IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 11.06.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.12350 of 2019
&
W.M.P.No.12649 of 2019

Alafiya Yusuf Kitabi .. Petitioner

Vs.

1. State of Tamil Nadu,
Represented by Secretary to Government
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.

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

3. The Assistant Revenue Officer,
Zonal Office - V,
Greater Chennai Corporation,
No. 61, Basin Bridge Road,
Old Washermenpet,
Chennai. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the 2nd and 3rd respondents comprised in the demand notice dated 19.11.2018 bearing Z.O.V.R.D.C.No.R1/SPL/2018 and all proceedings pursuant thereto and to quash the same as illegal, arbitrary and violative of the principles of natural justice.

For Petitioner : Mr.R.Parthasarathy

For Respondents: Mr.R.P.Pratapsingh,
Government Advocate for R1

Mr.T.C.Gopalakrishnan,
Standing counsel for Corporation
for R2 & R3

O R D E R

Mr.R.Parthasarathy, learned counsel on record for writ petitioner, Mr.N.Sakthivel, learned Government Advocate on behalf 1st respondent and Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation, who accepted notice on behalf of respondents 2 and 3, are before this Court.

2.This matter is listed under the caption 'FOR ADMISSION' in the motion list today.

3. A perusal of the earlier proceedings of this Court (dated 25.04.2019 and 27.04.2019) in the instant writ petition reveal that the Standing Counsel for Chennai Corporation had taken time to get instructions. Today, learned Standing Counsel for Chennai Corporation submits that he has got instructions and he is ready to make submissions.

4.With consent of learned counsel on both sides, the main writ petition itself is taken up for final disposal, heard out and is being disposed of.

5.The entire matter turns on a very narrow compass. This writ petition pertains to levy of property tax under the 'Chennai City Municipal Corporation Act, 1919' ('CCMC Act' for brevity).

6.The petitioner is owner of immovable property (which is his residence) in the city of Chennai. It is the specific and categoric case of the writ petitioner that she was surprised to receive a demand notice dated 19.11.2018 bearing reference 'Z.O.V.R.D.C.No.R1/SPL/2018', which shall hereinafter be referred to as 'impugned notice' for the sake of brevity, convenience and clarity. Vide the aforesaid impugned notice, demand for a sum of Rs.1,68,992/- towards purported property tax arrears has been made.

7. It is also the specific case of the writ petitioner that she responded to the impugned notice vide letter to the third respondent on 14.03.2019. Writ petitioner states that prior to the impugned notice, writ petitioner has not received any communication from the respondents. Elaborating on the aforesaid submissions, learned counsel for writ petitioner pointed out that it is imperative that the respondents serve pre-assessment notice i.e., provisional assessment setting out proposed enhancement, give opportunity to the writ petitioner Assessee to object to the same and only thereafter enhancement of property tax can be determined by final assessment order

after considering the objections. It was also submitted that there are statutory provisions for assailing such final assessment, if petitioner is not satisfied.

8. On instructions, learned Standing Counsel for Chennai Corporation submits that though his instructions are to the effect that a provisional assessment vide general revision has been despatched to the writ petitioner vide ordinary post, there is no acknowledgement and there is nothing in the files of the respondent to demonstrate that the writ petitioner has been duly served with provisional assessment notice. Therefore, there is no material before this Court to show that the provisional assessment order has been served on the writ petitioner.

9. It is not in dispute that an Assessee has to be given a provisional assessment notice, an opportunity to object to the provisional assessment order has to be given, the objections have to be considered and then final assessment order has to be passed before a demand is made. In this regard, an order made by another Hon'ble single Judge of this Court being order dated 04.02.2019 made in W.P.No.3231 of 2019 following an earlier order of a Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 is of relevance. Vide said order, Hon'ble single Judge has held that provisional assessment notice issued by Chennai Corporation as part of general revision is only provisional assessment and therefore, what will lie against the same are objections and not appeal. To be noted, provisional assessment notices in cases of this nature is in a template and it talks about an appeal within 15 days to the jurisdictional Regional Deputy Commissioner. In the light of the order of this Court made by another Hon'ble Judge, there would be objections to the provisional Assessment order even if the provisional assessment order refers to an appeal to the jurisdictional Regional Deputy Commissioner.

10. In the instant case, the entire controversy stands doused as learned standing counsel for Chennai Corporation, on instructions, from the jurisdictional Assessor, who is present in court, submits that the respondents undertake to serve the provisional assessment order on the writ petitioner in a manner known to law within a fortnight from today. From the date of service of the provisional Assessment Order on the writ petitioner, though obvious it is made clear that writ petitioner will have 15 days time to make objections (though provisional Assessment Order may say appeal) to the jurisdictional Regional Deputy Commissioner. On receipt of objections from the writ petitioner Assessee, the jurisdictional Regional Deputy Commissioner, shall consider all objections raised by the writ petitioner. Thereafter, the Regional Deputy Commissioner shall

pass an order i.e., final Assessment as expeditiously as possible.

11. The final Assessment made by the jurisdictional Regional Deputy Commissioner shall be served on the writ petitioner in a manner known to law under due acknowledgement.

12. In the interregnum, there shall be no coercive action until the jurisdictional Regional Deputy Commissioner makes a final assessment in the aforesaid manner after considering all objections and until such final assessment order is served on the writ petitioner under due acknowledgement, subject to the writ petitioner continuing to pay Half-yearly property tax for petitioner's property at the prevailing rate as is being done thus far according to the Property Tax Assessment Card.

13. It has been submitted that payment in excess of existing rate of Rs.25,998/- per half year has already been made. Without expressing any opinion on this submission, if records show that excess payment has been made, proper credit shall be given to the writ petitioner / assessee.

14. In the light of the narrative supra, the impugned order i.e., Demand Notice dated 19.11.2018 bearing Reference No. Z.O.V.R.D.C.No.R1/SPL/2018 is set aside and the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mp/rm

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
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2. The Commissioner,
Greater Chennai Corporation,
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Chennai - 600 003.

3. The Assistant Revenue Officer,
Zonal Office - V,
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No. 61, Basin Bridge Road,
Old Washermenpet,
Chennai.

+1cc to Government Pleader sr.47531
+2cc to Mr.S.Arunkungumaraj, Advocate sr.49808
+1cc to Mr.T.C.Gopalakrishnan, Advocate sr.47306

W.P.No.12350 of 2019 &
W.M.P.No.12649 of 2019

ca(co)
nr 01/08/2019