IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.13644 of 2019

K.Savithiri ..Petitioner

vs

1.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Commissioner,
Kancheepuram Municipality,
Kancheepuram – 631 502. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to pass appropriate orders on the petitioner representation dated 21.02.2019 to guidelines of the general revisions of property tax dated order dated 01.04.2018 within stipulated time period as may be fixed by this Hon'ble Court 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.N.Sudharsan

For Respondents : Mr.R.P.Pratap Singh
Government Advocate for R1

Mr.G.B.Rajesh
Standing counsel for R2

O R D E R

Mr.N.Sudharsan, learned counsel on record for writ petitioner, Mr.R.P.Pratap Singh, learned Government Advocate on behalf of 1st respondent and Mr.G.B.Rajesh, learned Standing counsel for 2nd respondent, Kancheepuram Municipality are before this Court.

2. With consent of all the aforesaid learned counsel, 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 property at '52AB, Sengaluneerodai Street and the Assessment number is 008/005/00992'. This property with this assessment number situate in Kancheepuram Municipality shall hereinafter be referred to as 'said property' for the sake of convenience and clarity in the instant writ petition.

4. There is no disputation or disagreement before this Court that interalia levy and enhancement of property tax qua said property is governed by 'Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act 5 of 1920)' which shall hereinafter be referred to as 'District Municipalities Act' for the sake of convenience and clarity.

5. The relevant provision under District Municipalities Act is Section 82 captioned 'Method of Assessment of Property'. Besides Section 82, the District Municipalities Act also contains a separate dedicated Schedule in this regard. This Schedule is Schedule IV, which is captioned 'Taxation and Finance Rules'. Under this Schedule IV, one part of the Schedule is Taxation Rules and the same is Part I, which goes by the caption 'Taxation Rules.'

6. Said property of writ petitioner has been assessed to property tax and the writ petitioner was paying half yearly property tax at the rate of Rs.76,283/-(Rupees Seventy Six Thousand Two Hundred and Eighty Three only) per half year.

7. It is the case of the writ petitioner that when things stood as above, writ petitioner was visited with a notice captioned 'Special Notice dated 17.02.2019' [hereinafter 'impugned notice' for the sake of brevity, convenience and clarity]

8. Vide this impugned notice, Kancheepuram Municipality had increased half yearly property tax for said property from Rs.76,283/- (Rupees Seventy Six Thousand Two Hundred and Eighty Three only) to Rs.1,70,873/-(Rupees One Lakh Seventy Thousand Eight Hundred and Seventy Three only).

9. Complaining that the enhancement is exorbitant and not commensurate with the said property and its specifications, instant writ petition has been filed.

10. Mr.R.P.Pratap Singh, learned Government Advocate on behalf of the 1st respondent submitted that general revision of property tax became imperative pursuant to Hon'ble Division

Bench orders of this Court and the Government issued G.Os as well as Guidelines for enhancement as well as parameters to be followed for enhancement.

11. Mr.G.B.Rajesh, learned Standing counsel for Kancheepuram Municipality, submitted that the enhancement is imperative and the enhancement was necessitated owing to the reclassification of the Zone in which said property is situated. Be that as it may, it may not be necessary to go into the merits of the matter in the light of the narrow compass on which the matter now turns. A perusal of the impugned notice, reveals that the same has been issued under Rules 9 and 10 of Part I of Schedule IV of District Municipalities Act namely 'Taxation Rules' under District Municipalities Act.

12. Rules 9 and 10 read as follows:

> '[9. When assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the [executive authority] shall give public notice stating that revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government, a railway administration or a company, and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of the municipal office and on the same day be published in the municipality by beat of drum]
>
> [Provided that in every case where there is an enhancement in the assessment, the executive authority shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned:
>
> Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso, the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice.]'
>
> [10. In every case in which between one general revision and another, the [executive authority] assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the [executive authority] shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within sixty days from

the date of service of such notice in the case of the Government, a railway administration or a company, and within thirty days from the said date in other cases.]
'

13. It may not be necessary to go into the question to as to whether the respondent Kancheepuram Municipality has given public notice as mandated under Rule 9 as in the instant cases, immediately on receipt of impugned notice, writ petitioner has sent a revision, on 21.02.2019. This objection / revision of the writ petitioner dated 21.02.2019 has been placed before this Court as part of the case file and more particularly as part of the typed set of papers filed along with the writ petition and it is at page no.34 of the typed set of papers.

14. There is no disputation or disagreement before this Court that the revision preferred by the writ petitioner pursuant to the impugned notice is pending.

15. A perusal of Rules 9 and 10 supra reveals that the authority, who has to consider the same is 'Executive Authority' vide Section 2(8-C) of District Municipalities Act, the term 'Executive Authority' has been defined and the same reads as follows:

> '[(8-C) 'Executive Authority' means an officer of the State Government, or of the local authority (not being the Chairman or Vice-Chairman or a Member of the Council) as may be specified by the State Government]'

16. Adverting to Section 2(8-C), learned counsel for respondent, submits that the Commissioner of Kancheepuram Municipality is the Executive Authority, he having been so specified by the State Government. Therefore, it follows that the Commissioner of Kancheepuram Municipality, is the Executive Authority within the meaning of Section 2(8-C) of District Municipalities Act (for the purposes of case on hand) and therefore, the Commissioner of Kancheepuram Municipality will be the Executive Authority, who will hear the revision / objections made by the writ petitioner, qua impugned notice.

17. This takes us to the manner in which the revision has to be dealt with and disposed of by the Executive Authority. This is adumbrated in Rule 12 of the Taxation Rules referred to supra and Rule 12 reads as follows:

> '[12 No petition under rule 9, 10, or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.]'

18. In the light of the narrative thus far, it emerges clearly that on receipt of impugned notice, writ petitioner has

filed a revision to the Executive Authority and the same is pending.

19. Under these circumstances, it follows as a necessary sequitur that aforesaid revision has to be decided in accordance with Rule 12 before demanding property tax at the enhanced rate or any other rate that may be fixed in revision. In this regard, a principle laid down by a Hon'ble Division Bench of this Court in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 is significant. Sanjai Gupta principle is to the effect that before a demand is made, a final assessment has to be made after taking into account the objections to the provisional assessment, being objections qua provisional assessment by the assessee. It may not be necessary to delve further into these aspects of the matter as it comes out clearly that it is necessary for the Commissioner of second respondent Municipality to dispose of the 21.02.2019 revision made by the writ petitioner. In the light of the narrative thus far, the following order is passed.

a) Second respondent before this Court namely Commissioner, Kancheepuram Municipality, who is Executive Authority within the meaning of Section 2(8-C) of District Municipalities Act, shall dispose of writ petitioner's revision dated 21.02.2019, which has been sent in response to impugned notice being Special Notice dated 17.02.2019 for writ petitioner's property at 52AB, Sengaluneerodai Street and the relevant Assessment No.008/005/00992.

b) Disposal of revision by 2nd respondent shall be in accordance with the procedure adumbrated in Rule 12 of the Taxation Rules.

c) Disposal of the revision in accordance with law by the 2nd respondent shall be done as expeditiously as possible and in any event within eight(8) weeks from the date of receipt of a copy of this order.

d) There shall be no coercive action against the writ petitioner or distraint proceedings against the writ petitioner's property until disposal of revision, subject to the condition that the writ petitioner shall continue to pay half yearly property tax for said property at the existing rate of Rs.76,283/- (Rupees Seventy Six Thousand Two Hundred and Eighty Three only). Though obvious, it is made clear that if the writ petitioner is not satisfied with the outcome of the revision, it is open to the writ petitioner to assail the same in a manner known to law and if that scenario unfurls, this order will not impede such a legal process.

20. This writ petition is disposed of with the aforesaid directions. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Commissioner,
Kancheepuram Municipality,
Kancheepuram – 631 502.

+1cc to Mr.N.Sudharsan, Advocate, SR.No.64392
+1cc to Mr.G.B.Rajesh, Advocate, SR.No.64377
+1cc to the Govt.Pleader, Vide Sr.No.64674

W.P.No.13644 of 2019

Kak(12/09/2019)