IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 01.07.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18181 of 2019
&
W.M.P.Nos.17542, 17543 and 17545 of 2019

Carborundum Universal Limited
Rep. By its Company Secretary
No.655, Thiruvottiyur High Road
Thiruvottiyur, Chennai - 600 019
Having Registered Office at
No.43, Moore Street,
Chennai - 600 001 .. Petitioner

Vs.

1.The Secretary
Department of Municipal Administration and
Water Supply Department
The Government Secretariat
Fort St. George
Chennai - 600 009

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

3.Deputy Regional Commissioner (North)
No.62, Basin Bridge Road
Old Washermanpet
Chennai - 600 021

3.Asst. Revenue Office
Zone-1
945, Thiruvottiyur High Road
Chennai - 600 019 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice dated 07.05.2019 Ref.I/18-19/1265616 issued by the 2nd respondent and the consequential order dated 18.06.2019 Ref. Ma.A.1.Va.thoo.Na.Ka.No..R2/3212/2019 passed by the 4th respondent and quash the same and consequently direct the 2nd respondent to strictly follow the procedure contemplated under the CCMC Act 1919 and G.O.Ms.No.73 dated 19.07.2018 and G.O.Ms.No.76 dated 26.07.2018 issued by the 1st respondent for revision of property tax.

For Petitioner : Mr.S.Thanka Sivan

For Respondent : Mr.R.P.Pratap Singh
Government Advocate for R1

Mr.T.C.Gopalakrishnan
Standing Counsel for Chennai Corporation
for R2 to R4

O R D E R

Mr.S.Thanka Sivan, learned counsel on record for writ petitioner is before this Court. Mr.R.P.Pratap Singh, learned Government Advocate accepts notice on behalf of first respondent and Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation accepts notice on behalf of Respondents 2 to 4.

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

3.Subject matter of instant writ petition is enhancement of property tax for property owned by the writ petitioner. Property owned by the writ petitioner is at No.655, Tiruvottriyur High Road, Ajax, Chennai - 600 019 (hereinafter 'said property' for convenience).

4.Short facts shorn of elaboration, imperative for disposal of the instant writ petition are as follows:

a) Vide a General Revision Notice dated 07.05.2019, half-yearly property tax for said property was proposed to be enhanced from Rs.8,26,718/- to Rs.40,82,635/-. Vide this provisional assessment, objections were called for and the writ petitioner had sent detailed objections dated 04.06.2019.

b) After considering these objections, a final assessment has been made by Chennai Corporation vide order dated 18.06.2019 bearing reference ம.அ.1.வ.து.ந.க.எண்.ஆர்2/3212/2019 (hereinafter 'impugned order II' for the sake of brevity).

c) The aforesaid provisional notice dated 07.05.2019 is also assailed in the instant writ petition and therefore, that shall be referred to as 'Impugned order I' for the sake of convenience and clarity.

d) Complaining that Impugned order I and impugned order II are not in accordance with the applicable statute, namely 'Chennai City Municipal Corporation Act, 1919 ('CCMC Act' for brevity) and the Rules thereunder, besides Government Orders issued pertaining to property tax enhancement, instant writ petition has been filed.

5. Learned counsel for writ petitioner submitted that there are two Government Orders namely G.O.Ms.No.73 dated 19.07.2018 and G.O.Ms.No.76 dated 26.07.2018. Adverting to the said Government Orders, learned counsel submitted that writ petitioner's property is non-residential and therefore the enhancement cannot be more 100%. It is the submission of learned counsel for writ petitioner that impugned orders I and II are not in accordance with said Government Orders.

6.Responding to the aforesaid submission, learned standing counsel for Chennai Corporation drew the attention of this Court to Impugned Order I i.e., provisional Assessment Order dated 07.05.2019 and submitted that the values have been given in the provisional assessment itself. The basic street rate for non-residential properties was 4.39 and proposed enhancement was 8.780, which now stands confirmed by Impugned Order II. Saying so, learned standing counsel submits that this is uniform for the said street and it is 100% and not more.

7. In reply, learned counsel for writ petitioner submitted that in the event of Government Orders not being adhered to, parameters and determinants contained in Section 100 of CCMC Act have to be followed.

8.Therefore, whether 100% as in Government Orders is qua determinants or tax is debate which cannot be embarked upon as this matter turns heavily on facts i.e., parameters and computations de hors the debate.

9. Before proceeding further, it is necessary to note that this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019 drawing inspiration from Division Bench judgment in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 had held that in the cases of this nature before making a demand, a provisional assessment has to be made, objections have to be called for and after considering all the objections, final assessment order has to be passed. To be noted, in Impugned order I there is a reference to appeal. However, writ petitioner has sent objections. It is the submission of learned Standing Counsel that the same have been treated as objections and Impugned II has been passed.

10. In this regard, prima facie 8.78 qua 4.39 pointed out by learned Standing Counsel for Chennai Corporation is 100%. With regard to the other parameters and determinants which are being canvassed, they turn on

facts as alluded to supra. Under such circumstances, learned counsel for Chennai Corporation drawing the attention of this Court to Rules 12 and 14 of Part V of Schedule IV to CCMC Act submits that there is an alternate remedy by way of an appeal to the Taxation Appeal Tribunal. To be noted, Schedule IV to CCMC Act is captioned 'Taxation Rules'. The 'Taxation Appeal Tribunal' ('TAT' for brevity) is a specialized Tribunal. There is no disputation before this Court that the same is functioning. Therefore there is a clear alternate remedy.

11. This takes us to the question of exercise of writ jurisdiction notwithstanding alternate remedy. From a long line of authorities it can be safely inferred that alternate remedy is not an absolute rule i.e., it is not a rule of compulsion, but it is a rule of discretion. Though alternate remedy is a rule of discretion, Hon'ble Supreme Court in Satyawati Tondon case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] has held that when it comes to cases relating to taxes, cess i.e, fiscal laws in general, alternate remedy rule has to be applied with utmost rigour. This Satyawati Tondon Principle has been reiterated by Hon'ble Surpeme Court recently in K.C.Mathew Case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Paragraph 10 in K.C.Mathew Case is of relevance and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
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> > "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken

for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'
(underlining made by this Court to supply emphasis and highlight)

12. In the light of the aforesaid principle and in the light of this matter turning heavily on facts, this Court deems it appropriate to relegate the writ petitioner to alternative remedy of appeal to TAT under Rules 10 and 14 of Taxation Rules forming part of Part V of Schedule IV to CCMC Act. As this Court is relegating the writ petitioner to the alternate remedy of filing an appeal to Taxation Appeal Tribunal, this Court refrains from expressing any view or opinion on the merits of the matter.

In the light of all that have been set out supra, this writ petition is disposed of leaving it open to the writ petitioner to approach the Taxation Appeal Tribunal in accordance with the aforesaid / other applicable rules. If there is any delay in filing the appeal, it is open to the writ petitioner to seek condonation of delay or exclusion of time spent in this writ petition by placing reliance on Section 14 of Limitation Act and it is for the Appellate Authority to decide the same on its own merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa
To

1.The Secretary
Department of Municipal Administration and
Water Supply Department
The Government Secretariat
Fort St. George
Chennai - 600 009
2.The Commissioner
Greater Chennai Corporation
Rippon Building
Chennai - 600 003
3.The Deputy Regional Commissioner (North)
No.62, Basin Bridge Road
Old Washermanpet
Chennai - 600 021
4.The Asst. Revenue Office
Zone-1
945, Thiruvottiyur High Road
Chennai - 600 019

+1cc to Mr.T.C.Gopalakrishnan , Advocate SR.No. 54590
+1cc to Mr.S.Thanka Sivan, Advocate SR.No. 54677
+1 cc to Government Pleader Sr.No. 55409

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A.SK(26/07/2019)