IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.17855 of 2019
and
W.M.P.No.17260 of 2019

Hallmark Foundations Ltd.,
Rep.by its Director,
No:35(SP), Developed Plot Estate,
Guindy,
Chennai - 600 032. ..Petitioner

vs

1.The Assistant Revenue Officer,
Zone-13, Revenue Department,
Greater Chennai Corporation,
No:115, Muthulakshmi Salai,
Adyar, Chennai - 600 020.

2.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of Notice dated 24.09.2018 bearing No.I/1/18-19/043581 issued by the 1st Respondent and the undated notice issued by the 1st Respondent and quash the same and Direct the Respondents to consider the letter of the Petitioner dated 10.05.2019 in accordance with law.

For Petitioner : Ms.Aishwarya S Nathan
For Respondents: Mr.T.C.Gopalakrishnan
Standing counsel
(Chennai Corporation)

O R D E R

Ms.Aishwarya S Nathan, learned counsel on record for writ petitioner is before this Court. Mr.T.C.Gopalakrishnan, learned standing counsel for Chennai Corporation accepts notice on behalf of both the respondents.

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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 this writ petition is enhancement of property tax for an immovable property(owned by the writ petitioner) under the 'Chennai City Municipal Corporation Act, 1919' ['CCMC Act' for the sake of brevity].

4. Immovable property at SP35(SP35), Industrial Estate, Guindy, Chennai - 600 032 is owned by writ petitioner and this property shall hereinafter referred to as the 'said property' for the sake of convenience and clarity.

5. Said property has been assessed to property tax by the Chennai Corporation and the same is being paid by the writ petitioner, according to learned counsel for writ petitioner.

6. When there was an earlier enhancement of property tax, for said property, writ petitioner filed an earlier writ petition in this Court being W.P.No.41869 of 2016 and the same came to be disposed of by this Court vide order dated 13.12.2018 based on an award made by the Lok Adalat.

7. Suffice to say that vide the award, which in turn was based on a joint memo of compromise, the half-yearly property tax for the said property was mutually agreed upon and the mutually agreed upon figure is Rs.3,32,020/-. This joint memo of compromise, which forms part of the earlier order in the aforesaid earlier writ petition also makes it clear that the order will not apply to general revision, which is to take effect from first half-year of 2018-19 i.e., on and from 01.04.2018.

8. Under such circumstances, the Chennai Corporation has issued a notice, which has been captioned 'Notice No.1: Property Tax General Revision - 2018-19', hereinafter 'Impugned notice-I' for brevity, convenience and clarity.

9. Impugned notice-I is dated 24.09.2018 and vide Impugned notice-I, Chennai Corporation proposed to enhance property tax for the said property to Rs.7,88,465/-. To be noted, the Impugned notice-I proposes enhancement from Rs.4,13,260/-, whereas vide aforesaid earlier order in earlier writ petition, the half-yearly property tax was agreed to be at Rs.3,32,020/- as mentioned supra. Further, to be noted, vide the earlier round of writ petition, proposed enhancement to Rs.4,13,260/- was scaled down and agreed to be fixed at Rs.3,32,020/-.

10. Be that as it may, in the light of the order, which this Court now proposes to pass, it may not be necessary to advert further to these aspects of the matter.

11. A perusal of the Impugned notice-I shows that it mentions about an 'appeal' to the jurisdictional Regional Deputy Commissioner of Chennai Corporation. This being a provisional

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assessment, it cannot be an 'appeal' and it can only be an 'objection'. With regard to this position, an earlier order dated 06.02.2019 made by a Hon'ble Single Judge in W.P.No.36462 of 2019 can be usefully referred to. Vide this order, drawing inspiration from a Hon'ble Division Bench judgment in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465, a Hon'ble Single Judge held that in cases of this nature, a demand cannot be made directly, without making a provisional assessment, calling for objections from the assessee and thereafter, making a final assessment.

12. In the instant case, one other aspect to be noticed is, post Impugned notice-I, the Chennai Corporation has also issued a notice under Section 104 of the CCMC Act, which is a demand notice, demanding property tax at the aforesaid enhanced rate of over 7.88 lakhs and threatening distraint action in the event of non-compliance. This undated demand notice, which is said to have been served on the writ petitioner on 30.05.2019 shall hereinafter be referred to as 'Impugned notice-II'.

13. There is also no disputation before this Court that pursuant to Impugned notice-I, which is a provisional assessment, writ petitioner has sent their objections being objections dated 10.05.2019. These objections are addressed to 1st respondent in instant writ petition.

14. It is submitted by learned standing counsel for Chennai Corporation that the objections have to be sent to the jurisdictional Regional Deputy Commissioner. It is also submitted, on instructions, that the jurisdictional Regional Deputy Commissioner for said property of the writ petitioner is 'Regional Deputy Commissioner (South), No:115, Muthulakshmi Salai, Adyar, Chennai - 600 020'. This is recorded.

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

a) Impugned notice-I i.e., notice dated 24.09.2018 is not quashed, but is held to be a provisional assessment order calling for objections from writ petitioner - assessee.

b) Writ petitioner shall file objections afresh to aforesaid jurisdictional Regional Deputy Commissioner being Regional Deputy Commissioner(South) having office at No:115, Muthulakshmi Salai, Adyar, Chennai - 600 020, objecting to impugned notice-I along with all supporting documents within 15 days from the date of receipt of a copy of this order.

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c) On receipt of objections in the aforesaid manner, the jurisdictional Regional Deputy Commissioner, shall consider all the objections along with supporting documents and pass final assessment order in accordance with law as expeditiously as possible and in any event, within six(6) weeks from the date of submission of objections, which in turn will be within a fortnight from the date of receipt of a copy of this order as mentioned supra.

d) The final assessment order so passed by the jurisdictional Regional Deputy Commissioner shall be communicated to the writ petitioner under due acknowledgment in accordance with law within seven(7) working days from the date of the final assessment order.

e) In the light of the aforesaid set of directions, the Impugned notice-II being demand notice-II is set aside, preserving the liberty of Chennai Corporation to issue notice afresh, if the need arises post final assessment notwithstanding Impugned notice-II being set aside. There shall be no other coercive action by the Chennai Corporation qua the said property with regard to property tax against the writ petitioner, subject to the condition that the writ petitioner continues to pay half-yearly property tax for the said property at the existing rate of Rs.3,32,020/- per half-year.

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

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1.The Assistant Revenue Officer,
Zone-13, Revenue Department,
Greater Chennai Corporation,
No:115, Muthulakshmi Salai,
Adyar, Chennai - 600 020.

2.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No. 52216
+1cc to Mr.Srinath Sridevan, Advocate, S.R.No. 53636

W.P.No.17855 of 2019
and
W.M.P.No.17260 of 2019

BS(CO)
GN(26/07/2019)

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