IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NOS.12630, 12634, 12637, 12642, 12646 & 13862 OF 2019
&
W.M.P.NOS.12862, 12864, 12868, 12878, 12872, 12875 AND 13936 OF 2019

M.Shanthi .. Petitioner in W.P.No.12630 of 2019
P.Suresh .. Petitioner in W.P.No.12634 of 2019
S.Suresh .. Petitioner in W.P.No.12637 of 2019
L.Venkatesan & V.Sornagandhi .. Petitioner in W.P.No.12642 of 2019
B.Mangai .. Petitioner in W.P.No.12646 of 2019
S.Padmanabhan .. Petitioner in W.P.No.13862 of 2019

Vs.

1. The Revenue Commissioner, Zone III,
   Greater Corporation of Chennai,
   Rippon Building, Chennai - 600 003.

2. The Assistant Revenue Officer, Zone - III,
   Greater Corporation of Chennai,
   Madhavaram, Chennai - 600 060.

3. Revenue Department, Zone-III,
   No.1, Thattankulam Street
   Bazar Road, Madhavaram
   Chennai - 600 060.

.. Respondents (in WP.Nos.12630, 12634, 12637, 12642, 12646 of 2019)

3. The Additional District Revenue Officer,
   Revenue Department, Zone III,
   No.1, Thattankulam Street,
   Bazar Road, Chennai - 600 060.

.. 3rd Respondent in WP.No.13862 of 2019

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned General Revision

Notice No.1/1/18-19/703777, S/1/18-19/651365, 1/1/18-19/713421, S/1/18-19/654110, S/1/18-19/655268, and 1/1/18-19/667040 respectively dated 08.10.2018 and quash the same and subsequently direct the 3rd respondent to restructure the property tax amount as according to the provisions of the Chennai City Municipal Corporation Act, 1919.

For Petitioner : Mr.Ch.Paranjothi

For Respondents : Mr.T.C.Gopalakrishnan
Standing Counsel

O R D E R

This common order will dispose of all these six writ petitions.

2. Mr.Paranjothi, learned counsel on record for the writ petitioner in all six writ petitions is before this Court. Mr.T.C.Gopalakrishnan, learned standing counsel for the Chennai Corporation, accepts notice on behalf of all three respondents.

3. By consent of both learned counsel, the main writ petitions were heard out at the admission stage itself.

4. Core facts are common and therefore, this Court would advert to the details / particulars in the first of the six writ petitions, i.e., W.P.No.12630 of 2019.

5.It is the case of the petitioner that she owns an apartment ad-measuring 1075 sq.ft or thereabouts. The same being Dafodil, H2 Block, Milk Colony Main Road, Milk Colony, Madhavaram. Chennai Corporation as part of general revision of Property Tax issued a notice dated 08.10.2018 bearing Reference No.I/1/18-19/70377. To be noted, as mentioned supra, these are details/particulars as in W.P.No.12630 of 2019.

6.The above said notice dated 08.10.2018 is clearly a provisional assessment and enhancement of Property Tax for the petitioners' apartments is with effect from First Half Year of 2018-19 (I/2018-19) or in other words, it is with effect from 01.04.2018. Adverting to the impugned provisional assessment, learned counsel for petitioner submitted that the Property Tax for the petitioner's apartment has been enhanced from Rs.702/- per Half Year to Rs.4295/- per Half Year. Learned counsel submitted that this is more than 600% enhancement.

7. Adverting to the typed-set of papers, particularly page 7, learned counsel for petitioner pointed out that the aforesaid enhancement vide the impugned provisional assessment is very high and that similar apartments have been assessed to lesser tax, (However, it is to be noted that no details about similar properties have been given).

8. In the aforesaid circumstances, learned standing counsel for respondents submits that this is a provisional assessment and the petitioner has a right to send objections to the Regional Deputy Commissioner, Greater Chennai Corporation. Learned standing counsel for Chennai Corporation also points out that this has been set out in the impugned provisional assessment notice itself. The relevant portion reads as follows:

> '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.'

9. To be noted, vide order dated 04.02.2019 made in W.P.No.3231 of 2019, a Hon'ble Single Judge of this Court, relying on the principle laid down by a Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 has held that notices of the above nature are provisional notices, objections from assessees have to necessarily be considered and the question of appeal will arise only after final assessment is made.

10. Learned Standing Counsel for Chennai Corporation submitted that this order of Hon'ble Single Judge has not been carried in appeal and it is operating. If that be the obtaining position, this is a case where the petitioner assessee will submit objections and not file an appeal qua the impugned provisional assessment.

11. Therefore, the writ petitioner will submit objections to the Regional Deputy Commissioner, though it has been referred to as an appeal in the impugned provisional assessment.

12. The second aspect is, though the aforesaid statement in the impugned provisional assessment (extracted and reproduced supra) says that there is a provision for an appeal to the Regional Deputy Commissioner and that the Half Yearly Tax which has been proposed (proposed enhancement) vide the impugned provisional assessment would be construed to be accepted, it is not in dispute before this Court that there is no provision in Chennai City Municipal Corporation Act, 1919 and the Rules thereunder which provides for deemed finality of the assessment,

if objections (described as appeal in impugned notice) are not filed.

13. In the aforesaid backdrop, one has to look into whether there is any alternate remedy and the obtaining position that impugned order is only a provisional assessment which is akin to a 'show cause notice' ('SCN' for brevity). There is no dispute or disagreement before this Court that there is an effective alternative remedy in the instant case by way of objections (described as appeal) to the Regional Deputy Commissioner, Greater Chennai Corporation. It is also to be noted that such an exercise turns heavily on facts. It would also turn heavily on numeric details, computations and calculations. It is also not in dispute that post decision of Regional Deputy Commissioner further statutory appeals/alternate remedies are available by way of provisions for approaching Taxation Appeal Tribunal and Principal Civil Court available in the relevant Rules under the Chennai City Municipal Corporation Act, 1919. In other words, there is a hierarchy of adjudicating bodies qua alternate remedy.

14. This takes us to the Satyawati Tondon case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110]. Hon'ble Supreme Court in Satyawati Tondon case has held that with regard to taxes, CESS, fees etc., i.e., fiscal statutes, the alternative remedy aspect has to be construed very strictly. This is more so in the light of a long line of authorities. Hon'ble Supreme Court has also held in K.C.Mathew Case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85] that exceptions are as in Whirlpool Corporation Case [Whirlpool corporation v. Registrar of Trade Marks, Mumbai reported in (1998) 8 SCC 1], Antarim Zila Parishad case [Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad reported in AIR 1969 SC 556] and Harbanslal Sahnia case [Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others reported in (2003) 2 SCC 107].

15. The aforesaid long line of authorities have been reiterated and reaffirmed by the Hon'ble Supreme Court as recently as in 2018 in aforementioned Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85. From the long of line of authorities, it comes to light that alternate remedy is essentially not an absolute rule. It is a rule of discretion and it is not a rule of compulsion. Having said that, though it is a rule of discretion, Court would interfere on the teeth of alternate remedy only when it falls within the exceptions set out in long line of authorities. Exceptions can broadly be enumerated and adumbrated as below:

a) Lack of jurisdiction on the part of the Authority issuing notice;

b) Violation of principles of natural justice;

c) A well settled position of law being revisited;

d) Alternative remedy being ineffective or not efficacies.

16. To be noted, the abovesaid adumbration of exceptions made by this Court are not to be construed as exhaustive. In other words, it is only a broad list of heads of exceptions set out for the limited purpose of disposal of instant case on hand.

17. To be noted, even if the impugned provisional assessment is to be treated as 'show cause notice' (SCN), the SCN should inter-alia fall under the aforesaid exceptions for interference in exercise of writ jurisdiction at SCN stage. That is not the case here as this case does not fall under aforementioned exceptions.

18. In the instant case, this Court, considering the facts and circumstances of the case, is unable to accept that this case falls within any of the exceptions, which have been alluded to supra. Be that as it may, considering the submissions made and the representations sent (albeit on behalf of the Resident's Association), it may not be proper to leave the petitioner completely without remedy at this distant point of time. Therefore, it is made clear that it is open to the petitioner to file objections (described as appeal in impugned notice) to the Regional Deputy Commissioner, Greater Chennai Corporation within 15 days from 10.06.2019. To be noted, this Court is directing this order to be issued on or before 10.06.2019. If the petitioner chooses to file objections described as appeal in impugned order), learned Standing Counsel for Chennai Corporation, on instructions, submits that the Regional Deputy Commissioner shall consider the same in accordance with law and dispose of the same as expeditiously as possible and in any event, within a period of four weeks from the date of filing.

19. Learned Standing Counsel for Corporation Mr.T.C.Gopalakrishnan undertakes to communicate this order to the jurisdictional Regional Deputy Commissioner, Greater Chennai Corporation under the cover of a letter making it clear that objections (described as appeal in impugned order), if preferred by the petitioner (within the aforesaid time frame) against the impugned provisional assessment the same shall be entertained, and disposed of in accordance with law within a period of four weeks from the date of filing.

All the writ petitions are disposed of on above terms. No costs. Consequently, all the miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

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   No.1, Thattankulam Street
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   Chennai - 600 060.

4. The Additional District Revenue Officer,
   Revenue Department, Zone III,
   No.1, Thattankulam Street,
   Bazar Road, Chennai - 600 060.

Copy To
The Regional Deputy Commissioner,
Greater Chennai Corporation,
Chennai.

+1cc to Mr.Ch.Paranjothi, Advocate, S.R.No.45093
+2cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.44687, 44688

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GJ-II(CO)
CS/11/06/2019