IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.25561 of 2019
and
W.M.P.No.25095 of 2019

M/s.Kamala Firm
Rep by its Partner CT.Valliappan
New No.295, Old No.156, N.S.K.Salai
Vadapalani
Chennai - 600 026 ..Petitioner

vs

1.The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration
Fort St.George
Chennai - 600 009

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003

3.The Regional Deputy Commissioner,
In-charge for Assessment
of Property Tax for Zone 10
Greater Chennai Corporation
Revenue Department
Ripon Building
Chennai - 600 003

4.The Assistant Revenue Officer,
Zone-10, Ward No.130,
Greater Chennai Corporation,
New No.177, Old No.64, N.S.K.Salai,
Chennai - 600 024 ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records from the file of the second and fourth respondents leading to the Revised Provisional Assessment Notice 7/18-19/126178 dated 02.01.2019 titled property tax Revised Assessment, in respect of the petitioner's property in Property Assessment No.10-130-05239-000 corresponding to Old Assessment No.08-121-0113-000 and quash the same consequently with a direction to Second and Third Respondents to consider the Petitioner's objection in terms of the G.O.Ms.No.73 dated 19.07.2018 and not to harass the Petitioner to pay the tax as per the impugned Revised Assessment Notice dated 02.01.2019 till the objection is considered and suitable order is passed, by issue of a Writ of Certiorarified Mandamus any other appropriate writ, order or direction in the nature of a writ and pass such other suitable orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Thirumalai

For Respondents : Mr.R.P.Pratap Singh
Government Advocate for R1

Mr.T.C.Gopalakrishnan
Standing counsel
(Chennai Corporation)
For R2 to R4

O R D E R

Mr.R.Thirumalai, learned counsel on record for writ petitioner and Mr.R.P.Pratap Singh, learned Government Advocate, who accepts notice for 1st respondent, Mr.T.C.Gopalakrishnan, learned standing counsel for Chennai Corporation, who accepts notice on behalf of respondents 2 to 4 are before this Court.

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

3. Subject matter of this writ petition is enhancement of property tax for writ petitioner's property at '295 (156), N.S.K.Salai, Vadapalani, Chennai - 600 026, Cinema Theater, Extent of Land:24000 Sq.Ft' [hereinafter 'said property' for brevity, clarity and convenience]

4. A notice captioned 'Notice No.7: Revised Assessment – 2018-2019 dated 02.01.2019 bearing reference 7/18-19/126178' [hereinafter 'impugned notice' for brevity] has been called in question.

5. A perusal of the impugned notice reveals that it is a proposal to enhance half yearly property tax for said property from Rs.37,900- to Rs.7,87,970/- with effect from I/18-19 or in other words, with effect from 01.04.2018.

6. It is contended by learned counsel for writ petitioner that the enhancement is exorbitant and is not commensurate with said property besides parameters and determinants, governing the same.

7. A perusal of the impugned notice reveals that it says that there is a provision for appeal to the Regional Deputy Commissioner, Greater Chennai Corporation. On instructions, learned standing counsel for Chennai Corporation submits that the jurisdictional Regional Deputy Commissioner in the instant case is Regional Deputy Commissioner (Central) at office of Greater Chennai Corporation, Pulla Avenue, Shenoy Nagar, Chennai – 600 040.

8. Though the impugned notice refers to an appeal, this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019, has held that notices of this nature are provisional assessments, assessee should be permited to file objections and final assessment orders have to be passed before any demand is made.

9. To be noted, the aforesaid order made by a Hon'ble Single Judge of this Court has been made by drawing inspiration from Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465.

10. Sanjai Gupta Case principle is to the effect that before a demand is made, there should be final assessment after taking into account assessee's objections to provisional assessment.

11. Therefore, what would now be sent in response to the impugned notice, shall be 'objections' and not an 'appeal'. These objections shall be sent to the aforementioned jurisdictional Regional Deputy Commissioner at the aforementioned address.

12. To be noted, from the case file placed before this Court, it comes to light that the writ petitioner has already sent one set of objections on 25.02.2019.

13. It is to be noted that as mentioned in the impugned notice, the calculation method for the proposed enhancement is available in the official website of Chennai Corporation at http://www.chennaicorporation.gov.in/online-civic-services/index.htm.

14. In the light of the narrative thus far, the following order is passed:

a) The impugned notice is a provisional assessment order.

b) In addition to objections dated 25.02.2019, sent by the writ petitioner, further objections raising all grounds including grounds raised in instant writ petition shall be sent by the writ petitioner to the jurisdictional Deputy Commissioner being Regional Deputy Commissioner (Central) at Pulla Avenue, Shenoy Nagar, Chennai - 600 040.

c) If the writ petitioner does not send additional objections, it is open to the jurisdictional Regional Deputy Commissioner to proceed and pass final assessment order based on the objection that has been sent by the petitioner on 25.02.2019 as well as records and files available before him.

d) If the writ petitioner files additional objections, aforesaid jurisdictional Regional Deputy Commissioner shall consider all objections and pass final assessment order in accordance with law and in a manner known to law as expeditiously as possible and in any event within four (4) weeks from the date of receipt of additional objections.

e) The final assessment order so passed shall be communicated to the writ petitioner under due acknowledgment within seven(7) working days from the date of the final assessment order.

f) Though obvious, it is made clear that it is open to the writ petitioner to assail the final assessment order in a manner known to law, if the writ petitioner is not satisfied with the final assessment order. If such a course is adopted by the writ petitioner, this order will not impede such a legal process.

g) There shall be no coercive action or distraint proceedings qua said property or writ petitioner until final assessment order is made and served on the writ petitioner with due acknowledgment in the aforesaid manner, subject to the condition that the writ petitioner continues to pay property tax at the existing half yearly rate of Rs.37,900/-(Rupees Thirty Seven Thousand and Nine Hundred only) for the said property.

h) Learned Standing counsel for Chennai Corporation undertakes to communicate this order to jurisdictional Regional Deputy Commissioner i.e., Regional Deputy Commissioner (Central) at office of Greater Chennai Corporation, Pulla Avenue, Shenoy Nagar, Chennai - 600 040 under cover of suitable letter.

15. This writ petition is disposed of with aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
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Chennai - 600 009

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New No.177, Old No.64, N.S.K.Salai,
Chennai - 600 024

+2ccs to Mr.R.Thirumalai , Advocate SR.No. 74955
+1cc to Mr.T.C.Gopalakrishnan , Advocate SR.No. 74999
+1 cc to Government Pleader Sr.No. 75616

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sv
A.SK(18/09/2019)