IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.19680 of 2019
and
W.M.P.Nos.19199 & 19200 of 2019

Mrs.Radha Gajapathi Raju ..Petitioner

vs

1.The Commissioner,
Greater Corporation of Chennai,
"Ripon Building"
Chennai - 600 003.

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

..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 the 2nd Respondent dated 15.05.2019, relating to the assessment of the property of the Petitioner bearing Old No.5/1, New No.4, 2nd Trust Link Street, Mandavelipakkam, Chennai - 600 028 and quash the same and directing the 2nd Respondent to conduct an enquiry in case of assessment of Corporation taxes.

For Petitioner : Mr.T.Srikrishna Bhagavat
for Mr.P.Subba Reddy

For Respondents : Mr.T.C.Gopalakrishnan
Standing counsel
(Chennai Corporation)
For R1 & R2

O R D E R

Mr.T.Srikrishna Bhagavat, learned counsel representing the counsel on record for the writ petitioner is before this Court. Mr.T.C.Gopalakrishnan, learned standing counsel for Chennai Corporation is before this Court on behalf of both respondents.

2. Subject matter of instant writ petition is enhancement of property tax for writ petitioner's property at 4(5/1), 2nd Trust Link Street, Mandavelipakkam, Chennai – 600 028 [hereinafter 'said property' for the sake of brevity and clarity]

3. It is the case of the writ petitioner that said order has been assessed to property tax and the writ petitioner has been paying the property tax as assessed.

4. This Court is informed that there was some additional construction, which was put up qua the said property and this was admittedly communicated to the Chennai Corporation.

5. On instructions, learned standing counsel for Chennai Corporation submits that pursuant to such additional construction being reported to the Chennai Corporation by the writ petitioner in accordance with Section 107(1) of the 'Chennai City Municipal Corporation Act, 1919' ['CCMC Act' for brevity], a notice dated 31.03.2019 bearing reference Notice:7/18-19/144488 was served on the writ petitioner. On instructions, it is submitted that it was served on one Mr.Lakshmi Kumaran, but it is the specific say of the writ petitioner that no notice was served on the writ petitioner. This being a factual dispute, the same cannot be resolved in a writ petition and considering the nature of the lis, it may not be necessary to enter upon this controversy.

6. The complaint of the writ petitioner is that writ petitioner was visited with a notice being a demand notice captioned 'Notice for Current Demand and Arrears Demand'. This notice is dated 15.05.2019 and the same shall hereinafter be referred to as 'impugned demand notice' for the sake of convenience and clarity. Primary and pivotal complaint of writ petitioner is that the impugned demand notice was not preceded by a provisional assessment, an opportunity being given to the writ petitioner for objecting to the same and a final assessment being passed in accordance with law.

7. Writ petitioner, took the aid of a judgment of a Hon'ble Division Bench of this Court in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC

465. Suffice to say that 'Sanjai Gupta Case' principle is to the effect that a demand for property tax has to be preceded by a final assessment order, which in turn should be made after taking into account the objections of the assessee.

8. Learned counsel also relied upon an order dated 07.09.2017 made by a Hon'ble Single Judge in W.P.Nos.24124 & 24125 of 2017, which in turn is based on 'Sanjai Gupta Case' principle. Besides this, this Court also notices that another Hon'ble Single Judge vide order dated 04.02.2019 made in W.P.No.3231 of 2019, drawing inspiration from 'Sanjai Gupta Case' principle, had held that with regard to property tax matters, a provisional notice should be issued to the assessee, objections have to be called for and then a final assessment has to be made in the manner known to law before enhanced property tax is demanded.

9. As far as order dated 04.02.2019 in W.P.No.3231 of 2019 by a Hon'ble Single Judge is concerned, it is not in dispute that the same has been given legal quietus as the same has not been carried in appeal by way of an intra court appeal.

10. In the light of the narrative thus far, considering the facts and circumstances of this case i.e., wherein it is asserted by the Chennai Corporation that a notice has been served on one Mr.Lakshmi Kumaran, whereas it is emphatically submitted by the writ petitioner that no provisional notice has been served on the writ petitioner, as alluded to supra without embarking upon the exercise of resolving this disputation (which in any case cannot be done in a writ petition as it is factual dispute) the aforesaid revised assessment Notice No.7 dated 31.03.2019 bearing reference Notice:7/18-19/144488 (obviously a photo copy) has been received by the learned counsel for writ petitioner in Court as per directions of the Court. Learned standing counsel for Chennai Corporation undertakes to communicate forthwith this order to the jurisdictional Regional Deputy Commissioner.

11. In the aforesaid backdrop, the following order is passed:

a) Writ petitioner shall send objections to the aforesaid 31.03.2019 notice, which shall be treated as a provisional assessment order.

b) The aforesaid objections from the writ petitioner shall be sent to the Regional Deputy Commissioner in the office of the Greater Chennai Corporation at Pulla Avenue, Shenoy Nagar, Chennai - 600 040 within 15 days from today under due acknowledgment i.e., on or before 25.07.2019.

c) On receipt of aforesaid objections, the Regional Deputy Commissioner shall embark upon the exercise of considering all the objections and pass a final assessment order in accordance with law and in a manner known to law. This Court is informed that, the calculation method, is available in the official website of Chennai Corporation namely, http://www.chennaicorporation.gov.in/online-civic-services/index.htm and it is open to the writ petitioner to gather the mode of computation from there and send objections.

d) If the writ petitioner does not send objections within 15 days from today as mentioned above, it is open to the Regional Deputy Commissioner to proceed and make a final assessment order in a manner known to law on the basis of available records.

f) On final assessment order being made in one of the aforesaid modes, Regional Deputy Commissioner shall communicate the same to the writ petitioner under due acknowledgment within seven (7) working days from the date of the final assessment order.

g) Though obvious, it is open to the writ petitioner to assail the final assessment order in the 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 process.

h) Until the aforesaid final exercise of passing a final assessment order and communicating the same to the writ petitioner under due acknowledgment is completed, there shall be no coercive action or distraint proceedings against the writ petitioner, subject to the condition that the writ petitioner continues to pay the existing half-yearly property tax of Rs.60,935/-(Rupees Sixty Thousand Nine Hundred and Thirty Five only)

12. This writ petition is disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To
1.The Commissioner,
Greater Corporation of Chennai,
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Chennai - 600 003.

2.The Assistant Revenue Officer,
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No.1, Lake Area, 4th Cross Street,
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+1 CC to Mr.P.Subba Reddy, Advocate sr 5987.
+1 CC to Mr.T.C.Gopalakrishnan, Advocate sr 58722.

W.P.No.19680 of 2019
and
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VD(CO)
SP(13/08/2019)