IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :08.08.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.23425 of 2019
&
W.M.P.Nos.23200 & 23202 of 2019

A.Anandhakumar ...Petitioner

vs

1.The Government of Tamil Nadu
rep. By its Principal Secretary to Government
Municipal Administration and Water Supply
(MA IV) Department, Chepauk
Chennai - 600 005

2.The Commissioner of Municipal Administration
Chepauk, Chennai - 600 005

3.The Commissioner Cum Executive Authority
Mettupalayam Municipality
Housing Unit, Mettupalayam - 641 301 ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the Special Notice dated 25.02.2019 issued by the 3rd respondent to the petitioner and quash the same.

For Petitioner : Mr.J.T.Rajasuriya
for Mr.T.K.S.Gandhi

For Respondents : Mr.R.P.Pratap Singh
Government Advocate for R1&R2

Mr.V.Jayaprakash Narayanan
Standing counsel for R3

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O R D E R

Mr.J.T.Rajasuriya, learned counsel representing the counsel on record for writ petitioner, Mr.R.P.Pratap Singh, learned Government Advocate on behalf of respondents 1 and 2 and Mr.V.Jayaprakash Narayanan, learned Standing counsel on behalf of third respondent, Mettupalayam Municipality are before this Court.

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2. With consent of all the aforesaid learned counsel, 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 property at '145A, Kovai Main Road and the Assessment number is 074/031/00381'. This property with this assessment number situate in Mettupalayam Municipality shall hereinafter be referred to as 'said property' for the sake of convenience and clarity in the instant writ petition.

4. There is no disputation or disagreement before this Court that levy and enhancement of property tax qua said property is governed by 'Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act 5 of 1920)' which shall hereinafter be referred to as 'District Municipalities Act' for the sake of convenience and clarity.

5. The relevant provision under District Municipalities Act is Section 82 captioned 'Method of Assessment of Property'. Besides Section 82, the District Municipalities Act also contains a separate dedicated Schedule in this regard. This Schedule is Schedule IV, which is captioned 'Taxation and Finance Rules'. Under this Schedule IV, one part of the Schedule is Taxation Rules and the same is Part I, which goes by the caption 'Taxation Rules.'

6. Said property of writ petitioner has been assessed to property tax and the writ petitioner was paying half yearly property tax at the rate of Rs.11,048/-(Rupees Eleven Thousand Forty Eight only).

7. It is the case of the writ petitioner that when things stood as above, writ petitioner was visited with a notice captioned 'Special Notice dated 25.02.2019' [hereinafter 'impugned notice' for the sake of brevity, convenience and clarity]

8. Vide this impugned notice, Mettupalayam Municipality had increased half yearly property tax for said property from Rs.11,048/-(Rupees Eleven Thousand Forty Eight only) to Rs.22,096/- (Rupees Twenty Two Thousand Ninety Six only).

9. Complaining that the enhancement is exorbitant and not commensurate with the said property and its specifications, instant writ petition has been filed.

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10. Mr.R.P.Pratap Singh, learned Government Advocate on behalf of the respondents 1 and 2 submitted that general revision of property tax became imperative pursuant to Hon'ble Division Bench orders of this Court and the Government issued G.Os as well as Guidelines for enhancement as well as parameters to be followed for enhancement.

11. Mr.V.Jayaprakash Narayanan, learned Standing counsel for Mettupalayam Municipality, submitted that the enhancement is imperative and the enhancement was necessitated owing to the reclassification of the Zone in which said property is situated. Be that as it may, it may not be necessary to go into the merits of the matter in the light of the narrow compass on which the matter now turns. A perusal of the impugned notice, reveals that the same has been issued under Rules 9 and 10 of Part I of Schedule IV of District Municipalities Act namely 'Taxation Rules' under District Municipalities Act.

12. Rules 9 and 10 read as follows:

'[9. When assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the [executive authority] shall give public notice stating that revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government, a railway administration or a company, and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of the municipal office and on the same day be published in the municipality by beat of drum]

[Provided that in every case where there is an enhancement in the assessment, the executive authority shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned:

Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso, the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice.]'

[10. In every case in which between one general revision and another, the [executive authority] assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the [executive authority] shall intimate by a special notice to the

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owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within sixty days from the date of service of such notice in the case of the Government, a railway administration or a company, and within thirty days from the said date in other cases.]
'

13. Immediately on receipt of impugned notice, a representation dated 14.05.2019 through the Mettupalayam Vattam Vari Selluthuvor Nala Sangam has been sent and this representation of the writ petitioner dated 14.05.2019 has been placed before this Court as part of the case file and more particularly as part of the typed set of papers filed along with the writ petition. It may not be necessary to go into the question as to whether the respondent Mettupalayam Municipality has given public notice as mandated under Rule 9 as in the instant case, as it is agreed that the writ petitioner will send a representation individually, this 'representation' shall be treated as 'revision' (therefore, the same shall hereinafter be referred to as 'revision') and the revision will be disposed of in accordance with aforementioned Taxation Rules.

14. To be noted, there is no disputation or disagreement before this Court that aforesaid representation dated 14.05.2019 sent by the writ petitioner through Mettupalayam Vattam Vari Selluthuvor Nala Sangam is pending.

15. A perusal of Rules 9 and 10 supra reveals that the authority, who has to consider the same i.e., revision is 'Executive Authority'. Vide Section 2(8-C) of District Municipalities Act, the term 'Executive Authority' has been defined and the same reads as follows:

> '[(8-C) 'Executive Authority' means an officer of the State Government, or of the local authority (not being the Chairman or Vice-Chairman or a Member of the Council) as may be specified by the State Government]'

16. Adverting to Section 2(8-C), learned counsel for respondents submit that the Commissioner of Mettupalayam Municipality is the Executive Authority, he having been so specified by the State Government. Therefore, it follows that the Commissioner of Mettupalayam Municipality, is the Executive Authority within the meaning of Section 2(8-C) of District Municipalities Act (for the purposes of case on hand) and therefore, the Commissioner of Mettupalayam Municipality will be the Executive Authority, who will consider the representation /

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objections to be made individually by the writ petitioner treating the same as revision, qua impugned notice.

17. This takes us to the manner in which the revision has to be dealt with and disposed of by the Executive Authority. This is adumbrated in Rule 12 of the Taxation Rules referred to supra and Rule 12 reads as follows:

> '[12 No petition under rule 9, 10, or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.]'

18. In the light of the narrative thus far, it emerges clearly that on receipt of impugned notice, writ petitioner has filed a revision to the Executive Authority and the same is pending.

19. Under these circumstances, it follows as a necessary sequitur that aforesaid revision has to be decided in accordance with Rule 12 before demanding property tax at the enhanced rate or any other rate that may be fixed in revision. In this regard, a principle laid down by a Hon'ble Division Bench of this Court in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 is significant. Sanjai Gupta principle is to the effect that before a demand is made, a final assessment has to be made after taking into account the objections to the provisional assessment, being objections qua provisional assessment by the assessee. It may not be necessary to delve further into these aspects of the matter as it comes out clearly that it is necessary for the Commissioner of third respondent Municipality to dispose of the revision to be made by the writ petitioner. In the light of the narrative thus far, the following order is passed.

a) Writ petitioner shall send individual representation/revision qua impugned order to the Commissioner of Mettupalayam Municipality within a fortnight from the date of receipt of a copy of this order.

b) Third respondent before this Court namely Commissioner, Mettupalayam Municipality, who is Executive Authority within the meaning of Section 2(8-C) of District Municipalities Act, shall dispose of writ petitioner's representation/revision in response to impugned notice being Special Notice dated 25.02.2019 for writ petitioner's property at 145A, Kovai Main Road and the relevant Assessment number is 074/031/00381.

c) Disposal of revision by 3rd respondent shall be in accordance with the procedure adumbrated in Rule 12 of the Taxation Rules.

d) Disposal of the revision on its own merits in

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accordance with law by the 3rd respondent shall be done as expeditiously as possible and in any event within twelve (12) weeks from the date of receipt of individual representation / revision from the writ petitioner.

e) There shall be no coercive action against the writ petitioner or distraint proceedings against the writ petitioner's property until disposal of revision, subject to the condition that the writ petitioner shall continue to pay half yearly property tax for said property at the existing rate of Rs.11,048/-(Rupees Eleven Thousand Forty Eight only). Though obvious, it is made clear that if the writ petitioner is not satisfied with the outcome of the revision, it is open to the writ petitioner to assail the same in a manner known to law and if that scenario unfurls, this order will not impede such a legal process.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa
To

1.The Principal Secretary to Government
Government of Tamil Nadu
Municipal Administration and Water Supply
(MA IV) Department, Chepauk,
Chennai - 600 005

2.The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

3.The Commissioner Cum Executive Authority
Mettupalayam Municipality,
Housing Unit, Mettupalayam - 641 301.

+1cc to Mr.V.Jayaprakash Narayanan, Advocate Sr.68342
+1cc to Mr.T.K.S.Gandhi, Advocate Sr.68319
+1cc to the Government Pleader Sr.68480

W.P.No.23425 of 2019 &
W.M.P.Nos.23200 and 23302 of 2019

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