IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SUNDAR

W.P.No.22343 of 2019
WMP.Nos.21659 and 21660 of 2019

Arcot Gandhi Market Kaaikani Vyabarigal Sangam
Represented by President A.C.Janakiraman
Marriage Hall
No.12, Seshanan Street
Arcot
Vellore District 632503 .. Petitioner

--Vs--

1.Commissioner
Arcot Municipality
Arcot
Vellore District 632503

2.Revenue Inspector
Arcot Municipality
Arcot
Vellore District 632503 .. 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 relating to the Demand Notice (Assessment No.025/004/00707) dated 09.01.2019 and consequent impugned Demand Notice (Assessment No.:025/004/00707) dated 09.05.2019, issued by the 1st respondent herein, quash the same as illegal and consequently forbear the respondents from insisting payment on revised rated of property tax.

For Petitioner : Mr.Salai Varun for Mr.G.Gokul

For Respondents : Mr.Lourdu Paul Maurya

O R D E R

Mr.Salai Varun, learned counsel, representing the counsel on record for writ petitioner and Mr. Lourdu Paul Maurya, learned counsel for both the respondents are before this Court.

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

3. The subject matter of the instant writ petition is enhancement of property tax for an immovable property at Arcot Gandhi Market Kaaikani Vyabarigal Sangam, No.12A, Seshasan Street, Arcot, Vellore District (hereinafter referred to as the 'said property' for the sake of brevity, convenience and clarity). There is no disputation that levy of enhancement of property tax for the said property is governed by the Tamil Nadu District Municipalities Act 1920 (Tamil Nadu Act V of 1920) (hereinafter referred to as the ' District Municipalities Act' for the sake of brevity).

4. With regard to the central theme of the instant writ petition, there is no disputation or disagreement between the learned counsel for the writ petitioner and Mr.Lourdu Paul Maurya, learned counsel for both the respondents that the same is covered by an earlier order made by this Court in W.P.No.19693 of 2019 dated 22.07.2019. This Court is also informed that there is no intra Court appeal against the aforesaid order and the same has been given legal quietus.

5. In the light of the undisputed position of the central theme and the fact that the instant case is covered by the aforesaid earlier order, it would be appropriate to extract/reproduce the earlier order and to hold that in the instant writ petition also, albeit with the caveat/rider, it has become necessary to pass a similar order owing to what unfurled in the hearing today.

6. It is submitted that the said property belongs to the writ petitioner namely Arcot Gandhi Market Kaaikani Vyabarigal Sangam, which this Court is informed is registered as Society under the Central Act namely (Societies Registration Act) Act 21 of 1860. This Court is informed that the assessment for the subject property stood in the name of one A.V.Shanmuga Naicker, who was previously President of the writ petitioner entity and the said individual is no more.

7. Therefore, the writ petitioner will have to submit a revision petition afresh. To be noted, writ petitioner has already submitted a revision petition dated 24.01.2019, but in the name of a different association, owing to the fact that the assessment stood in the name of a person, who is no more and the said property belongs to writ petitioner entity.

8. The writ petitioner shall submit revision petition afresh in the name of the writ petitioner together with a separate

application for substituting the name of the owner qua said property under Rule 8(2) of Schedule IV of the District Municipalities Act. The first respondent shall first dispose of the application under Rule 8(2) and thereafter dispose of the revision in accordance with Rule 12 of Schedule IV of District Municipalities Act in accordance with the order, which covers the instant writ petition. For ease of reference, order in W.P.No.19693 of 2019 is extracted and reproduced hereunder:

> 3. Subject matter of main writ petition is enhancement of property tax for an immovable property at 'No.136, G.S.T. Road, Chrompet, Chennai-600 044', which shall be hereinafter be referred to as 'said property' for the sake of brevity, convenience and clarity.
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> 4. This Court is informed that petitioners are co-owners of said property.
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> 5. This Court is also informed that said property was assessed to property tax under 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920), hereinafter referred to as 'District Municipalities Act' for the sake of brevity, convenience and clarity and property tax so assessed is being paid by the writ petitioners. This Court is also informed that half-yearly property tax for said property as of now is Rs.1,70,228/- (Rupees One Lakh Seventy Thousand Two Hundred and Twenty Eight only) and that the same is being paid. This Court is also informed that half-yearly property tax for said property at this rate is under vogue for about a decade now i.e., from the first half year of 2008-2009.
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> 6. When things stood as above, the respondent-Pallavapuram Municipality issued a notice dated 5.2.2019 captioned 'Special Notice Property Tax - General Revision 2018' (hereinafter 'impugned notice' for brevity), wherein the aforesaid half-yearly property tax for said property has been enhanced from Rs.1,70,228/- (Rupees One Lakh Seventy Thousand Two Hundred and Twenty Eight only) to Rs.2,29,807/- (Rupees Two Lakhs Twenty Nine Thousand Eight Hundred and Seven only)
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> 7. Complaining inter-alia that aforesaid enhancement is very steep, instant writ petition has been filed.
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> 8. This Court heard learned counsel on both sides. There is no disputation or disagreement before this Court that the Statute governing this enhancement is District Municipalities Act and the most relevant part is Schedule IV captioned 'Taxation

and Finance Rules'. To be precise, Schedule IV is in two parts and Part-I captioned as 'Taxation Rules' is of utmost significance.

9. Adverting to the aforesaid Taxation Rules, learned Standing Counsel for Pallavapuram Municipality submitted that enhancement of property tax for said property vide impugned notice has been made as part of general revision, which is to be carried out once in every five years under Rule 8. It was pointed out that this has been mentioned in the impugned notice. Besides all these, there is also a reference to Rules 9 and 10 of Schedule IV of District Municipalities Act (Taxation Rules) in the impugned notice.

10. Rules 9 and 10 of Schedule IV of District Municipalities Act (Taxation Rules), read as follows:

> "[8. (1) The assessment books shall be completely revised by the Executive Authority once in every five years.
>
> [(1-A) (a) Notwithstanding anything contained in sub-rule (1), the State Government may, for sufficient cause, from time to time, by order —
>
> (i) postpone the general revision of assessment of books,
>
> (ii) stay any proceedings relating to the general revision of assessment books, for a period of one or more half-years at a time but not exceeding in any case seven half-years:
>
> Provided that such postponement or stay shall not affect any subsequent general revision of assessment books.
>
> (b) Where the stay is vacated or the period of stay expires, the State Government may direct that proceedings for the general revision of assessment books shall be either commenced de novo or continued from the stage at which such proceedings were stayed.]
>
> 2) The Executive Authority may amend the assessment books at any time between one general revision and another by

inserting therein or removing therefrom any property or by altering the valuation of any property or the amount of tax or subject to any rules which the State Government may make in this behalf, by substituting therein for the name of the owner of any property, the name of any other person who has succeeded by transfer or otherwise to the ownership of the property.] Such amendment shall be deemed to have taken effect on the first day of the half-year in which it is made:

Provided that when the amendment is made in any half-year after the demand notice for that half year has been issued, it shall have effect only from the succeeding half-year except where the fair rent of a building together with land appurtenant to it has been determined by the Controller under the Madras Buildings (Lease and. Rent Control) Act, 1946] :

[Provided further that the decision of the Executive Authority in any disputed case of transfer of ownership of a property shall not give the transferee a legal title to the property.]

[9. When assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the Executive Authority shall give public notice stating that revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government, a railway administration or a company, and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of the municipal office and on the same day be published in the Municipality by beat of drum:]

[Provided that in every case where there is an enhancement in the assessment, the Executive Authority shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned:

> Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso, the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice.]

11. A conjoint reading of Rules 8 and 9 Schedule IV of District Municipalities Act (Taxation Rules), supra, bring to light that there is provision for revision to be considered by the Executive Authority, if enhancement vide notices akin to impugned notice is assailed. Learned counsel for writ petitioners points out that on receipt of impugned notice, writ petitioners have sent their objections dated 3.3.2019.

12. Once an assessee prefers a revision, albeit in the name of objection, the respondent-Municipality has to necessarily consider the same in accordance with the Rules and the most relevant Rule in this regard is Rule 12, which reads as follows:

> "12. No petition under rule 9, 10 or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case."

13. A perusal of Rule 12 reveals that a revision cannot be disposed of unless the petitioner (petitioner has to be read as 'assessee') is given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.

14. Before proceeding further, it is to be noted that the term 'Executive Authority' occurring in Rule 9, supra, has beendefined under Section 3(8-C) of District Municipalities Act, which reads as follows:

> "3(8-C) 'Executive Authority' means an officer of the State Government, or of the local authority (not being the Chairman or Vice-Chairman or a Member of the Council) as may be specified by the State Government]."

15. On instructions, learned Standing Counsel

for respondent-Municipality submits that 'Executive Authority' has since been specified by the State Government and the Commissioner of Pallavapuram Municipality is the Executive Authority. This is recorded.

16. From the narrative thus far, it follows as a inevitable and indispensable sequitur that the respondent-Pallavapuram Municipality has to consider the objections of the writ petitioners by giving reasonable opportunity to the writ petitioners to appear either in person or through their authorised agent and to represent their case.

17. Therefore, the following order is passed:

(a) Impugned notice being notice dated 5.2.2019 captioned 'Pallavapuram Municipality, Special Notice, Property Tax - General Revision 2018' pertaining to Assessment No.007/0-41/00638 Old Assessment No.007/51138 for the said property at No.136, G.S.T. Road, Chrompet, Chennai-600 044 is not interfered with, but implementation of the same is subject to the directions infra.

(b) The first respondent i.e., Commissioner of Pallavapuram Municipality shall communicate to the first writ petitioner at the address given in the writ petition, namely, No.12, Padmavathiar Road, Chennai-600 086 date, time and venue for personal hearing.

(c) On receipt of aforesaid notice, the first writ petitioner along with other co- writ petitioners shall nominate either one of them or their authorised agent to go before the first respondent, file additional objections along with supporting documents if necessary and represent their case against the enhancement made vide impugned notice.(d) If the writ petitioners do not avail of personal hearing, it will be open to the first respondent to pass orders on the basis of available records.

(e) If the writ petitioners avail of personal hearing, the first respondent shall consider all their objections and thereafter pass an order in revision qua
impugned notice.

(f) In the interregnum if any orders have been passed by the first respondent or any other Officer of the Pallavapuram Municipality, pursuant to the objections made by the writ petitioners, the same shall stand automatically set aside without any reference to this Court as finality will be subject to orders to be passed by the first respondent in the aforesaid manner.

(g) The order passed by the first respondent in the aforesaid manner interalia in exercise of powers under Rule 12 of Taxation Rules under Schedule IV of District Municipalities Act, shall be communicated to the first writ petitioner under Due Acknowledgment within seven working days from the date of such order in revision and writ petitioners submit that such communication shall be deemed and construed to be service on each/all of them.

(h) The orders in the aforesaid manner shall be passed by the first respondent as expeditiously as possible and in any case, within four weeks from the date fixed for personal hearing.

(i) Until orders are passed in the aforesaid manner and communicated to the first writ petitioner, there shall be no coercive action or distraint proceedings qua said property or against the writ petitioners subject to the condition that the writ petitioners continue to pay half yearly property tax at the existing rate of Rs.1,70,228/- (Rupees One Lakh Seventy Thousand Two Hundred and Twenty Eight only) without any default.

9. Though obvious for the sake of clarity and specificity, it is made clear that the operative portion of the earlier order dated 22.07.2019 in W.P.No.19693 of 2019 would govern to proceed in the instant case also albeit after decision on substitution of name under Rule 8(2), which has been alluded to supra.

10. In this view of the matter, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. Commissioner
   Arcot Municipality
   Arcot
   Vellore District 632503

2. Revenue Inspector
   Arcot Municipality
   Arcot
   Vellore District 632503

+1 cc to M/s.G.Gokul, Advocate, S.R.No.65772

+1 cc to M/s.Lourdu Paul Maurya, Advocate, S.R.No.65689

W.P.No.22343 of 2019
WMP.Nos.21659 and 21660 of 2019

RR(CO)
SSM(12/09/2019)