioner made further enquiries, writ petitioner was informed that the property tax has been enhanced and basic amenities such as water connection would be suspended if the enhanced property tax is not paid.

g) Thereafter, writ petitioner made an application to third respondent on 13.07.2018 under Right to Information Act, seeking details regarding enhancement with the specific query, namely date of issuance of notice of revision of property tax.

h) The third respondent sent a reply on 06.08.2018 enclosing a copy of the impugned special demand notice wherein it is mentioned that property tax for said property has been enhanced from Rs.134/- to Rs.6998/- with effect from II/2017-18. In other words, from 01.10.2017.

i) Most important aspect of the reply is that it has been categorically mentioned that this notice has not been served on the writ petitioner.

j) Therefore, the writ petitioner made a representation dated 03.09.2018 inter-alia calling upon the third respondent to rectify the situation.

k) Thereafter, the writ petitioner also sent a legal notice dated 04.12.2018 through his counsel.

l) As writ petitioner's letter dated 03.09.2018 and legal notice dated 04.12.2018 did not evoke any response or reply, instant writ petition has been filed by the writ petitioner with a prayer to quash the aforesaid special demand notice which was obtained by the writ petitioner in response to RTI query with the admission that it was never served on the writ petitioner.

4. In the aforesaid backdrop, the writ petition was heard out.

5. It was submitted by learned State Counsel that the property tax for said property had not been enhanced for a very long time and therefore, the property tax was enhanced. In other words, it is the specific submission of learned State Counsel that enhancement of property tax is long over due.

6. The issue before this Court is not enhancement, but the manner of enhancement.

7. On this basis, the matter was heard further. It was submitted without any disputation or disagreement that the statute which governs levy and enhancement of property tax in the instant case is 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' ('said Act' for brevity). Under said Act, there is also a set of Rules which go by the caption 'Taxation and Finance Rules' (hereinafter 'Taxation Rules' for brevity).

8. There is no disputation or disagreement before this Court that levy and enhancement of property tax is traceable to said Act and Taxation Rules.

9. Be that as it may, dealing with enhancement of Property Tax in Chennai Corporation, a Hon'ble Single Judge of this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019, relying on the principle laid down by a Hon'ble Division Bench of this Court in Sanjai Gupta Vs. The Commissioner, Corporation of

Chennai reported in 2009 (2) CTC 465 has held that enhanced property tax cannot be straight away demanded from an assessee without making a provisional assessment, calling for objections and making final assessment.

10. A perusal of the impugned order reveals that it has been made under Rules 9 and 10 of Schedule IV to Taxation Rules. Rules 9 and 10 of Schedule IV to Taxation Rules read as follows:

> '[9. When assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the [executive authority] shall give public notice stating that revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government, a railway administration or a company and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of municipal office and on the same day be published in the municipality by beat of drum]'
>
> '[10. In every cases in which between one general revision and another, the [executive authority] assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the [executive authority] shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within sixty days from the date of service of such notice in the case of the Government, a railway administration or a company, and within thirty days from the said in other cases]'

11. A perusal of Rule 10 reveals that the third respondent should intimate to the owner that there is a mechanism.

12. In the considered opinion of this Court, Rule 9 applies when assessment books are prepared for the first time and Rule 10 is in the case of enhancement between two general revisions. In any event, in the light of order made by this Court in W.P.No.3231 of 2019 dated 04.02.2019 following a Division Bench order, it is necessary that provisional assessment is made and the assessee is given an opportunity.

13. In the light of the narrative thus far, the following order is passed:

> a) Impugned special demand notice pertaining to Assessment No.040-038-00188 for said property at Door No.38/32-C, Vediappan Koil 2nd Street, Tiruvannamalai

Town and District is set aside. To be noted, impugned special demand notice is set aside on the ground of violation of 'natural justice principles'(NJP) without expressing any opinion on merits of the matter;

b) Third respondent shall send a provisional assessment order to the writ petitioner within a fortnight from the date of receipt of this order;

c) In the provisional Assessment Order, third respondent shall call for objections from the writ petitioner;

d) Writ petitioner shall submit objections to the provisional assessment within 15 days therefrom.

e) Thereafter, the third respondent shall consider all the objections and pass final Assessment order in accordance with law within six weeks there from.

f) The final assessment passed by the third respondent shall be communicated to the writ petitioner under due acknowledgement in a manner known to law within seven working days from the date of final Assessment Order. There shall be no coercive action qua property tax against the writ petitioner with regard to the said property till the final assessment is made subject to the writ petitioner paying half-yearly property tax at the existing rate of Rs.134/- without any delay or default until final assessment order is made. It is submitted by the writ petitioner that payment far in excess of Rs.134/- per half-year has already been made under pain of disconnection of civic amenities and a receipt dated 20.06.2018 annexed to the typed-set of papers is adverted to in this regard. If any excess payment has been made, the same shall stand adjusted until final Assessment Order is made.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gpa

To

1) The Principal Secretary to Government
Municipal Administration & Water Supply Department
Fort St. George
Chennai - 600 009

2) The Commissioner
Municipal Administration
Chepauk
Chennai - 600 005

3.The Commissioner
Tiruvannamalai Municipality
Tiruvannamalai - 606 201

+1cc to Mr.R.Karthikeyan, Advocate sr.50545
+1cc to Government Pleader sr.51226

W.P.No.10429 of 2019 &
W.M.P.Nos.10964 and 10965 of 2019

ln(co)
nr 31/07/2019