

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.30855 of 2018

And

W.M.P.No.36007 and 36009 of 2018

Sri Subbulakshmi Krishnasamy Reddiar
Educational Trust, Cuddalore
Rep. By its Managing Trustee
Dr.K.Rajendran
S/o.Krishnasamy
112, Nellikuppam Main Road
Cuddalore - 607 001

.. Petitioner

Vs.

1. The Secretary
Government of Tamil Nadu
Department of Municipal Administration and Water Supply
Secretariat, Fort St. George
Chennai - 600 009

2. The Commissioner
Municipal Administration
Commissionerate of Municipal Administration
Chepauk, Chennai - 600 005

3. The Commissioner
Cuddalore Municipality
Bharathi Road, Cuddalore

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records pertaining to Special Notice No.093/0000379 dated 12.07.2018 received on 29.08.2018 issued by the 3rd respondent and the consequential proceedings NK No.2472/2018/A1 dated 26.09.2018 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.P.Pratap Singh
Government Advocate for R1 and R2

Mr.P.Srinivas
Standing Counsel for R3

O R D E R

Mr.R.Subramanian, learned counsel on record for writ petitioner, Mr.R.P.Pratap Singh, learned Government Advocate on behalf of first and second respondents and Mr.P.Srinivas , learned Standing Counsel on behalf of third respondent are before this Court.

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

3. Subject matter of this writ petition is, enhancement of half yearly property tax for the property owned by the writ petitioner.

4. Notwithstanding several averments that have been made in the affidavit filed in support of the writ petition and notwithstanding several grounds urged/contentions canvassed in the affidavit filed in support of the writ petition, at the hearing learned counsel for writ petitioner restricted his submissions and submitted that submissions made at the Bar on instructions give the correct picture qua factual matrix. Such facts projected at the hearing are given below as short facts shorn of elaboration. To be noted, there is no dispute by learned Standing Counsel for third respondent municipality regarding these facts submitted at the Bar.

5. Short facts shorn of elaboration, particulars and details or in other words factual matrix imperative for disposal of instant writ petition are as follows:

a) Writ petitioner is a Charitable Trust running a school in the name and style 'Krishnasamy Memorial Matriculation Higher Secondary School' in Cuddalore and property tax assessment number for this property is 093/003/00958. This property shall be referred to as 'said property' for the sake of convenience and clarity.

b) Writ petitioner was visited with a special notice dated 12.07.2018 under Rules 9 and 10 of Schedule IV to the 'District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' ('said Act' for brevity) proposing to enhance property tax to Rs.3,14,086/- per half year from II/2017-18 and calling for objections if any. Thereafter third respondent issued 'demand notice dated 26.09.2018 for said property (hereinafter 'impugned demand notice' for brevity). According to learned counsel for writ petitioner, this impugned demand notice has been issued before the

expiry of time granted for filing objection to the special notice.

c) In the aforesaid circumstances, instant writ petition has been filed assailing the impugned demand notice.

6. From the narrative of factual matrix supra, it would be clear that case of the writ petitioner is that there has been upward revision / enhancement of property tax.

7. To be noted, it is submitted that with regard to said property, half yearly property tax has been enhanced to Rs.3,14,086/- (Rupees Three Lakhs Fourteen Thousand Eighty Six only) per half year from II/2017-18

8. To be noted, writ petitioner submits that payment of property tax at existing rate upto current half year will be made within a fortnight from the date of receipt of a copy of this order, if not already made.

9. Be that as it may, learned Standing Counsel on behalf of third respondent submits that there are Government Orders pertaining to general revision and that the said Municipality has embarked upon the exercise of enhancement of property tax pursuant to such Government Orders only as part of general revision.

10. The issue in the instant writ petition is not whether said Municipality is entitled to enhance the property tax or not. The issue is, procedure for enhancement of Property tax has not been followed.

11. In this regard, there is no dispute or disagreement that this matter is governed by said Act as obtaining today. It is also not in dispute that the Commissioner of said Municipality is the authority vested with powers for enhancement of property tax under said Act.

12. A perusal of structure and scheme of said Act reveals that procedure and methodology have been prescribed for assessment/enhancement of property tax. In the instant case, there is nothing on record to demonstrate that the prescribed procedure has been followed.

13. In this regard, dealing with enhancement of Property Tax by Chennai Corporation, a Hon'ble single judge of this Court vide order dated 04.02.2019 made in W.P.No.3231 of 2019 following the principle laid down by a Hon'ble Division Bench in Sanjai Gupta Vs. The Commissioner, Corporation of Chennai reported in 2009 (2) CTC 465 has held that with regard to

enhancement of property tax, there has to be a provisional assessment, an opportunity has to be given to the assessee to object to the same and a final Assessment Order can be passed only after considering the objections of the assessee. It has been held as a sequitur that demand for property tax can be made only after final assessment.

14. In the light of the aforesaid narrative, this Court passes the following order:

a) Impugned demand notice dated 26.09.2018 with regard to said property is set aside. To be noted, the same is set aside solely on the ground that existing property tax has been enhanced suddenly and an opportunity to the assessee to object to the same is imperative and therefore, no opinion is expressed on merits qua enhancement;

b) Writ petitioner undertakes to pay half-yearly property tax at the existing rate for said property within the time frame prescribed under the rules in this regard under the said Act. If there is delay or default on the part of the writ petitioner in paying property tax at the existing rate, it will be open to said Municipality to proceed against the writ petitioner for recovery of the same.

c) With regard to enhancement of property tax for said property vide special notice dated 12.07.2018, writ petitioner shall send objections/revision within a fortnight from the date of receipt of a copy of this order and the third respondent, whom this Court is informed is the Executive Authority within the meaning of Section 2(8-C) of said Act shall dispose of the objections / revision on their own merits and in accommodate with law, particularly, Rule 12 of Schedule IV to said Act.

d) The final assessment of property tax made in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement within seven working days from the date of final assessment being made.

e) Though obvious, it is made clear that it is open to the writ petitioner to seek statutory appellate remedy available under the statute against the final assessment and this order will not impede such a legal process, if the writ petitioner chooses to adopt such a course.

15. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Chennai - 600 009
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Chepauk, Chennai - 600 005
3. The Commissioner
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Bharathi Road, Cuddalore

+1cc to Mr.R.Subramanian, Advocate SR.No.66597

akm/16.09.19/5p-5c/

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