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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.07.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.13043 of 2019
&
W.M.P.Nos.13177 and 13180 of 2019

K.M.Ganesan .. Petitioner

Vs.

1. The Government of Tamil Nadu
   Represented by its Secretary
   Municipal Administration
   Fort St. George
   Chennai - 600 009

2. The Commissioner
   Corporation of Chennai
   Rippon Buildings
   Chennai - 600 003

3. The Assistant Revenue Officer
   Zone - 18, Ward No.103
   Greater Chennai Corporation
   Pulla Avenue, Shenoy Nagar
   Chennai - 40

4. The Assistant Engineer
   Zone - 08, Ward No.103
   Chennai Metropolitan Water Supply and Sewerage Board
   No.15, Letangs Road
   Purasaiwakkam
   Chennai .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records from the file of the second respondent leading to the Notice No.1 titled property tax General Revision dated 29.09.2018 in respect of the petitioner's property in E/1/18-19/488283 and quash the same.

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For Petitioner : Mr.N.C.Ashok Kumar

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

Mr.T.C.Gopalakrishnan
Standing Counsel for R2 and R3

Mr.M.Jothikumar for
Mr.Manimaran Standing Counsel for CMWSSB

O R D E R

Mr.N.C.Ashok Kumar, learned counsel on record for writ petitioner is before this Court. Mr.Pratap Singh, learned Government Advocate, on behalf of first respondent, Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation on behalf of Respondents 2 and 3 and Mr.Manimaran, learned counsel representing Mr.Jothikumar, standing counsel for 'Chennai Metropolitan Water Supply and Sewerage Board' ('CMWSSB' for brevity) on behalf of fourth respondent are before this Court.

2.With consent of all the four learned counsel representing all parties in this writ petition, main writ petition itself is taken up, heard out and is being disposed of.

3. Considering the trajectory of the hearing today, it may not be necessary to set out facts in great detail. Short facts shorn of elaboration will suffice and the same is as follows:

a) Subject matter of the writ petition is enhancement of property tax for writ petitioner's property at '10(24), Ramanathan Street, Kilpauk, Chennai - 600 010' (hereinafter 'said property' for brevity).

b) A notice captioned 'Notice No.1: Property Tax General Revision - 2018-19' proposing to enhance half-yearly property tax for said property from Rs.37,467/- to Rs.92,425/- with effect from first half year of 2018-19 i.e., with effect from 01.04.2018, has been called in question in the instant writ petition and the same shall hereinafter be referred to as 'impugned notice' for the sake of convenience and clarity.

c) Complaining that proposed enhancement is exorbitant and not in conformity with requisite parameters/determinants, instant writ petition has been filed.

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4. In this regard, an order made by this Court being order dated 04.02.2019 in W.P.No.3231 of 2019 is of relevance. This order was made by a Hon'ble Single Judge of this Court drawing inspiration from a principle laid down by a Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. To be noted, Sanjay Gupta principle is to the effect that before a demand, there should be a final Assessment Order, which in turn should be passed after taking into account all the objections of the assessee.

5. There is no disputation or disagreement before this Court that the aforesaid order made by Hon'ble Single Judge being order dated 04.02.2019 made in W.P.No.3231 of 2019 has been given legal quietus or in other words, the same has not been carried in appeal by way of an intra-court appeal. Therefore, it follows as a natural and inevitable sequitur that in the instant case, writ petitioner has to be given an opportunity to object to proposed enhancement, objections have to be considered and final Assessment Order has to be passed in accordance with law and in a manner known to law before any enhanced tax is demanded.

6. Before proceeding further, there are two aspects in the impugned notice, which need to be looked into.

7. One aspect is, impugned notice refers to an 'appeal' to the jurisdictional Regional Deputy Commissioner. Impugned notice shall also be referred to as 'provisional Assessment Order' and therefore, what the writ petitioner would be sending in by way of response to the impugned notice will be objections and not an appeal.

8. The second aspect with regard to impugned notice which need to be noticed is that the calculation method or in other words, the mode of computation for the purpose of proposed enhancement is available in the official website of Chennai Corporation being http://www.chennaicorporation. gov.in/online-civic-services/index.htm.

9. As far as first respondent is concerned, learned Government Advocate submits that guidelines for such general revision and enhancement have been issued by the Government and that the same is operating. As far as learned Standing Counsel for CMWSSB (fourth respondent), is concerned, it is submitted that they do not have a separate mechanism or machinery for assessment of water and sewerage tax/charges, but the water and sewerage tax/charges will be levied and demanded based on a percentage of annual value, which the Chennai Corporation assess for the purpose of property tax. This submission is made by adverting inter-alia to Sections 34(2) and 35(3) of the Chennai

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Metropolitan Water Supply and Sewerage Act, 1978 (Tamil Nadu Act, 28 of 1978). This submission is recorded. Therefore, it follows that CMWSSB has to await the process of final assessment by Chennai Corporation for which a Calender is being drawn up in this order.

10. In the light of the narrative thus far, this Court passes the following order:

a) Impugned notice being notice dated 29.09.2018 bearing reference E/1/18-19/488283 shall be treated as provisional assessment order for proposed enhancement of half-yearly property tax for said property i.e., property at 10(24), Ramanathan Street, Kilpauk, Chennai - 600 010 from Rs.37,467/- to Rs.92,425/-.

b) Writ petitioner assessee shall send his objections to the impugned notice i.e, which is now provisional assessment order, by raising all objections available to the writ petitioner inter alia after taking out the parameters and calculation method which is available in the official website of Chennai Corporation. As alluded to supra, such objections shall be sent by the writ petitioner to the Regional Deputy Commissioner (Central) at Greater Chennai Corporation, Pulla Avenue, Shenoy Nagar, Chennai - 40 within a fortnight from the date of receipt of a copy of this order.

c) On receipt of objections from the writ petitioner in the aforesaid manner, the Regional Deputy Commissioner (Central) i.e, jurisdictional Regional Deputy Commissioner shall consider all objections raised by the writ petitioner to the proposed enhancement qua the provisional Assessment Order (to be noticed, the impugned notice is being treated as provisional Assessment Order) and pass final Assessment Order in accordance with law and in a manner known to law. If the writ petitioner does not file objections within a fortnight from the date of receipt of a copy of this order, it is open to the Regional Deputy Commissioner (Central) to proceed and make final assessment on the basis of available papers, records and files.

d) The final assessment made in the aforesaid manner by the Regional Deputy Commissioner (Central) shall be communicated to the writ petitioner under due acknowledgement within 7 working days from the date of final Assessment Order.

e) Though obvious, it is made clear that it is open to the writ petitioner to assail such final Assessment Order in accordance with law if the writ

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petitioner is not satisfied with the final Assessment Order.

f) There shall be no coercive action or distraint proceedings against the writ petitioner either by the Chennai Corporation or CMWSSB till final Assessment Order is made in the aforesaid manner and till it is served on the writ petitioner in the aforesaid manner subject to the condition that the writ petitioner continues to pay half-yearly property tax at the rate of Rs.37,647/- per half year for the said property and water/sewerage tax/charges at prevailing rate relatable to this figure.

g) It is submitted by learned counsel for writ petitioner that some payment in excess of pre-revisional rate has been paid owing to demand. If any such payment has been made, the same shall be given due credit in this regard.

This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Secretary
   Government of Tamil Nadu
   Municipal Administration
   Fort St. George
   Chennai – 600 009

2. The Commissioner
   Corporation of Chennai
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4. The Assistant Engineer
   Zone - 08, Ward No.103
   Chennai Metropolitan Water Supply and Sewerage Board
   No.15, Letangs Road
   Purasaiwakkam
   Chennai

+1 cc to Mr.M.Jothikumar, Advocate, S.R.No.59136

+1 cc to M/s.C.Jagadish, Advocate, S.R.No.58915

+1 cc to M/s.T.C.Gopalakrishnan, Advocate, S.R.No.58723

+1 cc to the Government Pleader, S.R.No.59184

W.P.No.13043 of 2019 &
W.M.P.Nos.13177 and 13180 of 2019

GP(CO)
SSM(14/08/2019).

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