IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.10879 of 2019
and
WMP No.11323 of 2019

S.C.Ponnusamy
.. Petitioner

vs.

The Commissioner
Salem City Municipal Corporation
Salem.
.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records pertains to the impugned demand vide the respondent's Special Notice in Assessment No.049/013/02132 Old Assessment No.049/2073027, dated 12.02.2019 quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.J.Ramakrishnan

For Respondent : Mr.S.Sathish,

Standing Counsel for Salem

Corporation.

O R D E R

Mr.J.Ramakrishnan, learned counsel on record for writ petitioner and Mr.S.Sathish, learned Standing Counsel for Salem City Municipal Corporation on behalf of the sole respondent are before this Court.

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

3. Subject matter of instant writ petition is enhancement of property tax for writ petitioner's immovable property under 'Salem City Municipal Corporation Act, 1994 (Tamil Nadu Act 29 of 1994)', hereinafter 'Salem Corporation Act' for brevity.

4. Writ petitioner's immovable property, which forms subject matter of instant writ petition, is at 'No.120/1, Hasthampatty Main Road', which shall hereinafter be referred to as 'said property'.

5. Half yearly property tax payable for writ petitioner's said property was enhanced from Rs.636/- (Rupees Six Hundred and Thirty Six only) to Rs.1,272/- (Rupees One Thousand Two Hundred and Seventy Two only) and the Assessment Reference number is Assessment No.049/013/02132 Old Assessment No.049/2073027.

6. Regarding aforesaid enhancement of property tax under Salem Corporation Act, a notice captioned 'Special Notice/ சிறப்ப . அறிக்கை Property Tax - General Revision 2018, dated 12.02.2019', came to be issued to the writ petitioner and this shall hereinafter be referred to as 'impugned notice' for the sake of convenience and clarity.

7. Before this Court proceeds further, there are two aspects in the impugned notice, which are of relevance.

8. First aspect is the provisions of law under which impugned notice has been issued. A perusal of the impugned notice reveals that it has been issued under Sections 122, 125, 168 & 169 of Salem Corporation Act, besides Rules 1 and 2 thereunder. To be noted, in this regard, Section 8 of Salem Corporation Act is of relevance and the same reads as follows:

> '8.Application of the provisions of the 1981 Act to the Corporation._
>
> (1) Save as otherwise expressly provided herein, all the provisions of the 1981 Act including the provisions relating to the levy and collection of any tax or fee, are hereby extended to and shall apply mutatis mutandis to the corporation and the 1981 Act shall, in relation to the corporation, be read and constituted as if the provisions of this Act had formed part of the 1981 Act.
>
> (2)For the purpose of facilitating the application of the provisions of the 1981 Act to the Corporation, the Government may, by notification, make such adaptations and modifications of the 1981 Act and the rules and by-laws made thereunder whether by way of repealing, amending or suspending any provision thereof, as

may be necessary or expedient and thereupon, the 1981 Act and the rules made thereunder, shall apply to the corporation subject to the adaptations and modifications so made.

(3) Notwithstanding that no provision or insufficient provision has been made under sub-section (2) for the adaptation of the provisions of the 1981 Act, or the rules and by-laws made thereunder, any Court, tribunal or authority required or empowered to enforce these provisions may, for the purpose of facilitating their application to the corporation, construe these provisions in such manner, without affecting the substance, as may be necessary or proper having regard to the matter before the Court, tribunal or authority.

(4) In the 1981 Act as extended and applied to the city of Salem,_

(a) any reference to the city of Coimbatore and Coimbatore Municipality, shall by reason of this Act, be construed as a reference to the city of Salem and Salem Municipality, respectively; and

(b) any reference to the Coimbatore Corporation, Corporation of Coimbatore and Municipal Corporation of Coimbatore, shall by reason of this Act, be construed as a reference to the Salem Corporation, Corporation of Salem and Municipal Corporation of Salem, respectively.'

9. In the light of Section 8 of Salem Corporation Act, 'Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981)', which shall hereinafter be referred to as 'Coimbatore Corporation Act', has been made applicable to Salem Corporation. Therefore, reference to the aforesaid provisions in the impugned notice are reference to provisions of Coimbatore Corporation Act.

10. To be noted, both references i.e., reference to the provisions of law i.e., Sections as well as the Rules are reference to the provisions of Coimbatore Corporation Act and Rules forming part of the same. To be noted, with regard to Coimbatore Corporation Act, the Rules are contained in Schedule II of Coimbatore Corporation Act and Schedule II is captioned 'Taxation Rules'.

11. Second aspect of impugned notice is, it mentions that a noticee, if he so desires, can prefer an appeal against the enhancement qua impugned notice 'within 30 days' to the

'Taxation Appeals Tribunal' ('TAT' for brevity). A perusal of Schedule II of Coimbatore Corporation Act, which is applicable, more importantly, Rules 20, 21 and 22 thereunder, reveal that there is only a condition for pre-deposit of 50% of the differential tax i.e., difference between existing tax and enhanced tax, but no time limit has been prescribed for an appeal against the impugned notice to TAT.

12. Therefore, appeal if any against the impugned notice will no doubt be to TAT (to be noted, TAT, Salem), it will no doubt be governed by pre-deposit requirement, but there is no time limit and therefore, this appeal within 30 days to that extent is incorrect.

13. The aforesaid two aspects qua special notice have been noticed and the same have been set out supra.

14. This brings us back to the challenge to the impugned notice in the instant case on hand.

15. Predecessor Hon'ble Judge of this Court on 10.04.2019, passed proceedings in writ miscellaneous petition i.e., interim order in the instant writ petitions and the same reads as follows:

> 'Mr.Jayaprakash Narayanan, learned counsel for the respondent takes notice for the respondent and seeks time to obtain instructions and file counter.
>
> 2.The main contention of the learned counsel for the petitioner is that the impugned notice has not been preceded by opportunity given to the petitioner to show cause and the recovery has been initiated without following the principles of natural justice and not been preceded by an assessment of property tax.
>
> 3.In the light of the same, there shall be an order of status-quo of recovery subject to the petitioner submitting proof of remittance of: (i) admitted tax and (ii) tax of 100% of existing tax as per G.O.Ms.No.73, Municipal Administration and Water supply (MA.IV) Department dated 19.07.2018 within a period of two (2) weeks from today.
>
> 4.List on 04.06.2019. Counter to be filed by then with an advance copy served on the other side. Counsel for the petitioner is directed to serve a copy of a set of writ petition and its annexures to Mr.Jayaprakash Narayanan.'

16. Most relevant part of the aforesaid interim order / proceedings dated 10.04.2019 is paragraph 3. Today, in the hearing, learned Standing Counsel for Salem Corporation submits

without any disputation or disagreement that writ petitioner has since complied with paragraph 3.

17. As far as the impugned notice is concerned, a perusal of aforesaid Rule 4 of Taxation Rules contained in schedule II of Coimbatore Corporation Act reveals that it has to be preceded by publicity in local newspapers, calling upon the owners, occupiers of land and building, to file returns within a period not exceeding one month from the date notified in this behalf. Though there is no averment in the counter affidavit to this effect and though no such publicity given in the newspapers has been annexed to the typed set of papers, learned Standing Counsel for Salem Corporation brings to the notice of this Court that publicity in accordance with Rule 4 has been given in all newspapers, having adequate circulation in Salem within Salem Corporation limits. Learned counsel has placed photocopies of such publications made in The Indian Express, dated 03.09.2018, The Hindu (Tamil) dated 03.09.2018, Malaimurasu dated 02.09.2018, Dhinamalar dated 03.09.2018, Dhinakaran dated 03.09.2018, Dhinamani dated 03.09.2018, Kalaikathir dated 03.09.2018, Tamilmurasu dated 02.09.2018 and Dhinathanthi dated 02.09.2018. Though the newspapers had not been placed before this Court and only photocopies have been placed before this Court, submission of learned Standing Counsel for Salem Corporation, on instructions, that these publications have been made in Salem Edition and/or appropriate editions having adequate circulation in Salem Corporation limits is recorded.

18. A perusal of this publicity under Rule 4 reveals that writ petitioner ought to have filed returns on or before 03.10.2018. In the instant case, it is not disputed by writ petitioner that no such returns were filed on or before 03.10.2018.

19. It emerges clearly from the scheme and structure of Taxation Rules that when returns have not been filed, the Commissioner Salem Corporation, should take recourse to Rule 5, which reads as follows:

> '5. If any person fails o file a return within the notified time, the Commissioner may authorise any person not below the rank of a Bill Collector to enter upon and make an inspection of the assessable item and prepare the return.'

20. Admittedly, there is nothing to show that inspection of said property was made, prior to the issue of special notice i.e., impugned notice. However, adverting to the general revision working sheets, learned Standing counsel submits that some computation has been made. Learned counsel for writ petitioner points out that these working sheets are dated 12.03.2019, which is post impugned order. In any event, there

is no disputation that these are general working sheets and there was no inspection of the said property.

21. In the aforesaid scenario, learned counsel for writ petitioner submits that he would now file returns to the aforesaid publicity under Rule 4, within a fortnight from the date of receipt of a copy of this order. If writ petitioner files returns, within a fortnight from the date of receipt of a copy of this order, there will be no need or necessity to take recourse to Rule 5.

22. In the aforesaid backdrop, the following order is passed:

a) Impugned notice is set aside. To be noted, impugned notice is not set aside on merits. No opinion or view is expressed on merits and this setting aside is being done on the ground of undisputed non adherence to Rules and for the purpose of facilitating the writ petitioner to file returns in response to the aforesaid publicity given under Rule 4.

b) Learned counsel for writ petitioner, on instructions submits that writ petitioner will file returns within a fortnight from the date of receipt of a copy of this order. On instructions, it is submitted by learned Standing Counsel for Corporation that such returns shall be filed with the Assistant Commissioner of Salem Corporation, Hasthampatti Zone/ward.

c) On aforesaid returns being filed, the impugned notice shall be redone and reissued afresh, after taking into account the returns and objections if any, contained in the returns.

d) If writ petitioner does not file returns within a fortnight from the date of receipt of a copy of this order with the Assistant Commissioner of Salem Corporation, Hasthampatti Zone/Ward, the impugned notice will stand revived without further reference to this Court.

e) Redone/reissued notice shall be served on the writ petitioner under due acknowledgement within a fortnight from the date on which it is redone under due acknowledgement.

f) Until the aforesaid exercise is completed, there shall be no coercive action or distraint proceedings against writ petitioner qua said property with regard to property tax, subject to the condition that writ petitioner continues to pay half yearly property tax at the existing rate of Rs.636/- (Rupees Six Hundred and Thirty Six only) without any default.

g) On the aforesaid exercise being completed, if writ petitioner is not satisfied with the assessment made vide reissued notice, writ petitioner shall take recourse to statutory appeal by way of an appeal to the Taxation Appeals Tribunal under Rules 20 and 22 of Schedule II of Coimbatore Corporation Act.

h) If such an appeal is preferred, the Taxation Appeals Tribunal shall deal with the appeal in accordance with law and in a manner known to law and this order will not impede such a legal course.

This writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vsm
To

The Commissioner
Salem City Municipal Corporation
Salem.

+1 CC to Mr.S.Sathish, Advocate sr 63080.
+1 CC to Mr.P.Sivakumar, advocate sr 62732.

W.P.No.10879 of 2019
and WMP No.11323 of 2019

SV(CO)
SP(29/08/2019)