IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.13397 of 2019
and
W.M.P.Nos.13498 and 13503 of 2019

1.Sri M.Sivadasan
New No.82, Old No.10
Venatachala Achari Street
Pudupet, Chennai - 600 002.

2.Smt.P.M.Rajalakshmi
W/o.Sri M.Sivadasan .. Petitioners

Vs.

1.The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003.

2.The Regional Deputy Commissioner
Zone V, Greater Chennai Corporation
No.61, Basin Bridge Road
Old Washermanpet
Chennai - 600 021.

3.The Asst. Revenue Officer
Zone V, Greater Chennai Corporation
No.61, Basin Bridge Road
Old Washermanpet
Chennai - 600 021. .. 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 3rd respondent's impugned Notice dated 02.02.2019 under Reference No.Z.O.V.R.D.C.No.RI/SPL/2019 and quash the same as illegal and invalid 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 Petitioners : Mr.B.Balachander

For Respondents : Ms.Padma Shalini for
Mr.T.C.Gopalakrishnan

ORDER

Mr.B.Balachander, learned counsel on record for writ petitioners and Ms.Padma Shalini, learned counsel representing Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation on behalf of all the three respondents are before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. Subject matter of instant writ petition is enhancement of property tax under 'Chennai City Municipal Corporation Act, 1919' ('CCMC Act' for brevity).

4. Property which forms subject matter of instant writ petition is No.82(10) Venkatachala (Achari) Street, Pudupet, Chennai- 600 002 (hereinafter 'said property' for brevity).

5. Chennai Corporation, issued a provisional assessment notice dated 11.10.2018, proposing enhancement of half yearly property tax for the said property from Rs.5,146/- (Rupees Five Thousand One Hundred and Forty Six only) to Rs.49,725/- (Rupees Forty Nine Thousand Seven Hundred and Twenty Five only) with effect from first half year of 2018-19 i.e., I/18-19. In other words, with effect from 01.04.2019.

6. Writ petitioners responded to the aforesaid provisional notice, sent a cryptic letter dated 30.10.2018, but without making final assessment, the writ petitioners were visited with a 'demand notice dated 02.02.2019' (hereinafter 'impugned demand notice' for brevity). Thereafter, writ petitioners sent a notice through counsel dated 01.03.2019 in response to the impugned demand notice. This notice through advocate has been duly received by respondents on 05.03.2019, but Chennai Corporation is persisting with the impugned demand notice, is learned writ petitioner counsel's say.

7. This Court by order dated 04.02.2019 in W.P.No.3231 of 2019 held that notices in the nature of aforesaid notice dated 11.10.2018 are in the nature of provisional assessment. This Court has also held that there cannot be any appeal against provisional assessment. This Court has held that there should be objections to the provisional assessment though the provisional assessment order refers to an appeal. The objections have to be considered and final assessment has to be passed before any demand is made.

8. Aforesaid order was passed by a Hon'ble Single Judge drawing inspiration from Division Bench of this Court in Sanjai

Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. The principle in Sanjai Gupta case is, demand should be preceded by a final assessment after considering objections of the assessee.

9. There is no disputation or disagreement before this court that the aforesaid order made by a Hon'ble Single Judge being order dated 04.02.2019 in W.P.No.3231 of 2019 has not been assailed further by way of an intra Court appeal. In other words, the said order has been given legal quietus.

10. In the light of the narrative thus far, the following order is passed:

a) impugned notice being demand notice dated 02.02.2019 bearing reference No.Z.O.V.R.D.C.No.R1/SPL/2019 is set aside.

b) Writ petitioners shall send detailed objections to the provisional assessment notice dated 11.10.2018, wherein there is a proposal to enhance the half yearly property tax for the said property from Rs.5,146/- (Rupees Five Thousand One Hundred and Forty Six only) to Rs.49,725/- (Rupees Forty Nine Thousand Seven Hundred and Twenty Five only) to the jurisdictional Deputy Commissioner (2nd respondent) within a fortnight from the date of receipt of a copy of this order. It is not in dispute that the parameters and mode of computation for the proposed enhancement is available in the official website of Chenai Corporation.

c) On receipt of detailed objections, within the aforesaid time frame, jurisdictional Regional Deputy Commissioner (2nd respondent), shall pass a final assessment order in accordance with law after considering all objections raised by the assessee.

d) After passing final assessment order, the same shall be communicated to writ petitioners under due acknowledgement within 7 working days from the date of final assessment order.

e) There shall be no coercive action or distrain proceedings against the writ petitioners with regard to property tax qua said property until final assessment orders are made and served on the writ petitioners in the aforesaid manner subject to the condition that writ petitioners continue to pay property tax for the said property at the existing rate of Rs.5,146/- (Rupees Five Thousand One Hundred and Forty Six only). To be noted, this Court is informed that property tax at the existing rate of Rs.5,146/- (Rupees Five Thousand One Hundred and Forty Six only) has been paid up to the half year of I/18-19.

11. Writ petition is disposed of with the aforesaid directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

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Chennai – 600 003.

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No.61, Basin Bridge Road
Old Washermanpet
Chennai – 600 021.

+2cc to Mr.Ashok Menon, Advocate, S.R.No.57010
+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No. 56825

W.P.No.13397 of 2019 and
W.M.P.Nos.13498 and 13503 of 2019

GP(CO)
GN(19/08/2019)