IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.10995 of 2019
and WMP.No.11425 of 2019

Liberty Hotels (P) LTD,
Represented by its Director - Mr.Uday Kumar Reddy,
9(2A) United India Colony Circular Road,
United India Colony, Kodambakkam,
Chennai - 600 024.
.. Petitioner

vs.

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

2. The Regional Deputy Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

3. The Assessor,
Revenue Department,
Zonal Office -X,
Corporation of Chennai,
Chennai - 600 024.

4. The Assistant Revenue Officer,
Revenue Department,
Zonal Office - X,
Corporation of Chennai,
Chennai - 600 024.
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the 4th respondent in Demand Notice No.1 dated 31.01.2019 bearing number 7/18-19/129919 and quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

For Petitioner : Mr.K.M. Aasim Shehzad

For Respondents : Mr.T.C.Gopala Krishnan, Standing Counsel

ORDER

Mr.K.M.Aasim Shehzad of M/s. BFS Legal (Law firm) on behalf of sole petitioner company and Mr.T.C.Gopalakrishnan, learned Standing counsel for Chennai Corporation on behalf of all the four respondents are before this Court.

2. With the consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and disposed of, though this case is listed under the caption 'ADJOURNED ADMISSION' today(04.06.2019).

3. From the submissions made, it emerges clearly that the entire matter turns on a very narrow compass.

4. The central theme of the instant writ petition is upward revision of property tax for property owned by the petitioner. This Court is informed that the petitioner is a company which goes by the name 'Liberty Hotels Private Limited' and the property, which is subject matter of assessment is a hotel. Be that as it may, suffice to say that the Chennai Corporation issued a revised assessment dated 18.12.2018 and the petitioner/assessee has sent his objections dated 21.12.2018. It may not be necessary to advert to the quantum of revision considering the narrow scope of the instant writ petition.

5. Thereafter, while the objections were pending, Chennai Corporation had issued a notice dated 31.01.2019, which is a general revision. Vide this 'general revision notice dated 31.01.2019' (hereinafter 'impugned order' for the sake of clarity and convenience) Chennai corporation proposed to increase the half yearly property tax for the petitioner's property with effect from first half year of 2018-2019 or in other words, with effect from 01.04.2018.

6. It may not be necessary to advert to factual details regarding quantum in the light of their being an appeal provision i.e., an alternate remedy qua the impugned

order. This is set out in the impugned order itself and the relevant portion reads as follows:

> 'Within 15 days of receipt of this Notice, the appeal can be preferred to the Deputy Commissioner (Revenue & Finance), Greater Chennai Corporation, or else it will be assumed that the Half Yearly Tax is accepted.
>
> (இந்த அறிவிப்பு கிடைக்கப்பெற்ற 15 நாட்களுக்குள் துணை ஆணையாளர் (வருவாய் டி நிதி), பெருநகர சென்னை மாநகராட்சி அவர்களுக்கு மேல்முறையீடு செய்யலாம். தவறும்பட்சத்தில் இந்த அறிவிப்பின்படி அரையாண்டு வரி ஏற்றுக் கொள்ளப்பட்டதாக உறுதிபடுத்தப்படும்.)

7. Therefore, this takes us to the question of alternate remedy.

8. Before this Court adverts to alternate remedy, it is necessary to notice that the learned counsel for writ petitioner drew the attention of this Court to the order dated 04.02.2019 made by another Hon'ble Single Judge of this Court in W.P.No.3248 of 2019.

9. Adverting to the aforesaid order, learned counsel submitted that the petitioner/assessee has sent his objections dated 08.02.2019 to the impugned order, these objections have been sent to the second respondent and it is pending with the second respondent, learned counsel emphasised that this is in the nature of objections and it is not an appeal.

10. However, the matter is now in the hands of the second respondent, who has been described as the appellate authority in the impugned order.

11. Be that as it may, it is submitted by both sides that it will suffice if there is a direction to the second respondent to dispose of the objections in a manner known to law.

12. Learned Standing counsel for Chennai Corporation submits, on instructions, that the second respondent will dispose of the objections within a period of four weeks from the date of receipt of a copy of this order.

13. Be that as it may, as there is a reference to alternate remedy, this Court deems it appropriate to refer

to alternate remedy qua exercise of Writ Jurisdiction under Article 226. In a long line of authorities, Hon'ble Supreme Court has held that alternate remedy qua exercise of its Writ jurisdiction is a Rule of Discretion and not a Rule of compulsion. In other words, it is not an absolute Rule. Though, it is not an absolute Rule, Hon'ble Supreme Court has also held that with regard to matters pertaining to Tax, Cess, Fees, etc., this alternate remedy is to be construed very strictly and interference is warranted only when there are specific exceptions. Though there are long line of authorities, suffice to refer to Satyawati Tondon case (United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110), which has been reiterated and referred to by Hon'ble Supreme Court in a recently delivered judgment i.e., Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85.

14. A careful perusal of the long line of authorities and the view taken by Hon'ble Supreme Court leads us to the conclusion that the exceptions with regard to interference in exercise of writ jurisdiction on the teeth of alternate remedy can be in the following cases:

a) Lack of Jurisdiction,
b) Violation of principles of natural justice (NJP),
c) Where the alternate remedy is illusory

15. To be noted, the above is not exhaustive, but illustrative for the limited purpose of disposal of this case though it covers largely the exception.

16. In the instant case, the writ petitioner, in the considered opinion of this Court has not been able to show that alternate remedy falls under any of the exceptions. To be noted, specific reference to exception are Baburam Prakash Chandra Maheshwari Vs. Antarimzila Pareshad reported in AIR 1969 SC 556, Whirlpool Corporation Vs. Registrar of Trademarks reported in (1998) 8 SCC 1, Harbanslal Sahnia Vs. Indian Oil Corporation Limited reported in (2003) 2 SCC 107.

17. Therefore, this Court finds it appropriate to relegate the writ petitioner to the second respondent, who will decide on the objections dated 08.02.2019 qua the impugned order within a period of four weeks from the date of receipt of a copy of this order.

18. To be noted, second respondent shall dispose of the objections/appeal in a manner known to law after giving opportunity to the writ petitioner and all objections raised by the writ petitioner including objections with

regard to the quantum/percentile/percentage, G.O.(Ms)Nos.73 and 76 Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018 and 26.07.2018 respectively shall also be looked into.

19. Order of the second respondent shall be communicated to the writ petitioner with due acknowledgement within five working days from the date of the disposal of the objections/appeal.

Writ petition is disposed of on above terms. Consequently connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mp/ssd
To
1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R. Periyar Salai,
Chennai.

2. The Regional Deputy Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

3. The Assessor,
Revenue Department,
Zonal Office -X,
Corporation of Chennai,
Chennai - 600 024.

4. The Assistant Revenue Officer,
Revenue Department,
Zonal Office - X,
Corporation of Chennai,Chennai - 600 024.
+1cc to Mr.T.C.Gopala Krishnan, , Advocate SR.No. 45058

W.P.No.10995 of 2019
and WMP.No.11425 of 2019

A.SK(02/07/2019)