IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.08.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.22583 of 2019
and W.M.P.No.22016 of 2019

Chundoor Venkata Rangaiah Charities
rep. By its Managing Trustee
M.Ashok Kumar
S/o.M.Srinivasaiah
No.74, Devaraja Mudali Street
Park Town, Chennai - 600 003 .. Petitioner

Vs.

The Assistant Revenue Officer
Zone-9, Revenue Department
Greater Chennai Corporation
No.1, Lake Area, 4th Cross Street
Nungambakkam
Chennai - 600 034 .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the demand notice issued by the respondent in No.Ma.a.-9/Va.Thu.Na.Ka.R1/DN-117/90/2018 dated 14.11.2018 and quash the same.

For Petitioner : Mr.S.Elamurugan

For Respondent : Ms.Padma Shalini
for Mr.T.C.Gopalakrishnan
Standing Cousnel

ORDER

Mr.S.Elamurugan, learned counsel on record for writ petitioner and Ms.Padma Shalini, learned counsel representing Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation, who accepts notice on behalf of sole respondent, are before this Court.

2. With consent of both the 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 '519 (519) Anna Salai from Teynampet Signal to Kamarajar Arangam, Teynampet, Chennai – 600 006, independent building, admeasuring 2300 sq.ft', 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.24,880/- (Rupees Twenty Four Thousand Eight Hundred and Eighty only) per half year.

5. Adverting to a receipt dated 12.09.2018, learned counsel for writ petitioner submits that half yearly property tax for said property at the said rate of Rs.24,880/- (Rupees Twenty Four Thousand Eight Hundred and Eighty only) has been paid up to I/18-19.

6. Learned counsel for writ petitioner submits that writ petitioner was suddenly visited with a demand notice 'dated 14.11.2018, bearing Reference No.Ma.a.-9/Va.Thu.Na.Ka.R1/DN-117/90/2018' (hereinafter 'impugned demand notice for brevity, clarity and convenience). From the impugned demand notice, it came to light that Chennai Corporation is now demanding property tax arrears to the tune of Rs.64,290/- (Rupees Sixty Four Thousand Two Hundred and Ninety 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. Learned Standing counsel for Chennai Corporation on behalf of sole respondent herein pointed out that prior to the impugned demand notice, a notice dated 24.09.2018 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.44,585/- (Rupees Forty Four Thousand Five Hundred and Eighty Five only), but the writ petitioner has not responded or replied.

8. 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.

9. 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.

10. This Court now reverts to the impugned demand notice in the case on hand. The impugned demand notice is a demand where property tax arrears has been demanded at the enhanced rate of Rs.64,290/- (Rupees Sixty Four Thousand Two Hundred and Ninety only), while the existing rate of half-yearly property tax is Rs.24,880/- (Rupees Twenty Four Thousand Eight Hundred and Eighty only) as is evident from the receipt dated 12.09.2018, which has been adverted and alluded to supra.

11. 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) Impugned demand notice dated 14.11.2018 is set aside. To be noted, impugned demand notice is set aside solely on the ground that it was not preceded by provisional assessment notice calling for objections, if any. In other words, impugned demand notice is set aside without expressing any view or opinion on merits of the matter.

b) The notice dated 24.09.2018 shall be treated as provisional assessment notice.

c) 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.24,880/- (Rupees Twenty Four Thousand Eight Hundred and Eighty 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.

d) For the aforesaid provisional assessment order, writ petitioner shall send objections to the jurisdictional Regional Deputy Commissioner of Chennai Corporation within a fortnight from the date of receipt of a copy of this order. This Court is informed that jurisdictional Regional Deputy Commissioner in the instant case is Regional Deputy Commissioner (Central) having office at Greater Chennai Corporation, Pulla Avenue, Shenoy Nagar, Chennai - 40 , hereinafter 'said Officer' for clarity. This is recorded.

e) 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.

f) If writ petitioner does not file objections within a fortnight from the date of receipt of copy of this order, 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.

g) 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.

h) 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.24,880/- (Rupees Twenty Four Thousand Eight Hundred and Eighty only) without any default.

i) To be noted, it has already been recorded that the jurisdictional Regional Deputy Commissioner in the instant case is Regional Deputy Commissioner (Central) having office at Greater Chennai Corporation, Pulla Avenue, Shenoy Nagar, Chennai - 40, 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.

j) Though obvious, it is made clear that it is open to Chennai Corporation to issue suitable demand notice if the need arises post final assessment passed in the aforesaid manner.

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 (Insp Cell)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Revenue Officer
Zone-9, Revenue Department
Greater Chennai Corporation
No.1, Lake Area, 4th Cross Street
Nungambakkam
Chennai – 600 034

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No. 66461
+1cc to Mr.S.Elamurugan, Advocate, S.R.No. 66073

W.P.No.22583 of 2019 and
W.M.P.No.22016 of 2019

SJ(CO)
GN(21/08/2019)