IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.23375 to 23381 of 2014

Mrs.Suleikha Banu ...Petitioner in WP.No.23375, 23376, 23378 to 23381 of 2014

Dr.Haneefa ...Petitioner in WP.No.23377 of 2014

Vs.

1.The Commissioner
Corporation of Salem
Salem-636 001

2.The Assistant Commissioner
Hasthampatti Ward Office, Zone-II
Salem Corporation, Hasthampatti
Salem-636007 ...Respondents in all WPs

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to Revision of Property Tax from 1st half year 2008-09, by the 2nd respondent by issuing Notice dated 20.01.2014, in respect of premises bearing Door Nos.265, 266, 269, 268, 267, 264, Chera Rajan Street, Salem-636 001, 264/1, Old No.149, Ward No.29, Chera Rajan Street, Salem-636 001, bearing Assessment Nos.2088998, 2088997, 2089000, 2088994, 2088995, 2088996, 2088999 and quash the same.

For Petitioner : Mr.S.P.Sreenivasulu

For Respondent : Ms.K.Bhuvaneswari for R1 & R2

O R D E R

The petitioner in the respective Writ Petition challenges demand for property tax dated 20.01.2014, for the periods 1999-00 (both halves) to 2013-14 (both halves).

2. Though several grounds have been raised in the writ petitions itself, the only ground raised and canvassed before me by learned counsel for the petitioners is that the petitioners have not been afforded any opportunity prior to

issuance of the impugned demands. According to the learned counsel for the petitioners, no show cause notice or basis for computation of the impugned demands has been furnished and the demands have been issued in violation of principles of natural justice. This has been specifically raised in ground viii and paragraph 7 of the writ petitions.

3. The matters have been hanging fire since 2014. No counter has been filed by the respondents and even today, learned counsel for the respondents only seeks further time.

4. Bearing in mind the limited scope of the matter before me and the specific averment that no show cause notice or basis of assessment has been fixed prior to issuance of the demands, which fact has not been controverted, I am of the view that these writ petitions are liable to be allowed. Accordingly, the impugned demands are set aside.

5. I may refer to my order dated 04.02.2019 passed in W.P.No.3248 of 2019 (N.Krishnan V. The Secretary, Government of Tamil Nadu), wherein I have considered a case similar to present one. The orders reads as follows:-

> '3. The main contentions advanced by the learned counsel for the petitioner are that no show cause notice has been issued by the respondents prior to the issuance of the impugned notice and that no break up of the amount has been set out in the notice itself. The revision thus is contrary to G.O.(Ms) 73, Municipal Administration and Water Supply (MA.IV) Department dated 19.07.2018, which provides for a revision upto only 100% of the existing tax.
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> 4. Per contra, learned Standing Counsel appearing for the Corporation states that the impugned document is only a provisional notice and a final demand would be raised after consideration of the objections of the assessee/petitioner.
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> 5. The notice, on the face of it, states 'Within 15 days of receipt of this Notice, appeal if any, may be preferred to the concerned Regional Deputy Commissioner, Greater Chennai Corporation as per the delegation provided, or else it will be assumed that the Half Yearly Tax is accepted.'
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> 6. A Division Bench of this Court in the case of Sanjai Gupta V. The Commissioner, Corporation of Chennai (2009

(2)CTC465) has considered a similar case holding that an occasion to file an appeal would arise only after a final order has been passed. The decision of the Bench reads as follows:

> '1. ......
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> 2. This Appeal arises out of an interlocutory order passed by the learned Single Judge in W.P.No.4237 of 2009. By consent of both the counsel, the Writ Petition itself is taken in the causelist of the Division Bench. Both the counsel are heard.
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> `3. The submission of Mr.K.V.Babu, learned counsel for the appellant/petitioner is that the Municipal Corporation sent a notice dated 25.4.2007 to the appellant asking him to show cause as to why the property tax should not be revised in the manner indicated in that notice. The notice was supposed to be replied within 15 days. The appellant received that notice on 16.6.2007 and sent a reply to the same on 23.6.2007 pointing out amongst others that there was no alteration or addition in any manner in the building in which the appellant was running a lodging house. That apart, the grievance in the Writ Petition is that without deciding the objections, a subsequent order/notice dated 28.1.2009 has been issued calling upon the appellant/petitioner to pay the balance amount, as per the calculation of the respondents, to the tune of Rs.20,69,393/-. Being aggrieved by this order, the Writ Petition has been filed, wherein the learned Single Judge has directed the deposit of Rs.11 lakhs for granting a stay.
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> 4. Mr.K.V.Babu, learned counsel submits that the demand notice, dated 28.1.2009 is not based on any order passed by the Commissioner and, therefore, the order of the learned Single Judge, asking the appellant to deposit an

amount of Rs.11 lakhs for granting a stay, is unjustified.

5. Mr.L.N.Praghasam, learned ocunsel appearing for the Municipal Corporation submits that the appellant has a remedy to go to the Taxation Appellate Tribunal under Part V of the Taxation Rules read with Section 138 of the Chennai City Municipal Corporation Act, 1919.

6. In our opinion, this submission is misconceived. The occasion to file an Appeal will arise only after an order is passed and based thereon a demand is made. In the present case, the appellant having filed the objections, they were expected to be decided. Without deciding the same, this levy has been calculated and the balance amount of Rs.20,69,393/- has been demanded.

7. In the circumstances, we set aside the order passed by the learned Single Judge. The demand notice dated 28.1.2009, which is impugned in the Writ Petition is also set aside. The Writ Appeal as well as Writ Petition are allowed. Consequently, the connected M.Ps. are closed. There shall be no order as to costs.'

6. The respondent is directed to furnish the basis of assessment/computation of demand to the petitioners within a period of two weeks from the date of receipt of copy of this order. The petitioners in the respective Writ Petitions are permitted to file objections to the same within three (3) weeks from the date of receipt of basis of assessment. The petitioners shall thereafter be heard in person by the respondents and an order of assessment be passed on merits for the periods set out in the demand notices within a period of four (4) weeks from the date of receipt of objections from the petitioners.

7. These writ petitions are allowed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy// Sub Assistant Registrar

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To

1.The Commissioner
Corporation of Salem
Salem-636 001

2.The Assistant Commissioner
Hasthampatti Ward Office, Zone-II
Salem Corporation, Hasthampatti
Salem-636007

+2ccs to M/s.S.P.Sreenivasulu , Advocate SR.No. 79207&79208

W.P.No.23375 to 23381 of 2014

A.SK(18/10/2019)