IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31-07-2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18525 of 2019
And
W.M.P.Nos.17838 and 17842 of 2019

P.Senthilkumar .. Petitioner

Vs.

The Commissioner
Dharapuram Municipality
Dharapuram, Tiruppur District .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the entire records relating to online order dated nil, relating to D.No.25/A/25-1, which Old/New Assessment number is 154/026/01169 on the file of the respondent and quash the same.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.Mr.P.Srinivas
Standing Counsel
for Dharapuram Municipality.

O R D E R

Mr.K.Sudhakar, learned counsel on record for writ petitioner and Mr.P.Srinivas, learned Standing Counsel on behalf of sole respondent are before this Court.

2. It is submitted by both the learned counsel without any disputation that this matter is covered by an earlier order dated 18.06.2019 made by this Court in WP Nos.13673 and 13679 of 2019.

3. Therefore, it would be appropriate to pass a similar order in this matter also.

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

5. Subject matter of this writ petition is, enhancement of

half yearly property tax for the property owned by the writ petitioner.

6. Short facts shorn of elaboration, particulars and details or in other words factual matrix imperative for disposal of instant writ petition are as follows:

a) Writ petitioner owns an immovable property at Door No.25A/25-1, Nachimuthu Puthur Cross Street 1 Housing Unit, N.M.P.Nagar, Dharapuram, Tiruppur District, Pin-638 656. This shall be referred to as 'said property' for the sake of convenience and clarity.

b) It is the case of the writ petitioner that when the writ petitioner checked the official website of Dharapuram Municipality (hereinafter 'said Municipality' for brevity), it came to light that half-yearly property tax for said property has been shown at a much higher rate i.e., higher than the obtaining rate at which the writ petitioner is now paying and consequently shows that writ petitioner is in arrears though property tax at existing rate has been paid..

c) To be noted, writ petitioner has annexed property tax receipt to show that he has paid property tax upto the current half year i.e., 1/18-19 at the prevailing rate. It is the specific case of writ petitioner that the aforementioned enhancement has been made without any notice i.e., pre-assessment notice / provisional assessment and without giving opportunity to the writ petitioner to object to the same.

d) In the aforesaid circumstances, instant writ petition has been filed assailing hard copy of purported outstanding property tax downloaded from the official website of said Municipality.

7. From the narrative of factual matrix supra, it would be clear that the case of the writ petitioner is that there has been upward revision / enhancement of property tax.

8. To be noted, it is submitted that with regard to said property, half yearly property tax has been enhanced from Rs.4,335/- to Rs.8,670/-.

9. To be noted, with regard to said property, the tax receipt showing payment at the existing rate of Rs.4,335/- for I/18-19 has been paid. Writ petitioner submits that payment upto current half year will be made within a fortnight from the date of receipt of a copy of this order, if not already made.

10. Be that as it may, learned Standing Counsel on behalf of

sole respondent submits that there are Government Orders pertaining to general revision and that the said Municipality has embarked upon the exercise of enhancement of property tax only pursuant to such Government Orders as part of general revision.

11. The issue in the instant writ petition is not whether the said Municipality is entitled to enhance the property tax or not. The issue is, procedure for enhancement of Property tax has not been followed.

12. In this regard, there is no dispute or disagreement that this matter is governed by 'District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' ('said Act' for brevity) as obtaining today. It is also not in dispute that the Commissioner of said Municipality will be the authority vested with powers for enhancement of property tax under said Act.

13. A perusal of structure and scheme of said Act reveals that a procedure and a methodology has been prescribed for assessment/enhancement of property tax. In the instant case, there is nothing on record to show that procedure has been followed.

14. In this regard, dealing with enhancement of Property Tax by Chennai Corporation, a Hon'ble single judge of this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019 following 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 with regard to enhancement of property tax, there has to be a provisional assessment, an opportunity has to be given to the assessee to object to the same and a final Assessment Order can be passed only after considering the objections of the assessee. It has been held as a sequitur that demand for property tax can be made only after final assessment.

15. In the light of the aforesaid narrative, this Court passes the following order:

a) impugned hard copy of download from official website of Dharapuram Municipality showing arrears / balance of property tax qua writ petitioner with regard to said property is set aside. To be noted, the same is set aside solely on the ground that existing property tax has been enhanced without making a provisional assessment and without giving an opportunity to the assessee to object to the same and no opinion is expressed on merits of the matter;

b) Writ petitioner undertakes to pay half-yearly property tax at the existing rate of Rs.4,335/- for said property within the time frame prescribed under the rules in this regard under the said Act. If there is delay or default on the part of the writ petitioner in paying the property tax at the existing rate, it will be open to the said Municipality to proceed against the writ petitioner for recovery of the same.

c) With regard to enhancement, said Municipality shall issue a fresh provisional assessment to the writ petitioner within a fortnight from the date of receipt of a copy of this order copy, call for objections from the writ petitioner within another fortnight therefrom and pass final assessment order in accordance with law, more particularly in accordance with said Act and applicable Rules thereunder within four weeks there from.

d) The final assessment of property tax made in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement within seven working days from the date of final assessment being made.

e) Though obvious, it is made clear that it is open to the writ petitioner to seek statutory appellate remedy available under the statutes against the final assessment and this order will not impede this process, if the writ petitioner chooses to adopt such a course.

16. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

svn
To
The Commissioner, Dharapuram Municipality
Dharapuram, Tiruppur District.

+1cc to Mr.K.Sudhakar, Advocate, S.R.No.65759
+1cc to Mr.Mr.P.Srinivas, Advocate, S.R.No.66095

WP No.18525 of 2019

SS(CO)
CS/17/09/2019