IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-07-2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.19693 of 2019
And
W.M.P.No.19223 of 2019

1.Naina N.Patel
2.Girdhar Hemdev
3.Sangeeta B.Patel
4.Reena S.Patel
5.Suresh M.Hemdev
6.Avinash K.Hemdev
7.Vivek K.Hemdev
8.Kailash P.Hemdev ... Petitioners

..Vs..

1.The Commissioner,
Pallavapuram Municipality,
3rd Main Road,
Pallavapuram,
New Colony,
Chrompet,
Chennai-600 044.

2.The Executive Authority,
Pallavapuram Municipality,
3rd Main Road,
Pallavapuram,
New Colony,
Chrompet,
Chennai-600 044. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the impugned Assessment Notice bearing No.007/041/00638 dated 05.02.2019 and consequential impugned Defaulter Notice dated 03.05.2019 issued by the respondents as being arbitrary and violative of statutory principles and to consequently direct the respondents to hold an enquiry and assess the said property as per the provisions of the Chennai City Muncipal Corporation Act, 1919 (the said Act) within the period to be fixed by this Court and to forbear the respondents from demanding, recovering the property tax from the petitioner in respect of the said property at the revised rate either prospectively or retrospectively.

For Petitioner : Mr.Salai Varun for
M/s.Prem Anand and G.Gokul.

For Respondents: Mr.P.Srinivas,
Standing Counsel.

O R D E R

Mr.Salai Varun, learned counsel representing the counsel on record for writ petitioner and Mr.P.Srinivas, learned Standing Counsel on behalf of both respondents, are before this Court.

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

3. Subject matter of main writ petition is enhancement of property tax for an immovable property at 'No.136, G.S.T. Road, Chrompet, Chennai-600 044', which shall be hereinafter be referred to as 'said property' for the sake of brevity, convenience and clarity.

4. This Court is informed that petitioners are co-owners of said property.

5. This Court is also informed that said property was assessed to property tax under 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), hereinafter referred to as 'District Municipalities Act' for the sake of brevity, convenience and clarity and property tax so assessed is being paid by the writ petitioners. This Court is also informed that half-yearly property tax for said property as of now is Rs.1,70,228/- (Rupees One Lakh Seventy Thousand Two Hundred and Twenty Eight only) and that the same is being paid. This Court is also informed that half-yearly property tax for said property at this rate is under vogue for about a decade now i.e., from the first half year of 2008-2009.

6. When things stood as above, the respondent-Pallavapuram Municipality issued a notice dated 5.2.2019 captioned 'Special Notice Property Tax - General Revision 2018' (hereinafter 'impugned notice' for brevity), wherein the aforesaid half-yearly property tax for said property has been enhanced from Rs.1,70,228/- (Rupees One Lakh Seventy Thousand

Two Hundred and Twenty Eight only) to Rs.2,29,807/- (Rupees Two Lakhs Twenty Nine Thousand Eight Hundred and Seven only)

7. Complaining inter-alia that aforesaid enhancement is very steep, instant writ petition has been filed.

8. This Court heard learned counsel on both sides. There is no disputation or disagreement before this Court that the Statute governing this enhancement is District Municipalities Act and the most relevant part is Schedule IV captioned 'Taxation and Finance Rules'. To be precise, Schedule IV is in two parts and Part-I captioned as 'Taxation Rules' is of utmost significance.

9. Adverting to the aforesaid Taxation Rules, learned Standing Counsel for Pallavapuram Municipality submitted that enhancement of property tax for said property vide impugned notice has been made as part of general revision, which is to be carried out once in every five years under Rule 8. It was pointed out that this has been mentioned in the impugned notice. Besides all these, there is also a reference to Rules 9 and 10 of Schedule IV of District Municipalities Act (Taxation Rules) in the impugned notice.

10. Rules 9 and 10 of Schedule IV of District Municipalities Act (Taxation Rules), read as follows:

> “[8. (1) The assessment books shall be completely revised by the Executive Authority once in every five years.
>
> [(1-A) (a) Notwithstanding anything contained in sub-rule (1), the State Government may, for sufficient cause, from time to time, by order —
>
> (i) postpone the general revision of assessment of books,
>
> (ii) stay any proceedings relating to the general revision of assessment books, for a period of one or more half-years at a time but not exceeding in any case seven half-years:
>
> Provided that such postponement or stay shall not affect any subsequent general revision of assessment books.
>
> (b) Where the stay is vacated or the period of stay expires, the State Government may direct that proceedings for the general revision of assessment books shall be either commenced de novo or continued from the stage at which such proceedings were stayed.]

2) The Executive Authority may amend the assessment books at any time between one general revision and another by inserting therein or removing therefrom any property or by altering the valuation of any property or the amount of tax or subject to any rules which the State Government may make in this behalf, by substituting therein for the name of the owner of any property, the name of any other person who has succeeded by transfer or otherwise to the ownership of the property.] Such amendment shall be deemed to have taken effect on the first day of the half-year in which it is made :

Provided that when the amendment is made in any half-year after the demand notice for that half-year has been issued, it shall have effect only from the succeeding half-year except where the fair rent of a building together with land appurtenant to it has been determined by the Controller under the Madras Buildings (Lease and. Rent Control) Act, 1946] :

[Provided further that the decision of the Executive Authority in any disputed case of transfer of ownership of a property shall not give the transferee a legal title to the property.]

[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.]

11. A conjoint reading of Rules 8 and 9 Schedule IV of District Municipalities Act (Taxation Rules), supra, bring to light that there is provision for revision to be considered by the Executive Authority, if enhancement vide notices akin to impugned notice is assailed. Learned counsel for writ petitioners points out that on receipt of impugned notice, writ petitioners have sent their objections dated 3.3.2019.

12. Once an assessee prefers a revision, albeit in the name of objection, the respondent-Municipality has to necessarily consider the same in accordance with the Rules and the most relevant Rule in this regard is Rule 12, which 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."

13. A perusal of Rule 12 reveals that a revision cannot be disposed of unless the petitioner (petitioner has to be read as 'assessee') is given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.

14. Before proceeding further, it is to be noted that the term 'Executive Authority' occurring in Rule 9, supra, has been defined under Section 3(8-C) of District Municipalities Act, which reads as follows:

> "3(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]."

15. On instructions, learned Standing Counsel for respondent-Municipality submits that 'Executive Authority' has since been specified by the State Government and the Commissioner of Pallavapuram Municipality is the Executive Authority. This is recorded.

16. From the narrative thus far, it follows as a inevitable and indispensable sequitur that the respondent-Pallavapuram Municipality has to consider the objections of the writ petitioners by giving reasonable opportunity to the writ petitioners to appear either in person or through their authorised agent and to represent their case.

17. Therefore, the following order is passed:

(a) Impugned notice being notice dated 5.2.2019 captioned 'Pallavapuram Municipality, Special Notice, Property Tax - General Revision 2018' pertaining to Assessment No.007/0-41/00638 Old Assessment No.007/51138 for the said property at No.136, G.S.T. Road, Chrompet, Chennai-600 044 is not interfered with, but implementation of the same is subject to the directions infra.

(b) The first respondent i.e., Commissioner of Pallavapuram Municipality shall communicate to the first writ petitioner at the address given in the writ petition, namely, No.12, Padmavathiar Road, Chennai-600 086 date, time and venue for personal hearing.

(c) On receipt of aforesaid notice, the first writ petitioner along with other co-writ petitioners shall nominate either one of them or their authorised agent to go before the first respondent, file additional objections along with supporting documents if necessary and represent their case against the enhancement made vide impugned notice.

(d) If the writ petitioners do not avail of personal hearing, it will be open to the first respondent to pass orders on the basis of available records.

(e) If the writ petitioners avail of personal hearing, the first respondent shall consider all their objections and thereafter pass an order in revision qua impugned notice.

(f) In the interregnum if any orders have been passed by the first respondent or any other Officer of the Pallavapuram Municipality, pursuant to the objections made by the writ petitioners, the same shall stand automatically set aside without any reference to this Court as finality will be subject to orders to be passed by the first respondent in the aforesaid manner.

(g) The order passed by the first respondent in the aforesaid manner inter-alia in exercise of powers under Rule 12 of Taxation Rules under Schedule IV of District Municipalities Act, shall be communicated to the first writ petitioner under Due Acknowledgment within seven working days from the date of such order in revision and writ petitioners submit that such communication shall be deemed and construed to be service on each/all of them.

(h) The orders in the aforesaid manner shall be passed by the first respondent as expeditiously as possible and in any case, within four weeks from the date fixed for personal hearing.

(i) Until orders are passed in the aforesaid manner and communicated to the first writ petitioner, there shall be no coercive action or distraint proceedings qua said property or against the writ petitioners subject to the condition that the writ petitioners continue to pay half-yearly property tax at the existing rate of Rs.1,70,228/- (Rupees One Lakh Seventy Thousand Two Hundred and Twenty Eight only) without any default.

18. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Commissioner,
Pallavapuram Municipality,
3rd Main Road,
Pallavapuram,
New Colony,
Chrompet,
Chennai-600 044.

2.The Executive Authority,
Pallavapuram Municipality,
3rd Main Road,
Pallavapuram,
New Colony,
Chrompet,
Chennai-600 044.

+1cc tThiru G.Gokul, Advocate Sr.62866
+1cc to Thiru P.Srinivas, Advocate Sr.63429

WP 19693 of 2019

mr[co]
srg 28/08/2019