IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :09.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.18760 of 2019
and
W.M.P.No.18107 of 2019

P.Vengadakrishnan ..Petitioner

Vs

1.Corporation of Chennai, rep.by its
Commissioner,
Rippon Buildings, Chennai - 600 003.

2.The Revenue Officer,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

3.The Asst.Revenue Officer,
Zonal Office-V,
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Old Washermenpet,
Chennai - 21. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent proceedings in demand notice No.Z.O.V.R.D.C.No.R1/SPL./2019, dt.13.05.2019 relating to the petitioner property 3/2, Montieth Lane, Egmore, Chennai - 600 008, and quash the same and consequently direct the 3rd respondent to revise the assessment order after giving opportunity and get objections from the petitioner and follow the due process of law.

For Petitioner : Mr.S.Venkatesh

For Respondents : Ms.Padma Shalini
For Mr.T.C.Gopalakrishnan
Standing counsel
for R1 to R3

O R D E R

Mr.S.Venkatesh, learned counsel on record for writ petitioner is before this Court. Ms.Padma Shalini, learned counsel representing Mr.T.C.Gopalakrishnan, learned standing counsel for Chennai Corporation accepts notice on behalf of the all the three respondents.

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

3. Subject matter of instant writ petition is enhancement of property tax for writ petitioner's immovable property at 3 (2), Montieth Lane, Egmore, Chennai - 600 008, hereinafter 'said property' for the sake of brevity under 'Chennai City Municipal Corporation Act, 1919' [hereinafter 'CCMC Act' for brevity]

4. It is submitted without any disputation or disagreement that the current half yearly properly tax for said property is Rs.6,875/- (Rupees Six Thousand Eight Hundred and Seventy Five only). It is not in dispute that the aforesaid sum of Rs.6,875/- was fixed vide a final assessment dated 29.08.2017, which in turn was pursuant to orders made by this Court in an earlier round of litigation vide writ petition being W.P.No.1393 of 2012, which was referred to Lok Adalat. It may not be necessary to advert to these particulars in greater detail as the short point that arises for consideration in the instant writ petition is the complaint of the writ petitioner that the aforesaid Rs.6,875/- per half year property tax for said property has been enhanced to Rs.12,380/- without any provisional assessment notice, without calling for objections from the writ petitioner and without any final assessment order. In other words, it is the specific and pointed submission of the learned counsel for writ petitioner that a demand notice has been directly sent to the writ petitioner being notice dated 13.05.2019 bearing reference Z.O.V.R.D.C.NO.R1/SPL/2019 [hereinafter 'impugned demand notice' for brevity].

5. Faced with the above situation, learned standing counsel for Chennai Corporation, is unable to demonstrate that any provisional assessment order was served on the writ petitioner much less is there anything before this Court to show that the writ petitioner was given an opportunity to object to proposed enhancement.

6. Before this Court proceeds further, it is necessary to capture the trajectory of the instant writ petition. When the instant writ petition came for admission on 04.07.2019, the trajectory of the hearing was captured in the proceedings made on that day and the same reads as follows:

> 'It is submitted by learned counsel for writ petitioner that impugned demand notice dated 13.05.2019 has been issued without any prior provisional notice or assessment, demanding property tax at an enhanced rate.

2.Ms.Padma Shalini, learned counsel representing Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation, accepts notice on behalf of all the three respondents and seeks time to get instructions.

3. List in the motion list on 09.07.2019.

As Standing Counsel for Chennai Corporation has sought time to get instructions, there shall be no coercive action till the next listing on 09.07.2019'

7. It is after accepting notice and after getting instructions that learned standing counsel submits that there is nothing to demonstrate that writ petitioner has been served with provisional assessment order under due acknowledgment. Writ petitioner also asserts that no notice has been served with regard to enhancement of property tax for said property from Rs.6,875/- to Rs.12,380/- prior to impugned demand notice.

8. This takes us to the legal position.

9. This Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019, had held that it is imperative that in cases of this nature, a provisional assessment order is served on the writ petitioner, writ petitioner is given an opportunity to object to the same and a final assessment order is passed after considering all the objections before a demand is made. To be noted, this order was made by a Hon'ble Single Judge of this Court, by drawing inspiration from Hon'ble Division Bench judgment in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. This Sanjay Gupta principle is to the effect that objections of a assessee shall be considered and final assessment should be made before a demand is raised. In other words, the principle in Sanjay Gupta case is that any demand for tax should be preceded by objections of the assessee being considered and final assessment being made.

10. In the light of the aforesaid undisputed position, this Court passes the following order:

a) Impugned demand notice dated 13.05.2019 bearing reference No.Z.O.V.R.D.C.No.R1/SPL/2019 is set aside. Impugned demand notice is set aside solely on the ground that writ petitioner has not been given any opportunity to object to the proposed enhancement. In other words, this Court does not express any opinion on merits.

b) Respondent Chennai Corporation, shall serve on the writ petitioner under due acknowledgment a provisional assessment order, regarding proposed enhancement of property tax for said property from

Rs.6,875/- to Rs.12,380/-, giving all particulars pertaining to parameters, determinants and mode of computation. It should either be given or made available in the official website of the Chennai Corporation which shall be accessible by the writ petitioner. On receipt of the aforesaid provisional assessment, writ petitioner shall send her objections to the provisional assessment within a fortnight from the date of service of the provisional assessment order on the writ petitioner. All payments made by the writ petitioner pursuant to the aforementioned earlier round of litigation shall be taken into account while computing payment at the existing rate till final assessment and service of the same on the writ petitioner.

c) On receipt of the objections from the writ petitioner, Chennai Corporation shall embark upon the exercise of considering all objections and passing final assessment order in accordance with law as expeditiously as possible and in any event within six(6) weeks from the date of receipt of objections.

d) Though the impugned demand notice has been set aside, it is made clear that there shall be no coercive action against the writ petitioner till the aforesaid exercise is completed and till the aforesaid final assessment order is served on the writ petitioner under due acknowledgment, subject to the condition that the writ petitioner continues to pay half yearly property tax at the existing rate of Rs.6,875/- for said property.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

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To

1.Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

2.The Revenue Officer,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

3.The Asst.Revenue Officer,
Zonal Office-V,
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Old Washermenpet,
Chennai - 21.

+1cc to Mr.S.Venkatesh, Advocate, S.R.No.57652
+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.57576

W.P.No.18760 of 2019and
W.M.P.No.18107 of 2019

NRL(CO)

RRS(19/08/2019)