IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-07-2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.16693 of 2019
And
W.M.P.Nos.16316 and 16318 of 2019

M.Mani .. Petitioner

vs.

The Commissioner of Municipality,
Udumalpet,
Tiruppur District. .. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent demanding the property tax made in proceedings No.M.F.25-I-II, Udumalpet Municipality No.157/004/00340-157/18033 dated 12.02.2019 in respect of the property bearing Door No.27, Ward No.004, Dharapuram Road, Eripalayam, Udumalpet, Tiruppur District and quash the same.

For Petitioner : Mr.G.Vinoth

For Respondent : Mr.A.S.Thambuswamy

O R D E R

Mr.G.Vinoth, learned counsel on record for writ petitioner and Mr.A.S.Thambusamy, learned counsel, who accepts notice on behalf of lone respondent are before this Court.

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

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3. There is no disputation or disagreement that main writ petition pertains to enhancement of property tax for writ petitioner's immovable property at 'No.27, Dharapuram Road, Eripalayam, Udumalpet, Tiruppur District 642 126, situate in Udumalpet Municipality in respect of assessment order No.157/004/00340-157/18033 in Ward No.004' (hereinafter 'said property' for brevity).

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4. There is also no disputation or disagreement that enhancement of property tax for the said property is governed by 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)', which shall hereinafter be referred to as 'District Municipalities Act' for the sake of brevity, clarity and convenience.

5. Adverting to a receipt dated 28.02.2018, learned counsel for writ petitioner submits that half yearly property tax for said property has been paid up to II/2017-18 or in other words up to 31.03.2018.

6. A demand notice dated 12.02.2019 (hereinafter 'impugned notice for brevity) was issued to the writ petitioner, enhancing half yearly property tax for said property to Rs.14,106/- (Rupees Fourteen Thousand One Hundred and Six only) with effect from I/2018-19 or in other words, with effect from 01.04.2018. Against this enhancement, writ petitioner has admittedly given a representation to respondent and this representation is dated 20.03.2019. This 'representation' shall be treated as 'revision' and therefore the same shall hereinafter be referred to as 'revision'. There is no disputation or disagreement between the parties that this revision is pending even as of today and no orders have been passed on the same. Learned counsel for writ petitioner also submits that there was no provisional assessment, there was no enhancement to the knowledge of the writ petitioner and no objections were called for for proposed enhancement of property tax from the writ petitioner.

7. It may not be necessary to delve further into these aspects of the matter as the issue that falls for consideration now is disposal of the aforesaid revision of writ petitioner dated 20.03.2019. Obviously, there cannot be any demand before disposal of aforesaid revision. In other words, while the enhancement is subject matter of revision, there cannot be a demand at the enhanced rate, as the scheme of District Municipalities Act and Taxation Rules forming part of the same in the considered view of this Court brings out clearly that disposal of revision will tantamount to final assessment. Therefore, Sanjai Gupta principle comes into play. To be noted, Sanjay Gupta principle is vide Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 and the principle is to the effect that a demand can be made only after a final assessment which in turn should be made after considering the objections of assessee qua provisional assessment.

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8. Faced with the above situation, learned counsel for respondent submits that respondent will dispose of the revision as expeditiously as possible and in any event within four weeks from the date of receipt of a copy of this order. This puts an end to the controversy and douses the anxiety of writ petitioner.

9. In the light of the narrative thus far, the following order is passed:

a) impugned notice dated 12.02.2019, bearing Reference No.157/004/00340-157/18033 is set aside. To be noted, impugned notice is not set aside on merits, but is set aside because the same has been issued during pendency of revision.

b) Aforesaid revision of writ petitioner dated 20.03.2019 shall be disposed of by respondent on merits and in accordance with law, more particularly, in accordance with Rule 12 of Schedule IV of District Municipalities Act, which provides for reasonable opportunity being given to writ petitioner or writ petitioner's authorised agent to represent his case. Such disposal of revision shall be done as expeditiously as possible in any event within four weeks from the date of receipt of a copy of this order.

c) Revision disposed of in the aforesaid manner and the order disposing of the revision shall be communicated to the writ petitioner under due acknowledgement within 7 working days from the date of disposal.

d) Though obvious it is made clear that if writ petitioner is not satisfied with the order made in revision, it is open to writ petitioner to assail the same in accordance with law and this order will not impede such legal proceedings.

e) There shall be no distraint proceedings or coercive action against said property and/or the writ petitioner till disposal of the revision in the aforesaid manner by respondent and communication of the same to writ petitioner under due acknowledgement in the aforesaid manner, subject to the condition that writ petitioner continues to pay half yearly property tax for the said property at the existing rate without any default.

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

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Svn

To

The Commissioner of Municipality,
Udumalpet,
Tiruppur District.

+1 cc to Mr.N.Umapathi, Advocate, S.R.No.65999

W.P.No.16693 of 2019

VBA(CO)
SSM(13/09/2019)

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