IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.8609 and 9478 of 2020
and W.M.P.Nos.10408 of 2020

R.Venkataramanan ... Petitioner in both W.Ps.

-Vs-

The Commissioner
Chengalpattu Municipality
Chengalpattu,
Chengalpattu District. ... Respondent in both W.Ps.

Prayer in W.P.No.8609 of 2020 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to Call for the impugned records of the Respondent herein the Property Tax demand notices (3 Nos) viz. 1) proceedings Old Assessment No.018/016/00403 and New Assessment No.018/160106 dated 12.11.2018 2)Proceedings Old Assessment No.018/016/00404 and New Assessment No. 018/160107 and 3)Old Assessment No.018/016/00405 and New Assessment No. 018/160108 both dated 14.11.2018 in respect if Radha Mahal single Door old 2 new No.1A Councilor Devarajanar Street Chengalpattu-603 001 passed by the Respondent herein.

Prayer in W.P.No.9478 of 2020 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus Directing the Respondent /Commissioner Chengalpattu Municipality the respondents to grant permission to demolish the old dilapidated building situated of Radha Mahal single Door old No 2 New No.1A Councilor Devarajanar Street Chengalpattu-603 001 in accordance with the provisions of law.

For Petitioner
in both Wps :Mr. A.Arumugam

For Respondent
in both Wps :Mr.P.Srinivas, Standing Counsel

C O M M O N   O R D E R

The issues involved in both the writ petitions are inter-connected and hence they are taken up, heard together and disposed of through this common order.

2. W.P.No.8609 of 2020 has been filed challenging the property tax demand notices issued by the respondent, calling upon the petitioner to pay the property tax dues to the tune of Rs.31,02,793/-.

3. W.P.No.9478 of 2020 has been filed for the issue of a writ of Mandamus directing the respondents to act upon the application submitted by the petitioner on 03.01.2020, wherein the petitioner has sought for permission for demolition of the building situated in the subject property.

4. The case of the petitioner is that, he is the absolute owner of the subject property and initially he was running a cinema theatre in the property. Subsequently, he had converted the usage of the building into a marriage hall. The petitioner received property tax demand notices in the year 2004 and aggrieved by the revision of tax, the petitioner filed an appeal before the Taxation Appellate Committee. The petitioner also deposited 50% of the amount due without prejudice to his rights. The appeal that was filed by the petitioner was pending before the Taxation Appellate Committee and no orders have been passed in the appeal.

5.In the meantime, the impugned property tax demand notices were issued to the petitioner, calling upon the petitioner to pay a total sum of Rs.31,02,793/- towards revision of property tax. Aggrieved by the same, Writ Petition No.8609 of 2020 has been filed challenging the revision.

6. The further case of the petitioner is that, the building in question is in a dilapidated condition and requires immediate demolition and therefore, the petitioner made an application before the respondent on 03.01.2020 seeking for permission for demolition. It is also stated that the petitioner also applied for the disconnection of electricity and paid the necessary fees and charges towards the same. Since no sanction was granted for demolition of the building, the petitioner has filed one more writ petition in W.P.No.9478 of 2020 seeking for a direction to the respondent to act upon the application submitted by the petitioner.

7. The respondent has filed a counter affidavit and the relevant portions of the counter affidavit are extracted hereunder.

"3. I respectfully submit that at the inception it is necessary to clarify that originally the property in question was a cinema theatre and was subject to property tax assessment under the Property Tax Assessment Number 7516 and later during the first half yearly assessment year 2004-05 the said property was converted into a Kalyanamandapam from the erstwhile cinema theatre without getting approval from the Respondent Municipality as contemplated under Section 197 and Section 199 of the Tamil Nadu District Municipalities Act 1920 read with Rule 3 of the Tamil Nadu District Municipality Building Rules 1972 and certain alterations and additions ie., unauthorized constructions were made to the pre-existing building. I respectfully submit that the Kalyanamandapam consisted of (a) Dining Hall with AC sheet roof (b) Marriage Hall with AC sheet (c) Kitchen with RCC portion (d) Front Building (e) Toilet.

4. I respectfully submit that after the conversion of cinema theatre to Kalyanamandapam at about 1995 the petitioner herein had not applied for revised taxation. During the Assessment Year 2004-05, Old Assessment No.7516 cancelled and Property Tax Assessment was made on 01/07/2004 categorizing the Building into three components based on the usage and type of construction made in the Kalyana Mandapam, wherein property Tax Assessment No.160106 was pertaining to the Marriage Hall Building with AC sheet and Property Tax Assessment No.160107 pertaining to the Dining Hall with Tiled AC Sheet and Property Tax Assessment No.160108 pertaining to the Kitchen with RCC Roof Building.
5. I respectfully submit that thereafter based on G.O.Ms.No.150 MAWS (Election) Department dated 12.11.2007 and based on the Resolution of the Municipal Council 722 dated 27.12.2007, the Property Tax for commercial Buildings was raised to 100% of the existing tax. I respectfully submit that as a consequence there was revision of Property Tax with respect to the property of the petitioner namely Kalyana Mandabam (categorized as Commercial Building) with effect from 01.04.2008 and the existing property tax was subject to 100% increase of the existing amount.
6. I respectfully submit that no sub division was made as contended by the petitioner in his affidavit. I respectfully submit that on the

contrary since the property was converted from Cinema theatre to Kalyana Mandabam with different and additional structures, fresh assessment was done for the different structures.

7. I respectfully submit that if the petitioner is aggrieved by the tax assessment done, he ought to have filed an appeal before the Tax Appellate Committee in accordance with Section 124-I of the Act read with Rule 23 of the Taxation and Finance Rules. However, the petitioner has only preferred a representation to the respondent to reduce the property tax.

8. I respectfully submit that there is no unilateral increase and enhancement of property tax. I respectfully submit that the impugned property tax and demand notices dated 12.11.2018 for Property Tax Assessment New No.018/016/00403 with Old Assessment No.160106 and Notice dated 018/016/00404 with Old Assessment No.018.160107 dated 14.11.2018 and Notice dated 14.11.2018 for Property Tax Assessment New No.018/016/00405 with Old Assessment No.018/160108 dated 14.11.2018 are in order and the three assessment notices have been issued only for the additions and alterations in the building after conversion from cinema theatre to Kalyanmandapam in about the year 1995 when the conversion took place.”

8. Heard Mr.Arumugam learned counsel for the petitioner and Mr.P.Srinivas, learned Standing Counsel for the respondents.

9. This Court has carefully considered the materials available on record.

10. There are three main issues that have been raised by the learned counsel for the petitioner and they are,

(a) The respondent Municipality has arbitrarily and unilaterally made three assessments for a single property and therefore the same requires the interference of this Court.

(b) The petitioner has already filed an appeal against the earlier revision of the property tax in the year 2004 and the appeal is pending before the Taxation Appellate Committee and in the meantime, the subsequent revision has been made by the respondent.

(c) The general revision that was undertaken in the year 2018 was kept under abeyance due to the protest raised by various property owners. Therefore, the revision that took place in the year 2018 should not be applied even in the case of the petitioner.

11. Learned Standing Counsel appearing on behalf of the respondent Municipality submitted that, the property was originally assessed when it was a cinema theatre and therefore there was a single assessment. Thereafter the petitioner has converted the property into a marriage hall and this was done without getting the approval of the respondent municipality. On conversion of the building, there were three types of structures that required to be assessed for property tax and hence three separate assessments were made. To explain this submission, the learned counsel relied upon Para Nos.3 and 4 of the counter affidavit.

12. The learned Standing Counsel further submitted that insofar as the appeal that is pending before the Taxation Appellate Committee is concerned, the Committee is yet to be constituted and the same will be done after the completion of the elections and till then there is no scope for the disposal of the appeal.

13. Insofar as the revision that was undertaken in the year 2018, the learned Standing Cunsel submitted that the same will be kept in abeyance even insofar as the petitioner is concerned.

14. The petitioner has sought for permission for demolition of the structure and such permission was not granted by the respondent since there was tax dues payable by the petitioner. When this Court posed a question to the petitioner as to whether the report that was prepared by the respondent Municipality after inspection of the building will be questioned by the petitioner, the learned counsel submitted that the report was made only after due inspection and the petitioner will not question the validity of the report insofar as the determination of the super structure is concerned. The learned counsel made it very clear that the only issue that is being challenged by the petitioner is the revision in the property tax and the manner in which it is done by the respondent Municipality.

15. A specific stand has been taken in the counter affidavit to the effect that the petitioner had converted the property into a marriage hall even without getting an approval from the respondent Municipality. In reply to this stand taken

by the respondent Municipality, the learned counsel for the petitioner brought to the notice of this Court, the proceedings of the local planning authority dated 27.07.2000 wherein, according to the petitioner, the conversion of the building into a marriage hall has been approved by the local planning authority. The learned counsel for the petitioner also placed reliance upon the proceedings of the Municipality dated 08.08.2000, wherein the approval was granted for the conversion of the building into a marriage hall. The learned counsel further submitted that even subsequently, the property tax was assessed by taking into consideration the change of character of the building and all of a sudden, the respondent Municipality is now trying to take a stand as if no approval was granted for the conversion of the building.

16. In the considered view of this Court, the approval or otherwise of the building is not strictly in issue in the present writ petitions. The petitioner has taken a stand that the respondent Municipality ought not to have made three separate assessments for a single building and on the contrary, the respondent Municipality has taken a stand that three assessments were required by considering the nature of construction put up by the petitioner without approval.

17. The appeal filed by the petitioner challenging the earlier revision in the year 2004 is admittedly pending before the Taxation Appellate Committee. Unfortunately, since the Committee is yet to be constituted, all the appeals are pending without final determination. When the appeal is pending, the subsequent revision has now taken place and that is again made a subject matter of challenge in the writ petition. The subsequent revision will always be subject to the appeal that is now pending before the Taxation Appellate Committee and a final decision in the appeal will have a bearing on the present revision that has been made by the respondent Municipality.

18. It was also brought to the notice of this Court that out of the total property tax that was due and payable by the petitioner through the impugned demand notices, the petitioner had paid a sum of Rs.4,24,164/- under protest and a receipt has also been issued in this regard by the respondent Municipality on 02.03.2020.

19. Taking into consideration facts and circumstances of the case and also the fact that the earlier appeal filed by the petitioner against the revision of tax is yet to be decided by the Taxation Appellate Committee, and since there is some urgency on the side of the petitioner to demolish the building as it is in a very dilapidated condition, a via-media has to be struck to ensure that the interest of both the parties are

balanced. In view of the same, both the writ petitions are disposed of with the following directions.

(a) The petitioner is directed to pay a further sum of Rs.6,00,000/- (Rupees Six Lakhs only) to the respondent Municipality without prejudice to the rights of the petitioner to raise the issue before the Taxation Appellate Committee as and when the appeal is taken up for hearing.

(b) Immediately on payment of the sum of Rs.6,00,000/- by the petitioner, the respondent Municipality shall grant necessary permission for the demolition of the building within a period of four weeks thereafter. This direction is issued on the assurance given by the petitioner that he will not challenge the report that has already been prepared by the Municipality after the inspection of the property.

(c) As and when the Taxation Appellate Committee is constituted and appeals are taken up for hearing, the appeal filed by the petitioner shall be taken up and the petitioner will also be permitted to raise the grounds that have been raised in the present writ petitions and the impugned property tax demand notices shall also be made a subject matter of the appeal and be determined by the Taxation Appellate Committee.

(d) The petitioner shall pay the property tax that is determined by the Taxation Appellate committee to the respondent Municipality to ensure that the final tax that is determined by the Taxation Appellate Committee is paid by the petitioner to the respondent Municipality. There shall be a charge on the property in favour of the respondent Municipality since the building is going to be demolished by the petitioner. Once the property tax that is finally determined is paid by the petitioner, the charge will get automatically raised without any further reference to this Court, and

(e) As and when the Taxation Appellate Committee is constituted, the appeal filed by the petitioner shall be taken up and disposed of within a period of three months thereafter.

20. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KST
To

1.The Commissioner,
Chengalpattu Municipality,
Chengalpattu,
Chengalpattu District.

2.The Taxation Appellate Committee,
Chengalpattu.

+1cc to Mr.A.Arumugam, Advocate Sr.38308

W.P.No.8609 and 9478 of 2020

spd[co]
srg 20/10/2021