IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-07-2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.20526 and 20531 of 2019
And
W.M.P.Nos.19789 and 19790 of 2019

V.D.Ponkumaran ... Petitioner in both WPs

vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R. Periyar Salai,
Greater Chennai-600 003.

2.The Assistant Revenue Officer,
Revenue Department,
T.Nagar Range,
Zone 9, Corporation of Chennai
No.1, Lake Area,
4th Cross Street,
Nungambakkam,
Greater Chennai-600 034.

3.The Assessor,
Revenue Department,
Zone 9, Corporation of Chennai,
No.1, Lake Area,
4th Cross Street,
Nungambakkam,
Greater Chennai-600 034. ... Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writs of Certiorarified Mandamus, calling for the records of the second respondent relating to the final warrant notices dated 3.2.2019 vide Notice Nos.ம.அ.9/வ.து.ந.க.எண்.ஆர்/DN117/348.2019 and ம.அ.9/வ.து.ந.க.எண்.ஆர்/DN117/ 349/2019 and quash the same and direct the second and third respondents to issue fresh assessment notices after inspection and giving prospective effect deducting the commercial tax paid from 2013 to 2015.

For Petitioner in both WPs : Mr.T.K.S.Bharathy Anandraj

For Respondents in both WPs: Mr.T.C.Gopalakrishnan,
Standing Counsel for
Chennai Corporation.

COMMON ORDER

Mr.T.K.S.Bharathy Anandraj learned counsel on record for writ petitioner in both the writ petitions is before this Court and Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation, who has accepted notice on behalf of all respondents in both the writ petitions is also before this Court.

2. With consent of both the learned counsel, main writ petitions are taken up for disposal, heard out and are being disposed of.

3. This Court is informed that both these writ petitions arise out of a common factual matrix and the core issue is same in both these writ petitions.

4. These two writ petitions pertain to enhancement of property tax for two apartments (flats) owned by the writ petitioner at No.56(34), Chevalier Shivaji Ganesan Road, South Boag Road Slum, T.Nagar, Chennai. While one flat is Flat No.F-2 in first floor and the other Flat is Flat No.T-2 in third floor.

5. These aforesaid two flats shall hereinafter be referred to as 'the said flats' for the sake of brevity, convenience and clarity.

6. With regard to first flat of the two flats namely, Flat No.F-2 in first floor, the existing half-yearly property tax is shown as Rs.29,845/- (Rupees Twenty Nine Thousand Eight Hundred and Forty Five only) and the proposed enhancement is shown as Rs.53,725/- (Rupees Fifty Three Thousand Seven Hundred and Twenty Five only) with effect from 1/18-19.

7. With regard to second of the two flats namely, Flat No.T-2 in third floor, the existing half-yearly property tax is shown as Rs.29,845/- (Rupees Twenty Nine Thousand Eight Hundred and Forty Five only) and the proposed enhancement is shown as Rs.53,725/- (Rupees Fifty Three Thousand Seven Hundred and Twenty Five only) with effect from 1/18-19.

8. Read this in conjunction with and in continuation of earlier proceedings of this Court dated 19.7.2019, which reads as under:

> "Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation who has accepted notice on behalf of all the three respondents submits that Provisional Assessment Orders have been served on the writ petitioner today.
>
> In both these matters, learned counsel for writ petitioner seeks time to get instructions.
>
> List in the Motion List on 22.7.2019."

9. Today, it is submitted that the provisional assessment notices for both the flats have been sent and the same have been served on writ petitioner. Learned counsel for writ petitioner, on instructions, confirms receipt of the same.

10. Learned counsel for writ petitioner submits that flats are of the year 2014, they were handed over to writ petitioner only on 10.3.2014 and that the general revision has now been given effect to on 9.5.2017. In the light of the order which this Court now proposes to pass this question is left open to be agitated before authorities concerned.

11. Before this Court proceeds further, it is to be noticed that in the provisional assessment orders both dated 24.9.2018 with regard to aforesaid two flats, it has been mentioned that an appeal will lie to Jurisdictional Regional Deputy Commissioner, Greater Chennai Corporation. In this case, this Court is informed by learned Standing Counsel for Chennai Corporation that Jurisdictional Regional Deputy Commissioner is Regional Deputy Commissioner (Central) having Office at Pullah Avenue, Shenoy Nagar, Chennai-40.

12. Though provisional notices refer to an appeal, what would lie to the aforesaid authority is only an objection.

13. In the light of an order made by this Court in WP No.3231 of 2019 dated 4.2.2019, it is necessary that before enhancement of property tax, provisional assessment is issued, assessee should be given an opportunity to object to the same and thereafter final assessment should be made in accordance with law. There can be demand only thereafter.

14. To be noted, aforementioned order of a Hon'ble Single Judge was made drawing inspiration from a Division Bench judgment in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai, reported in 2009 (2) CTC 465 and the

principle laid down by the Division Bench that there should be determination qua assessment after considering objections of assessee and final assessment before demand is also relevant.

15. Sanjai Gupta principle is of the effect that whenever a demand is made, that should be preceded by a final assessment which in turn should be made taking into account objections of the assessee.

16. It is not in dispute that the aforesaid order of learned single Judge has given legal quietus. In other words, aforesaid order of learned single Judge has not been carried in appeal. Therefore, it is imperative and it follows as an inevitable sequitur in the instant case that writ petitioner should be given an opportunity to object to the aforesaid provisional notices. Objections should be considered and final assessment orders should be made before any demand of enhancement property tax is made.

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

(a) Receipt of provisional assessment orders dated 24.9.2018 bearing Reference Nos.S/1/18-19/144880 in respect of Flat No.F-2 in first floor and S/1/18-19/016883 in respect of Flat No.T-2 in third floor of the said property by writ petitioner is recorded.

(b) Writ petitioner shall submit objections to the aforesaid provisional enhancement within 15 days from the date of receipt of a copy of this order. While submitting such objections, it is open to the writ petitioner to verify the calculation method available at the official website of Greater Chennai Corporation namely, http://www.chennaicorporation.gov.in/online-civic-services/index.htm and raise objections pertaining to determinants / parameters. All questions, including questions raised in the instant writ petition are left open to be raised in such objections.

(c) Aforesaid objections shall be made to Jurisdictional Regional Deputy Commissioner being Regional Deputy Commissioner (Central), having Office at Pullah Avenue, Shenoy Nagar, Chennai-40.

(d) The aforesaid authority i.e., Regional Deputy Commissioner (Central) shall consider all objections and pass final orders in accordance with law and in a manner known to law as expeditiously as possible and in any event, within eight weeks from the date of receipt of objections.

(e) If the writ petitioner does not file any objections, it is open to the aforesaid authority to pass final assessment orders on the basis of available records.

(f) In either case, final assessment orders so passed shall be communicated to the writ petitioner under Due Acknowledgement, within seven working days from the date of final assessment orders.

(g) Though obvious, it is made clear that it is open to the writ petitioner to assail final assessment orders in a manner known to law, if the writ petitioner is not satisfied with the final assessment order and if the writ petitioner chooses to do so, this order will not impede such a legal process.

(h) Until the final assessment orders are made and communicated to the writ petitioner as in the aforesaid manner, there shall be no distraint proceedings/coercive action against the writ petitioner's two apartments/flats concerned, subject to the condition that the writ petitioner continues to pay the existing half-yearly property tax of Rs.29,845/- (Rupees Twenty Nine Thousand Eight Hundred and Forty Five only) for Flat No.F-2 in first floor and Rs.29,845/- (Rupees Twenty Nine Thousand Eight Hundred and Forty Five only) for Flat No.T-2 in third floor of the said property.

18. Both these writ petitions are disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Commissioner,
Corporation of Chennai,
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E.V.R. Periyar Salai,
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2.The Assistant Revenue Officer,
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3.The Assessor,
Revenue Department,
Zone 9, Corporation of Chennai,
No.1, Lake Area,
4th Cross Street,
Nungambakkam,
Greater Chennai-600 034.

4.Regional Deputy Commissioner (Central),
Pullah Avenue Shenoy Nagar,
Chennai-40.

+1cc to Mr.T.C.Gopalakrishnan, Advocate Sr.62519
+1cc to Mr.T.K.S.Bharathy Anandraj, Advocate Sr.62858

W.P.Nos.20526 and 20531 of 2019

nmI[co]
srg 28/08/2019