IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

WP. No.10024 of 2019
and
WMP. Nos.10596 & 10601 of 2019

V.Srinivasan .. Petitioner

vs.

1.The Government of Tamil Nadu
Represented by its Secretary
Municipal Administration and
Water Supply Department,
Fort. St. George,
Chennai - 600 009.
2.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.
3.The Deputy Commissioner (R & F),
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.
4.Assistant Revenue Office
Zone -08 Ward -103,
Greater Chennai Corporation .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamaus calling for the production of the records relating to the impugned Property Tax General Revision: 2018-19 in Notice:7/18-19/129525 dated 31.01.2019 passed by the 2nd respondent in respect of petitioner hotel premises at Door No.79 and 80, Millers Road, Kilpauk, Chennai - 600 010 and quash the same and consequently direct the respondents to revise and reduce the Property Tax considering the objection of the petitioner dated 15.03.2019.

For Petitioner : Mr. M.Stalin
For Respondents : Mr.A.Zakkir Hussain,
Government Advocate for R1
Mr.T.C.Gopalakrishnan,
Standing Counsel for R2 to R4.

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O R D E R

The petitioner is an individual and challenges a notice issued by the Corporation/the 2nd respondent dated 31.01.2019.

2. The premises in question bears the address, Door Nos.79 and 80, Millers Road, Kilpauk, Chennai – 600 010. The petitioner is a regular assessee to Property Tax and states that he is paying property tax in time.

3. While this is so, he received a notice dated 09.10.2018 in respect of the premises in question styled as a General Revision Notice in respect of one half of 2018-19. The existing half yearly tax of a sum of Rs.47,090/- was revised to Rs.1,13,015/-. This notice was not accompanied by a computation sheet or any other breakup. One assumes that the revision is effected on the basis of G.O. Ms. No.73, Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018, as per which the taxes in respect of commercial building would stand enhanced to 100% of the existing taxes. The petitioner has admittedly paid the tax of an amount of Rs.47,090/- in respect of the aforesaid period even on 07.09.2018, the receipt of which is placed before this Court.

4. In the meantime, the petitioner received the impugned notice dated 31.01.2019 modifying the entire basis of assessment and categorising the property in question as a special type building, being 'A' Class Hotel. Thus, with effect from the first half of 2018-19, the property in question has been valued at an annual value of Rs.27,89,771/- and the revised half yearly tax has been computed at a figure of Rs.3,45,935/-. This notice has also not been accompanied by computation/breakup and admittedly no notice has been issued prior thereto calling for objection/explanation from the assessee for the impugned revision.

5. The petitioner has filed an appeal against the impugned notice before the Deputy Commissioner (Revenue and Finance), Greater Chennai Corporation on 15.03.2019 which is yet pending disposal.

6. Heard Mr.Zakkir Hussain, learned Government Advocate who has taken notice for R1 and Mr.T.C.Gopalakrishnan, learned Standing Counsel who has taken notice for R2 to R4.

7. Clearly, the Corporation cannot revise its stand in regard to the parameters that apply in the framing of property tax assessments within a period of one and half months, as it is seem to have done in the present case. Notice No.1 for General Revision dated 09.10.2018, has enhanced the property tax only by a little over 100% whereas, the impugned notice dated 31.01.2019 has taken an entirely different basis of assessment and that too admittedly without any opportunity granted to the petitioner.

8. In the aforesaid circumstances, I reiterate an earlier order of mine, wherein I have dealt with the matters relating to an assessment of property tax in the case of N.Krishnan V. The Secretary, Government of Tamil Nadu in W.P.No.3248 of 2019 order dated 04.02.2019. The relevant portion of the said order reads 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.'
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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.'

9. The observations and conclusions of this Court in the aforesaid matter are equally applicable in the present case as well.

10. Insofar as the petitioner has filed an appeal against the impugned notice on 15.03.2019 is concerned, the 3rd respondent is directed to dispose the appeal after hearing the petitioner within a period of six(6) weeks from today, upon condition that the petitioner remit the balance of the demand as per notice dated 09.10.2018, i.e., Rs.65,925/- (Rs.1,13,015/- - Rs.47,090/-) within a period of one week from today and provides proof of compliance thereof at the time of hearing of the appeal. The demand raised in the impugned notice, in excess of 100% of the existing rates, shall be kept in abeyance till such time orders are passed by the third respondent.

11. With the aforesaid direction, the Writ Petition is disposed of. Connected miscellaneous petitions are closed. No costs.

rkp/sl Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
The Government of Tamil Nadu
Municipal Administration and
Water Supply Department,
Fort. St. George,Chennai - 600 009.

2.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

3.The Deputy Commissioner (R & F),
Greater Chennai Corporation,
Rippon Buildings,
Chennai - 600 003.

4.Assistant Revenue Office
Zone -08 Ward -103,
Greater Chennai Corporation.

+1cc to Mr. T.C.Gopalakrishnan,, Advocate SR.No.32199
+1cc to Mr.M.Stalin , Advocate SR.No. 39668

WP. No.10024 of 2019
and
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A.SK(25/04/2019)