IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
W.P.No.13844 of 2019

Ashok Kumar .. Petitioner

Vs.

1.The Commissioner
Corporation of Chennai
Rippon Building
Chennai - 600 003.

2.The Regional Deputy Commissioner
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

3.The Deputy Area Engineer
CMWSSB, Area IX
No;1, Dr.Ranga Road
Abhiramipuram
Chennai - 600 018.

4.The Assistant Revenue Officer
Corporation of Chennai
Rippon Building
Chennai - 600 003.

5.The Assessment Officer
Corporation of Chennai
Rippon Building
Chennai - 600 003. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to take action in the light of the petitioner representation dated 04.03.2019 by considering the same as an appeal to fix the property tax in respect of the property situated at Door No.44 (Old No.14), Whites Road, Royapettah, Chennai - 600 014.

For Petitioner : Mr.R.Thirumoorthy

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

O R D E R

Mr.R.Thirumoorthy, learned counsel on record for the writ petitioner is before this Court. Mr.T.C.Gopalakrishnan, learned standing counsel for Chennai Corporation, accepts notice on behalf of all the five respondents.

2. By consent of both learned counsel, the main writ petition is heard out at the admission stage itself.

3. It is the case of the petitioner that he owns a property ad-measuring 6253 sq.ft at Door No.44 (Old No.14), Whites Road, Royapettah, Chennai - 600 014. Chennai Corporation as part of general revision of Property Tax issued a notice dated 26.10.2018 bearing Reference No.S/1/18-19/1029647.

4.The above said notice dated 26.10.2018 is clearly a provisional assessment and proposed enhancement of Property Tax for the petitioner's property 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 property has been enhanced from Rs.39,210/- per Half Year to Rs.88,020/- per Half Year.

5. 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.'

6. 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.

7. 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.

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

9. 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 it also says that the Half Yearly Tax which has been proposed (proposed enhancement) vide the impugned provisional assessment would be construed to be accepted, if there is response within 15 days. 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 assessments, if objections (described as appeal in impugned notice) are not filed.

10. In the aforesaid backdrop, the obtaining position that impugned order is only a provisional assessment which is akin to a 'show cause notice' ('SCN' for brevity) gains significance. There is no dispute or disagreement before this Court that objections (described as appeal) to the Regional Deputy Commissioner, Greater Chennai Corporation lie. 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 statutory appeals/alternate remedies are available by way of provisions for approaching Taxation Appeal Tribunal and Principal Civil Court all of which are 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.

11. 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].

12. 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.

13. 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 list of broad heads of exceptions and the same has been set out for the limited purpose of disposal of instant case on hand.

14. 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.

15. In the instant case, this Court, considering the facts and circumstances of instant case, is unable to accept that this case falls within any of the aforementioned exceptions, which have been alluded to supra. Be that as it may, considering the submissions made and the representations sent, 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 jurisdictional Regional Deputy Commissioner, Greater

Chennai Corporation within 15 days from the date of receipt of a copy of this order. 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 of objections.

16. Learned Standing Counsel for Corporation Mr.T.C.Gopalakrishnan undertakes to communicate this order to the jurisdictional Regional Deputy Commissioner, Greater Chennai Corporation under 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.

Writ Petition is disposed of on above terms. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To

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+1cc to Mr. T.C.Gopalakrishnan, Advocate SR.No. 44688
+1cc to Mr.R.Thirumoorthy , Advocate SR.No. 44559

W.P.No.13844 of 2019

A.SK(08/07/2019)