IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.11629 of 2019
and
W.M.P.Nos.11865 & 11866 of 2019

M.Srinivasan ...Petitioner

Vs

1.The Commissioner
Vellore City Municipal Corporation
Vellore.

2.The Revenue Officer,
Ward Office-II
Vellore City Municipal Corporation
Sathuvachari,
Vellore-632 009. ....Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned Demand Notice dated Nil on Tax Assessment No.035/1700738 (also Assessment No.035/017/01118) issued by the 2nd respondent and quash the same and consequently forbear the respondents, their men, agents, representatives etc., from any manner initiating recovery proceedings on the basis of the impugned Demand Notice dated Nil in Old Tax Assessment No.035/1700738 (also assessment No.035/17/01118) issued by the 2nd respondent.

For Petitioner : Mr.Balaji

For Respondents: Mr.Silambanan, Senior Counsel
for Ms.P.Shanthi

O R D E R

Mr.Balaji, learned counsel on record for writ petitioner and Mr.Silambanan, learned Senior counsel instructed by Ms.P.Shanthi, learned Standing counsel for respondents are before this Court.

2. With consent of counsel on both sides, main writ petition is taken up, heard out and is being disposed of. Entire writ petition turns on a very narrow compass, more so owing to the trajectory of the hearing today.

3. Writ petitioner is one of the owners of a immovable property situated in Old Survey No.428, New Survey No.428/1, Sathuvachari Village, Vellore District (hereinafter 'said property' for the sake of brevity, clarity and convenience).

4. Learned counsel for writ petitioner, adverting to the affidavit filed in support of the writ petition, submitted that said property was assessed to Property Tax at Rs.15,720/- (Rupees Fifteen Thousand Seven Hundred and Twenty only) by the Vellore Municipality and the property tax so assessed and levied was paid without any default. It is the case of the writ petitioner that the property tax of Rs.15,720/- was paid for the assessment year 2017-18 without any delay or default.

5. Under the aforesaid circumstances, writ petitioner was visited with a Demand Notice dated nil. Vide this Demand Notice, writ petitioner has been called upon to pay a sum of Rs.1,51,338/- (Rupees one lakh fifty one thousand three hundred and thirty eight only) within 3 days. This notice shall herein be referred as 'impugned notice' for brevity.

6. Vide impugned notice, writ petitioner was also put on notice that if the aforesaid sum of money (which according to respondents is due towards property tax arrears of the writ petitioner qua said property) is not paid within 3 days, legal action will be taken under the provisions of Coimbatore City Municipal Corporation Act (Vellore), 1981.

7. From a reading of the impugned notice, it also comes to light that the purported arrears of property tax is for two assessment years namely 2017-18 and 2018-19.

8. Adverting to property tax receipts dated 20.07.2016, 02.08.2016, 30.03.2018, 31.03.2018, which have been filed as part of the typed set of papers, learned counsel for writ petitioner submits that property tax as per the existing rate has been duly paid. More particularly, property tax for I/2017-18 and II/2017-18 have been duly paid and there is no disputation or disagreement before this Court in this regard.

9. It is the specific case of the writ petitioner that the writ petitioner was not put on notice about any enhancement of property tax and they were suddenly visited with the impugned

notice. Notwithstanding this position, without prejudice to the rights and contentions of writ petitioner, writ petitioner paid the aforesaid tax of Rs.15,720/- (Fifteen Thousand Seven Hundred and Twenty only) for the assessment year 2017-2018.

10. In the aforesaid circumstances, learned Senior Counsel for the respondents submits that the Act that is applicable to the instant case is 'Vellore City Municipal Corporation Act, 2008 (Tamil Nadu Act 26 of 2008)', hereinafter 'said Act' for brevity and vide Section 8 of the said Act, the provisions of Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981) have been made applicable to Vellore Municipality.

11. Learned Senior Counsel in his usual fairness drew the attention of this Court to Section 118 of the 'Coimbatore City Municipal Corporation Act, 1981' (hereinafter 'Coimbatore Act 1981' for brevity) and submitted that before imposing tax for first time or increasing the rate of existing tax, a publication has to be made in a Tamil Newspaper.

12. Learned Senior Counsel submitted that though it is the specific stand of the respondents that said publication has been made, the respondents are not averse to issuing a notice individually to the writ petitioner regarding the proposed enhancement. To be noted, this therefore is a consent order, in the light of the aforesaid stated position that the respondent Municipality which has been articulated before this Court by learned Senior Counsel on instructions.

13. On instructions, it is submitted on behalf of the Vellore Municipality that they would give a notice to the writ petitioner giving details of the proposed assessment together with parameters / determinants and mode of computation for the proposed enhancement (which will be a provisional assessment) call for objections from writ petitioner, thereafter pass a final assessment order after taking into account the objections of writ petitioner and after giving an opportunity of personal hearing to the writ petitioner.

14. Therefore, it follows as a natural sequitur that the impugned notice is to be set aside, as there cannot be any demand of property tax at the enhanced rate until further final assessment order is passed. In this regard, Sanjai Gupta principle laid down by Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 that any demand should be preceded by a final assessment after taking into account the objections of the assessee is relevant.

15. In the light of the narrative supra, by consent of both sides, the following order is passed:

(a) Impugned order bearing Assessment No.035/1700738 (also Assessment No.035/017/01118), nil dated is set aside.

(B) The respondent shall send a notice to the writ petitioner within a fortnight from the date of receipt of the order along with details of proposed enhancement of property tax for the said property along with parameters / determinants mode of computation which are used to arrive at the proposed enhancement. This notice will call for objections from the writ petitioner and shall be served on the writ petitioner under due acknowledgment.

(C) Writ petitioner shall send their objections to the aforesaid proposed enhancement / provisional assessment within a fortnight thereafter i.e., from date of receipt of aforesaid notice.

(D) On receipt of objections from writ petitioner, the respondent Municipality shall consider all the objections of the writ petitioner, give an opportunity of personal hearing to the writ petitioner and then pass a final assessment order in accordance with law as expeditiously as possible, in any event within 8 weeks from the date of receipt of the objections from the writ petitioner.

(D) The final assessment order so passed by Vellore Municipal Corporation i.e., respondents shall be communicated to the writ petitioner under due acknowledgment within seven (7) working days from the date of the final assessment order.

(E) Until final assessment order is made, there will be no coercive action against the writ petitioner subject to the condition that the writ petitioner continues to pay property tax at the existing rate of Rs.15,720/- (Rupees Fifteen Thousand Seven Hundred and Twenty only)

(F) Though obvious, it is made clear that it is open to the writ petitioner to assail aforesaid final assessment order in a manner known to law (if writ petitioner is not satisfied with final assessment order). If writ petitioner chooses to assail the final assessment order, this order will not impede such legal proceedings.

16. Accordingly, this writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner
Vellore City Municipal Corporation
Vellore.

2.The Revenue Officer,
Ward Office-II
Vellore City Municipal Corporation
Sathuvachari,
Vellore-632 009.

+1cc to M/s.McGan Law Firm, Advocate Sr.53250

W.P.No.11629 of 2019

gp[co]
srg 22/08/2019