IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.21493 of 2019
and
W.M.P.No.20701 of 2019

Mrs.Azeema Bi .. Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary to the Government
Revenue Department
Fort St. George, Rajaji Salai
Chennai - 600 009.

2.The Revenue Officer
Revenue Department
Greater Chennai Corporation
Ripon Building, Chennai - 600 003.

3.The Assistant Revenue Officer, Zone-5
Greater Chennai Corporation
No.61, Basin Bridge Road
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 pertaining to the impugned notice issued by the 3rd respondent vide demand notice vide Z.O.V.R.D.C.No.R1/SPL/2019 dated 06.05.2019 revising the property tax from Rs.15,398/- to Rs.43,945/- per half year from 2019-2020 and quash the same and subsequently direct the 2nd & 3rd respondent to restructure the property tax amount as according to the provisions of the Chennai City Municipal Corporation Act, 1919.

For Petitioner : Mr.E.Suganthan for
M/s.Nathan and Associates [Law Firm]

For Respondents: Mr.R.P.Pratap Singh
Government Advocate taking notice
on behalf of R1.
Mr.T.C.Gopalakrishnan,
Standing Counsel for
Chennai Corporation for R2 & R3.

ORDER

Mr.E.Suganthan, learned counsel of M/s.Nathan and Associates [Law Firm] on behalf of writ petitioner, Mr.R.P.Pratap Singh, learned Government Advocate, who accepts notice on behalf of first respondent 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 immovable property at 'No.25(2), Anderson Street, Kothaval Chavadi, Sowcarpet, Chennai - 600 001', which shall hereinafter be referred to as 'said property' for the sake of convenience and clarity.

4. It is submitted without any disputation or disagreement that said property was assessed to property tax by Chennai Corporation and the last obtaining rate of property tax was Rs.15,398/- (Rupees Fifteen Thousand Three Hundred and Ninety Eight only) per half year.

5. Adverting to a receipt dated 16.07.2018, learned counsel for writ petitioner submits that half yearly property tax for said property at the said rate of Rs.15,398/- (Rupees Fifteen Thousand Three Hundred and Ninety Eight only) has been paid up to II/18-19 or in other words up to 31.03.2019.

6. Learned counsel for writ petitioner submits that writ petitioner was suddenly visited with a demand notice 'dated 06.05.2019, bearing Reference No.Z.O.V.R.D.C.No.R1/SPL/2019' (hereinafter 'impugned demand notice for brevity, clarity and convenience). From the impugned demand notice, it came to light that Chennai Corporation is now demanding half yearly property tax at the rate of Rs.43,945/- (Forty Three Thousand Nine Hundred and Forty Five only) for the said property, is learned writ petitioner counsel's say. Learned counsel for writ petitioner also submits that there was no provisional assessment, there was no enhancement to the knowledge of the writ petitioner and no objections were called for for proposed enhancement of property tax from the writ petitioner.

7. Mr.R.P.Prathap Singh, learned Government Advocate, who has accepted notice on behalf of respondent No.1, submitted that a General Revision of property tax is under way and guidelines for such enhancement has been issued to Chennai Corporation in this regard.

8. Learned Standing counsel for Chennai Corporation on behalf of respondents 2 and 3 herein pointed out that prior to the impugned demand notice, a notice dated 19.11.2018 has also been issued to writ petitioner, wherein it has been clearly mentioned that the current demand of property tax is at the rate of Rs.43,945/- (Forty Three Thousand Nine Hundred and Forty Five only), but the writ petitioner has not responded or replied. In response to this, learned counsel for writ petitioner submits that writ petitioner is 70 years old, writ petitioner took a while to come to terms with the sudden demand without any enhancement proceedings. A perusal of notice dated 19.11.2018, referred to by learned Standing Counsel for Chennai Corporation reveals that 19.11.2018 notice is also a demand notice. In other words, it comes out clearly that there has been no provisional assessment.

9. 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.

10. 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.

11. This Court now reverts to the impugned demand notice in the case on hand. The impugned demand notice is a demand where property tax at the enhanced rate of Rs.43,945/- (Forty Three Thousand Nine Hundred and Forty Five only) has been demanded, while the existing rate of property tax is Rs.15,398/- (Rupees Fifteen Thousand Three Hundred and Ninety Eight only) as is

evident from the receipt dated 16.07.2018, which has been adverted and alluded to supra.

12. Though learned Standing Counsel for Chennai Corporation submits that a provisional assessment order was sent to writ petitioner, there is nothing to show that any provisional assessment order was served on the writ petitioner. To be noted, it is submitted by learned Standing Counsel for Chennai Corporation that provisional assessment order was dispatched by ordinary post and writ petitioner submits that no provisional assessment order was ever received. Therefore, without entering upon this factual dispute in this writ petition, in the light of the aforementioned obtaining legal position, the following order is passed:

a) Chennai Corporation shall serve a provisional assessment order under due acknowledgement on the writ petitioner proposing enhancement of half yearly property tax for said property from Rs.15,398/- (Rupees Fifteen Thousand Three Hundred and Ninety Eight only) to Rs.43,945/- (Forty Three Thousand Nine Hundred and Forty Five only) within a fortnight from the date of receipt of a copy of this order.

b) without waiting for the aforesaid provisional assessment order, writ petitioner undertakes to pay half yearly property tax for the current half year of I/2019-20 i.e., for the period from 01.04.2019 to 30.09.2019 at the rate of Rs.15,398/- (Rupees Fifteen Thousand Three Hundred and Ninety Eight only). If tendered, Chennai Corporation shall receive the same and issue a receipt to writ petitioner. Such payment shall be made within one week from the date of receipt of a copy of this order.

c) Within a fortnight from the date of receipt of provisional assessment order, writ petitioner shall send objections to the jurisdictional Regional Deputy Commissioner of Chennai Corporation. This Court is informed that jurisdictional 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.

d) Said Officer shall consider all objections and pass 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.

e) 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.

f) 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.

g) 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.15,398/- (Rupees Fifteen Thousand Three Hundred and Ninety Eight only) without any default.

h) 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 petitions are closed.

vsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Secretary to the Government,
Government of Tamil Nadu
Revenue Department
Fort St. George, Rajaji Salai
Chennai - 600 009.

2.The Revenue Officer
Revenue Department
Greater Chennai Corporation
Ripon Building, Chennai - 600 003.

3.The Assistant Revenue Officer, Zone-5
Greater Chennai Corporation
No.61, Basin Bridge Road
Chennai - 600 021.

4. The Regional Deputy Commissioner
of Chennai Corporation, Chennai.
No.6, Basin Bridge Road,
Old Washermenpet,
Chennai - 21.

+1cc to M/s.Nathan & Associates, vide SR.No.63588
+1cc to Mr.T.C.Gopalakrishnan, Advocate, SR.No.63320
+1cc to the Govt.Pleader, Vide Sr.No.63803

W.P.No.21493 of 2019 and
W.M.P.No.20701 of 2019

Kak(09/09/2019)