IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.20802 of 2015
and
M.P.No.2 of 2015

Kamal Babbar ... Petitioner

Vs.

1.The Tahsildar
Area-V, Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, M.C.Road,
Anna Park,
Chennai – 600 021.

2.The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chennai – 600 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the issue of attachment notice dt 6.7.2015 in Proceedings No.5/060/03741/00 claiming a sum of Rs. 1,77,180/- as arrears of tax and the surcharge at Rs.76963/- in all amounting to Rs.2,54,143/- for the period between the 1st half of the 2007-08 and 1st half of the 2015-16 by the Tahsildar, Area-V, Chennai Metropolitan Water Supply and Sewerage Board, No.1, M.C.Road, Anna Park, Chennai – 600 021, the 1st respondent herein and quash the same.

For Petitioner : Mr.D.Ashok Kumar

For R1 and R2 : Mr.G.Janakiraman
Standing Counsel for CMWSSB

O R D E R

The writ petition on hand is filed to call for the records pertaining to the notice, dated 06.07.2015, in Proceedings No.5/060/03741/00, passed by the 1st respondent.

2.The petitioner states that he is the owner of the subject property in which the Water and Sewerage Tax assessment is made and the notice is issued. The learned counsel for the petitioner states that the petitioner is an occupant of a portion of the building and the assessment of Water and Sewerage Tax is made for the entire building, and thus, the very impugned notice is not in accordance with the legal requirements to be complied with. The respondents have not made proper assessment and have imposed Water and Sewerage Tax on taking into consideration the entire premises, which is improper.

3.This Court is of the considered opinion that the Water and Sewerage charges are determined based on the Property Tax assessment made by the Chennai Corporation. In other words, Property Tax assessment is to be taken into consideration for the purpose of determining the Water and Sewerage Tax. Thus, if at all the assessment is not made properly, the competent authorities are at liberty to make the order of assessment with reference to the Property Tax assessment made by the Corporation, and accordingly, determine the Water and Sewerage Tax to be paid by the petitioner. However, the present writ petition is filed with reference to the notice issued by the 1st respondent. The petitioner has to prefer an appeal if any grievance exists with reference to the Water and Sewerage Tax to be levied. When an appeal remedy is available, without exhausting the same, the High Court cannot entertain a writ proceedings and the appeal remedy can never be undermined. The petitioner has to prefer an appeal by following the procedures contemplated.

4.Undoubtedly, statutory appellate remedy provided is to be exhausted. Appeal remedy is efficacious and the Appellate Authority is the final fact finding authority. The findings of the Appellate Authority would be of more assistance to the High Court for the purpose of exercise of judicial review under Article 226 of the Constitution of India. Contrarily, disputed facts cannot be adjudicated and there is a possibility of error in view of the fact that the findings are to be given in a writ proceedings only based on the affidavits and the photocopies of the limited documents enclosed by the parties. In this view of the matter, this Court is of the opinion that in all circumstances, the parties are expected to exhaust the appeal remedy provided under the Statute. The legislative intention to contemplate such appeals have a definite purpose and thus, the rule is to prefer an appeal and entertaining a writ petition can be done only under extraordinary circumstances where the damage if any caused cannot be compensated or in need of urgency and not otherwise.

5.In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal within a period of four weeks from the date of receipt of a copy of this order, and on receipt of any such appeal, the competent Appellate Authority shall consider the same on merits and in accordance with law and dispose of the same as expeditiously as possible, after affording opportunity to the petitioner.

6.With the above liberty, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mkn

To

1.The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chennai - 600 002.

2.The Tahsildar,
Area-V, Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, M.C.Road,
Anna Park,
Chennai - 600 021.

+1cc to M/s.D.Ashok Kumar, Advocate SR.No.31656

W.P.No.20802 of 2015

PCH (CO)
B.VC(28.07.2021)