IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :11.07.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.13000 of 2019
and
W.M.P.No.13145 of 2019

S.Ishrath Sulthala ...Petitioner

Vs

The Commissioner,
Vellore City Municipal Corporation
Vellore
Vellore District ....respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to dispose of her representation dated 29.12.2018 providing her ample opportunity of personal hearing while reviewing the property tax to her property situated in at No.24, Main Bazar, Vellore, Vellore District.

For Petitioner : Mr.M.Sathish Kumar

For Respondent : Ms.P.Shanthi
Standing Counsel

O R D E R

Mr.M.Sathish Kumar, learned counsel on record for the writ petitioner and Ms.P.Shanthi, learned Standing counsel for the sole respondent 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 the owner of an immovable property bearing No.24, Main Bazar, Vellore, 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 half-yearly property tax at Rs.1,424/- (Rupees One Thousand Four Hundred and Twenty Four) by

the Vellore Municipality and the property tax so assessed and levied was paid. It is the case of the writ petitioner that the property tax of Rs.1,424/- (Rupees One Thousand Four Hundred and Twenty Four) was paid upto assessment year 2016-17.

5. Under the aforesaid circumstances, the writ petitioner was visited with a Demand Notice dated 22.11.2018. Vide this Demand Notice, writ petitioner has been called upon to pay a sum of Rs.17,434/- (Rupees Seventeen Thousand Four Hundred and Thirty Four only) within 15 days of receipt of notice. This notice shall hereinafter 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 the respondent is due towards property tax arrears of the writ petitioner qua said property) is not paid within 15 days, warrant will be issued to seize the said property and fine also will be imposed.

7. From a reading of the impugned notice, it also comes to light that the purported arrears of property tax is for the Assessment year 2018-19.

8. Adverting to property tax receipt dated 17.11.2016, which has 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 till second half year 2016-17 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 she was suddenly visited with the impugned notice.

10. In the aforesaid circumstances, learned Standing Counsel for the respondent 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 the Vellore Municipality.

11. Learned Standing Counsel 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 Standing Counsel submitted that though it is the specific stand of the respondent that said publication has been made, the respondent is 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 of the respondent Municipality which has been articulated before this Court by learned Standing 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 035/029/01997 dated 22.11.2018 is set aside.

(B) The respondent shall send a notice to the writ petitioner within a fortnight from the date of receipt of this order along with details of proposed enhancement of property tax for the said property together 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 his objections to the aforesaid proposed enhancement / provisional assessment within a fortnight thereafter i.e., from the 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 objections from the writ petitioner.

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

(F) 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.

(G) 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(J)

//True Copy//

Sub Assistant Registrar

gpa

To

The Commissioner,
Vellore City Municipal Corporation
Vellore 632 001.

+1cc to Ms.P.Shanthi, Advocate sr.58924

W.P.No.13000 of 2019

nr 20/08/2019