IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.06.2019

CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.13540 of 2019
and
W.M.P.No.13629 of 2019

M/s.North Arcot District
Thuluva Vellala Association
No.17, 2nd East Main Road,
Gandhi nagar,
Vellore 632 006
rep.by its General Secretary
G.Sambandan ...Petitioner

Vs

The Commissioner,
Vellore City Municipal Corporation
Vellore 632 001. ....Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records of the respondent pertaining to the impugned order and its proceedings dated 16.03.2018 in so far as old assessment no.035/121589, assessment no.035/012/01714 of the petitioner Association's property on the file of the respondent and quash the same.

For Petitioner : Mr.Jayachandran. G

For Respondents : Mr.Silambanan, Senior Counsel for Ms.P.Shanthi

O R D E R

Mr.G.Jayachandran, learned counsel on record for the writ petitioner and Mr.Silambanan, learned Senior counsel instructed by Ms.Shanthi, learned Standing counsel for the sole respondent are before this Court.

2. With the consent of counsel on both sides, main writ petition is taken up and heard out. The entire writ petition turns on a very narrow compass.

3. Writ petitioner owns a property at No.90, 2nd East Main Road, Gandhi Nagar, Kadpadi, Vellore 692 006 (hereinafter 'said property'' for the sake of brevity, clarity and convenience).

4. Said property is being used as a Marriage Hall.

5. Learned counsel for writ petitioner, adverting to the affidavit filed in support of the writ petition, submitted that the writ petitioner is into welfare activities and therefore, contribution made to the writ petitioner are exempt under Section 80G of 'Income Tax Act, 1961 '(hereinafter referred as 'IT Act' for brevity).

6. Be that as it may, with regard to said property, it is submitted without any disputation or disagreement that the said property was assessed to Property Tax by the Vellore Municipality and the half yearly property tax was assessed at Rs.2,107/- (Rupees Two Thousand One Hundred and Seven only). It is the case of the writ petitioner that the aforesaid property tax of Rs.1,107/- is being paid without any delay or default.

7. Under the aforesaid circumstances, the writ petitioner was visited with a Distraint Warrant Notice dated 16.03.2018. Vide this Distraint Warrant Notice, writ petitioner has been called upon to pay a sum of Rs.2,45,876/- (Rupees Two Lakhs Forty FiveThousand Eight Hundred and Seventy Six only) within 7 days. This notice shall herein be referred as 'impugned notice' for brevity.

8. Vide impugned notice, writ petitioner was 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 7 days, distraint proceedings qua properties of writ petitioner will be proceeded with.

9. From reading of the impugned notice, it also comes to light that the purported arrears of property tax is for 2 half years namely I/2017-18 and II/2017-18.

10. Adverting to a property tax receipt dated 01.08.2017, 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 of Rs.2,107/- has been duly paid on 01.08.2017 itself. More particularly, property tax for I/2017-18 and II/2017-18 have been duly paid and it is not disputed.

11. 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 they were suddenly visited with the impugned notice. Notwithstanding this position, without prejudice to the rights and contentions of writ petitioner, writ petitioner paid a sum of Rs.1,22,938/- (One lakh twenty two thousand nine hundred and thirty eight only) also on 28.03.2018 vide receipt No.035/105/17-18/0008700 and learned counsel for petitioner

submitted that this payment has been made under protest to avoid marriage hall being sealed.

12. In the aforesaid circumstances, learned Senior 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.

13. Learned Senior Counsel in his usual fairness 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.

14. Learned Senior Counsel submitted 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.

15. To be noted, this therefore is a consent order, in the light of the aforesaid stated position that the respondent Municipality which has been articulated before this Court by learned Senior Counsel on instructions. On instructions, it is submitted on behalf of the respondent Municipality that they would give a notice to the 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.

16. 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.

17. In the light of the narrative supra, by consent of both sides, the following order is passed:

(a) Impugned order bearing old assessment No.035/121589, assessment No.035/012/01714 dated 16.03.2018 is set aside.

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

(D) On receipt of the 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 the objections from the writ petitioner.

(D) The final assessment order so passed by the respondent shall be communicated to the writ petitioner under due acknowledgment within seven (7) working days from the date of the final assessment order.

(E) 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 half yearly rate of Rs.2,107/- .

(F) 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.

18. Accordingly, this writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sk

To

The Commissioner,
Vellore City Municipal Corporation
Vellore 632 001.

+1cc to M/s.P.Shanthi, Advocate, S.R.No.53814
+1cc to Mr.G.Jayachandran, Advocate, S.R.No.52947

W.P.No.13540 of 2019

SV(CO)

RRS(19/08/2019)