IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.06.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.15309 of 2019
&
W.M.P.No.15293 of 2019

S.Ramasubramaniam ... Petitioner

Vs.

1. Assistant Revenue Officer- Zone IX
   Revenue Department
   Chennai Corporation
   Zone Office - IX
   No.1, 4th Street, Lake Area
   Nungambakkam, Chennai - 600 034

2. Regional Deputy Commissioner
   Greater Chennai Corporation
   No.1, 4th Street, Lake Area
   Nungambakkam. Chennai - 600 034 ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the Impugned Notice i.e, the Final Warrant Notice Ref. No. ம.அ–9/வ.து.ந.க.எண்.ஆர்1/DN-123/133/2019 dated 09.03.2019 issued by the respondents and quash the same.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.T.C.Gopalakrishnan
Standing counsel for Corporation

O R D E R

Mr.R.Jayaprakash, learned counsel on record for writ petitioner and Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation who accepted notice on behalf of both the respondents are before this Court. To be noted, there are two respondents in this writ petition and both the respondents are official respondents.

2.This matter is listed under the caption 'FOR ADMISSION' in the motion list today.

3. A perusal of the earlier proceedings of this Court (dated 06.06.2019 and 10.06.2019) in the instant writ petition reveal that the Standing Counsel for Chennai Corporation was given opportunity to get instructions. Today, learned Standing Counsel for Chennai Corporation submits that he has got instructions and he is ready to make submissions.

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

5.The entire matter turns on a very narrow compass. This writ petition pertains to levy of property tax under the 'Chennai City Municipal Corporation Act, 1919' ('CCMC Act' for brevity).

6.The petitioner is owner of immovable property (which is his residence) in the city of Chennai. It is the specific and categoric case of the writ petitioner that he was surprised to receive a notice captioned 'Final Warrant Notice' dated 09.03.2019 bearing reference 'ம.அ–9/வ.து.ந.க.எண்.ஆர்1-DN-123/133/2019', which shall hereinafter be referred to as 'impugned notice' for the sake of brevity, convenience and clarity. Vide the impugned notice, a demand for a sum of Rs.11,762/- towards purported property tax arrears has been made.

7. It is also the specific case of the writ petitioner that prior to the impugned notice, the writ petitioner has not received any communication from the respondents. It is also the pointed case of the writ petitioner that the writ petitioner has submitted a Property Return Form giving all necessary particulars, but had not received any response or provisional assessment notice prior to the impugned notice. Elaborating on the aforesaid submissions, learned counsel for writ petitioner pointed out that it is imperative that the respondents serve pre-assessment notice i.e., provisional assessment setting out proposed enhancement, give an opportunity to the writ petitioner Assessee to object and only thereafter enhancement of property tax can be determined after considering the objections.

8. On instructions, learned Standing Counsel for Chennai Corporation submits that though his instructions are to the effect that a provisional assessment vide general revision has been despatched to the writ petitioner vide ordinary post, there is no acknowledgement and there is nothing in the files of the respondent to demonstrate that the writ petitioner has been duly

served with provisional assessment notice. Therefore, there is no material before this Court to show that the writ petitioner has been served with the provisional assessment order.

9. It is not in dispute that an Assessee has to be given a provisional assessment notice, an opportunity to object to the provisional assessment order has to be given, the objections have to be considered and then final assessment order has to be passed. In this regard, an order made by another Hon'ble single Judge of this Court being order dated 04.02.2019 made in W.P.No.3231 of 2019 following an earlier order of Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 is of relevance. Vide said order, the Hon'ble single Judge has held that provisional assessment notice issued by Chennai Corporation as part of general revision is only provisional assessment and therefore, what will lie against the same are objections and not appeal. To be noted, provisional assessment notices in cases of this nature is in a template and it talks about an appeal within 15 days to the jurisdictional Regional Deputy Commissioner. In the light of the aforesaid order of this Court made by another Hon'ble Judge, there would be objections to the provisional Assessment order even if the same refers to an appeal to the jurisdictional Regional Deputy Commissioner.

10. In the instant case, the entire controversy stands doused as learned standing counsel for Chennai Corporation, on instructions, from the jurisdictional Assessor, who is present in court, submits that the respondents undertake to serve the provisional assessment order on the writ petitioner in a manner known to law within a fortnight from today. From the date of service of the provisional Assessment Order on the writ petitioner, though obvious it is made clear that writ petitioner will have 15 days time to make objections (though provisional Assessment Order may say appeal) to the jurisdictional Regional Deputy Commissioner. On receipt of objections from the writ petitioner Assessee, the Regional Deputy Commissioner, shall consider all objections raised by the writ petitioner. Thereafter, the Regional Deputy Commissioner shall pass an order i.e., Assessment as expeditiously as possible.

11. The final Assessment made by the jurisdictional Regional Deputy Commissioner shall be served on the writ petitioner in a manner known to law under due acknowledgement. In the interregnum, until the jurisdictional Regional Deputy Commissioner makes a final assessment in the aforesaid manner after considering all objections and until such final assessment order is served on the writ petitioner under due acknowledgement, the writ petitioner shall continue to pay Half-yearly property tax for petitioner's property at the prevailing

rate as is being done thus far according to the Property Tax Assessment Card.

12. In the light of the narrative supra, the impugned order i.e., Final Warrant Notice dated 09.03.2019 bearing Reference No. ம.அ–9/வ.து.ந.க.எண்.ஆர் 1-DN-123/133/2019 is set aside and the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gpa
To

1. The Assistant Revenue Officer- Zone IX
Revenue Department
Chennai Corporation
Zone Office - IX
No.1, 4th Street, Lake Area
Nungambakkam, Chennai - 600 034.

2. The Regional Deputy Commissioner
Greater Chennai Corporation
No.1, 4th Street, Lake Area
Nungambakkam. Chennai - 600 034.

+1cc to Mr.T.C.Gopala Krishnan, Advocate Sr.47082
+1cc to M/S.R.Jayaprakash, Advocate Sr.47609

W.P.No.15309 of 2019 &
W.M.P.No.15293 of 2019

gp[co]
srg 09/07/2019