IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23008 of 2019
and W.M.P.No.22680 of 2019

V.D.Ponkumaran .. Petitioner

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
Greater Chennai Corporation
No.61, Basin Bridge Road
Old Washermenpet
Greater Chennai - 600 021.

3.The Assessor
Revenue Department
Greater Chennai Corporation
No.61, Basin Bridge Road
Old Washermanpet
Greater Chennai - 600 021. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned demand and arrear notice dated 02.02.2019 vide notice No.Z.O.V.R.D.C.No.R1/SPL/2019 and quash the same directing the 2nd and 3rd respondents for inspection and assessment and issue fresh assessment notice for the ground floor as non residential and first and second floor as vacant portion giving prospective effect from 2019.

For Petitioner : Mr.T.K.S.Bharathy Anandraj
For Respondents : Mr.T.C.Gopalakrishnan,
Standing Counsel for Chennai Corporation

ORDER

Mr.T.K.S.Bharathy Anandraj, learned counsel on record for writ petitioner and Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation, who accepts notice on behalf of respondents 2 and 3 are before this Court.

2. With consent of all the aforesaid learned counsel, main writ petition is taken up, heard out and is being disposed of.

3. Subject matter of instant writ petition is enhancement of property tax for writ petitioner's immovable property at 'No.25 (12), Jones Street, George Town, Chennai - 600 001, Independent Building, Extent of Land: 1799 sq. ft.', which shall hereinafter be referred to as 'said property' for the sake of convenience and clarity.

4. There is no dispute or disagreement that the respondent Chennai Corporation has sent a provisional assessment notice dated 29.09.2018 proposing enhancement of half yearly property tax for the said property from Rs.14,915/- (Rupees Fourteen Thousand Nine Hundred and Fifteen only) to Rs.43,410/ (Rupees Forty Three Thousand Four Hundred and Ten only) with effect from first half year of 2018-19 i.e., with effect from 01.04.2018.

5. Learned counsel for writ petitioner submits that half yearly property tax for said property at the existing rate of Rs.14,915/- (Rupees Fourteen Thousand Nine Hundred and Fifteen only) is being paid by the writ petitioner.

6. Learned counsel for writ petitioner submits that without making final assessment, writ petitioner was suddenly visited with a demand notice 'dated 02.02.2019, bearing Reference No.Z.O.V.R.D.C.No.R1/SPL/2019' (hereinafter 'impugned demand notice for brevity, clarity and convenience). Thereafter, writ petitioner sent a representation dated 03.04.2019 in response to the impugned demand notice. From the impugned demand notice, it came to light that Chennai Corporation is now demanding half yearly property tax at the rate of Rs.43,410/- (Rupees Forty Three Thousand Four Hundred and Ten only) for the said property, is learned writ petitioner counsel's say.

7. Before this Court proceeds further, it is necessary to refer to an order made by a Hon'ble Single Judge of this Court being order dated 04.02.2019 in W.P.No.3231 of 2019. Learned Standing Counsel for Chennai Corporation submits that this order made by a Hon'ble Single Judge of this Court has been given legal quietus and has not been carried in appeal by way of an intra Court appeal. In other words, there is no disputation before this Court that this order made by another Hon'ble Single Judge has been given legal quietus and has attained finality.

8. Vide aforesaid order made by a Hon'ble Single Judge of this Court, it has been held that a notice akin to impugned notice is to be treated as provisional assessment order, what

will lie against such a notice to the jurisdictional Regional Deputy Commissioner is not an 'appeal' as mentioned in the impugned notice, but 'objections', the objections if made by the assessee have to be considered by the concerned officer and a final assessment order should be made before enhancing property tax and before a demand qua enhanced property tax is made. To be noted, this order was made by a Ho'ble Single Judge drawing inspiration from a Division Bench judgment of this Court in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465. Also to be noted, Sanjai Gupta principle is to the effect that before a demand for tax is made, objections of the assessee have to be considered and final assessment has to be made.

9. This Court now reverts to the impugned demand notice in the case on hand. The impugned demand notice is a demand where half yearly property tax at the enhanced rate of Rs.43,410/- (Rupees Forty Three Thousand Four Hundred and Ten only) has been demanded, while the existing half yearly rate of property tax is Rs.14,915/- (Rupees Fourteen Thousand Nine Hundred and Fifteen only), which has been alluded to supra.

10. In the light of the aforementioned obtaining legal position, the following order is passed:

a) impugned notice being demand notice dated 02.02.2019 bearing reference No.Z.O.V.R.D.C.No.R1/SPL/2019 is set aside.

b) Writ petitioners shall send detailed objections to the provisional assessment notice dated 29.09.2018, wherein there is a proposal to enhance the half yearly property tax for the said property from Rs.14,915/- (Rupees Fourteen Thousand Nine Hundred and Fifteen only) to Rs.43,410/ (Rupees Forty Three Thousand Four Hundred and Ten only) to the jurisdictional Regional Deputy Commissioner. This Court is informed that jurisdictional Regional Deputy Commissioner in the instant case is Regional Deputy Commissioner (North), having office at No.61, Basin Bridge Road, Old Washermenpet, Chennai - 600 021, hereinafter 'said Officer' for clarity. This is recorded.

c) Said Officer shall consider all objections and pass a final assessment order in accordance with law, in a manner known to law, as expeditiously as possible and in any event within eight weeks from the date of receipt of objections.

d) If writ petitioner does not file objections within a fortnight from the date of provisional assessment, it is open to said Officer to proceed with final assessment and pass final assessment order on the available records. In either case final assessment order passed by the said Officer i.e., post objections or on the basis of available records as the case may be, shall be served on writ petitioner under due acknowledgement within seven working days from the date of final assessment order.

e) Though obvious, it is made clear that if writ petitioner is not satisfied with the final assessment order, it is open to writ petitioner to assail the final assessment order in a manner known to law and if this scenario unfurls, this order will not impede such a legal process.

f) There shall be no distraint proceedings or coercive action against the said property/writ petitioner qua property tax for said property, until final assessment order is made by said Officer and until it is served on the writ petitioner under due acknowledgement in the aforesaid manner, subject to the condition that writ petitioner continues to pay half yearly property tax at the existing rate of Rs.14,915/- (Rupees Fourteen Thousand Nine Hundred and Fifteen only) without any default.

g) To be noted, it has already been recorded that the jurisdictional Regional Deputy Commissioner in the instant case is Regional Deputy Commissioner (North), having office at No.61, Basin Bridge Road, Old Washermenpet, Chennai - 600 021, but he has not been arrayed as respondent herein. Therefore, Standing Counsel for Chennai Corporation undertakes to communicate this order to the said jurisdictional Regional Deputy Commissioner forthwith on receipt of a copy of this order.

This writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to the Government
Government of Tamil Nadu
Municipal Administration and
Water Supply Department (MAAS)
Fort St. George
Chennai - 600 009

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

3.The Assistant Revenue Officer
Zone Office - V
Greater Chennai Corporation
No.61, Basin Bridge Road
Old Washermenpet
Chennai - 600 021.

+1cc to Mr.T.K.S.Bharathy Anandraj, Advocate,SR No.66954
+1cc to Mr.T.C.Gopalakrishnan, Advocate SR.No.66919

akm/12.09.2019 /5p-6c/

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