IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.19441 of 2021
and
W.M.P.Nos.20736 and 20738 of 2021

P.Nemichand ...Petitioner

-Vs.-

1. The Commissioner,
Corporation of Chennai
Ripon Buildings
No.1131, EVR Periyar Salai, Park Town
Chennai 600 003.

2. Zonal Officer,
Zone VII (Ambattur),
Corporation of Chennai,
Ambattur, Chennai 600 053.

3. Assistant Revenue Officer
Zone VII (Ambattur),
Corporation of Chennai,
Ambattur, Chennai 600 053. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for records pertaining to the Impugned Order namely Notice No.7: Revised Assessment dated 06.02.2020 for Assessment No.07-085-03657-000 bearing Notice 7/19-20/196525 issued by the 3rd Respondent and to quash the said Impugned Order.

For Petitioner : Mr.B.Deepak Narayanan

For Respondents : Ms.S.Vaitheeswari,
Standing counsel for Corporation

O R D E R

Captioned writ petition and 'writ miscellaneous petition' [hereinafter 'WMP' in singular and 'WMPs' in plural for the sake of convenience and brevity] therein pertain to property tax and it arises under 'Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919)' which was earlier known as Madras City Municipal Act, 1919, and therefore, which shall hereinafter be referred to as 'MCMC Act' for the sake of convenience and clarity.

2. Mr.B.Deepak Narayanan, learned counsel on record for writ petitioner and Ms.S.Vaitheeswari, learned standing counsel for Chennai Corporation who accepts notice on behalf of all the three respondents are before me.

3. Owing to the narrow compass and acute legal angle on which the captioned writ petition turns, with the consent of learned counsel on both sides the main writ petition is taken up.

4. Learned counsel for writ petitioner submitted that writ petitioner is the owner of property at '7/17, Station Road, Varadarajapuram, Ambattur, Chennai - 600 053' [hereinafter 'said property' for the sake of convenience and clarity], which was originally situate in Ambattur Municipality and subsequently, brought under Chennai Corporation, sometime in October 2011.

5. Learned counsel submitted that the said property was assessed to property tax albeit as fourteen separate assessments and varying quantums of property tax were levied for each of the fourteen assessments.

6. Learned counsel submitted that a notice dated 06.02.2020, bearing notice No.7/19-20/196525 was issued to the writ petitioner and this is a composite demand for all the fourteen assessments. Learned counsel contended that if the fourteen assessments are clubbed together into one assessment, the writ petitioner should have been put on notice and the quantum of tax qua all the fourteen assessments put together has also been enhanced many-fold without notice.

7. Learned counsel submitted that the issues in the captioned writ petition are directly and squarely covered and concluded in S.Srikanth Vs. Commissioner, Corporation of Chennai and Ors. reported in [2018 (6) CTC 535], but MANU/TN/7232/2018 has been placed before me. It is submitted that there is no intra-Court appeal against this Srikanth's case.

8. Learned standing counsel for Chennai Corporation drew the attention of this Court to Section 414-A of MCMC Act and submitted that property tax levied by the erstwhile Ambattur Municipality will be construed as tax levied by Chennai Corporation even post said property coming under Chennai Corporation limits and therefore, Chennai Corporation is entitled to demand arrears of tax. There is no difficulty up to

this point, but what difficulty presents in two fronts and they are (a) Revision/Enhancement of property tax and (b) Clubbing fourteen assessments together and consolidating the same as one, both of which have been done without putting the Assessee on notice or in other words, without following the procedure laid down under MCMC Act, more particularly under Section 100 of MCMC Act and Taxation Rules which forms part of MCMC Act i.e., Schedule IV of the MCMC Act. To be noted, Taxation Rules which is Schedule IV of MCMC Act provides a mechanism for assessment and revision.

9. Be that as it may, the most important contention of learned counsel for Chennai Corporation is enhancement became necessary under Section 137-B of MCMC Act. On instructions, learned counsel submits that the use to which said property is used as a hostel and therefore, there was under enhancement. I refrain myself from expressing any opinion on this, as it turns on facts and it is not necessary for disposal of the captioned writ petition. Revision (periodic) is imperative is her further say.

10. A careful perusal of aforementioned Srikanth's case reveals that (unlike this case) it is not a case where Chennai Corporation took a stand that Section 137-B of MCMC Act come into operation qua under assessment based on use to which property is put, atleast that is not evident from the Manu citation that has been placed before me. Therefore, I have some reservation about the submissions of learned counsel for writ petitioner that it has been directly and squarely covered by Srikanth's case.

11. Reverting to discussion, assuming for a moment i.e., on a demurer that 137-B of MCMC Act powers have been exercised, the Chennai Corporation should have put the Assessee on notice. Chennai Corporation has chosen to send notice/communication in this regard post impugned notice as that is putting the cart before the horse. Regarding periodic revision, Court in a long line of authorities has repeatedly laid down the manner in which revision of property tax under MCMC Act should be done, more particularly with regard to Section 100 and Taxation Rules of Schedule IV of MCMC Act and such mechanism includes giving the Assessee an opportunity to object by putting Assessee on notice.

12. In the instant case, without expressing any opinion on whether Section 137-B of MCMC Act is attracted or not, as the upward revision to property tax qua said property has been done by the Chennai Corporation without putting the writ petitioner-Assessee on notice and without giving opportunity to the writ petitioner-Assessee to object to the same, it will suffice to say that it follows as a sequitur that the principles/procedure

adumbrated in Section 100 of MCMC Act in Schedule IV (Taxation Rules) as elucidated by long line of authorities has been given a go-by.

13. On aforementioned short point, the following order is passed:

(a) Impugned notice (described as order in the prayer in the writ petition) being notice No.7 : Revised Assessment dated 06.02.2020 bearing reference notice No.7/19-20-196525 is set aside solely on the ground that the Assessee has not been put on notice and given an opportunity to object this being infraction of Rules adumbrated in Schedule IV (Taxation Rules) of MCMC Act;

(b) As a sequitur, it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

(c) Chennai Corporation shall now embark upon the exercise of assessing/revising property tax including exercise of its powers under Section 137-B of MCMC Act, if so advised and if so considered necessary by adhering to procedure laid down under MCMC Act and Taxation Rules forming part of Schedule IV of MCMC Act. To be noted, that will include giving petitioner pre-revision notice calling for objection.

(d) The above exercise shall be completed by the Chennai Corporation as expeditiously as possible i.e., as expeditiously as its business would permit and in any event, within twelve weeks from today i.e., on or before 08.12.2021;

14. Notwithstanding very many averments and grounds in the writ affidavit and notwithstanding very many complex submissions that were attempted to be made as the matter turns on the aforementioned simple and narrow compass, I deem it appropriate to dispose of the Writ Petition, setting aside the impugned notice and giving the aforesaid directives. Consequently WMPs are also closed as not necessary. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+1 CC to M/s.S.Vaideeswari, Advocate, Sr 47067.

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SRA(CO)
LS(23/09/2021)