IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.22223 of 2021
and
W.M.P.No.23442 of 2021

V.Srinivasan
Son of Velliah ...Petitioner

-Vs.-

1. The Government of Tamil Nadu
Represented by its Secretary
Municipal Administration and
Water Supply Department
Fort St.Geroge
Chennai-600 009.

2. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.

3. The Deputy Commissioner (R&F)
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.

4. Assistant Revenue Office
Zone-08 Watd-103
Greater Chennai Corporation. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the production of the records relating to the proceedings of the 3rd respondent in Zo.VIII.R.D.C.No.R2/1556/19 dated 12.08.2021 in respect of the petitioner's hotel premises at Door No.79 and 80, Millers Road, Kilpauk, Chennai-600 010 and quash the same and consequently, direct the respondents to revise and reduce the property tax considering the objection of the petitioner dated 15.03.2019.

For Petitioner : Mr.M.Stalin

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate for R1
Ms.S.Vaitheeswari
standing counsel for Chennai Corproation
for R2 to R4

ORDER

Mr.M.Stalin, learned counsel for writ petitioner submits that the captioned writ petition has been filed assailing an 'order dated 12.08.2021 bearing reference No. Zo.VIII.R.D.C.No.R2/1556/19' [hereinafter 'impugned order' for the sake of convenience, clarity and brevity] made by the third respondent.

2. Learned counsel for writ petitioner, notwithstanding very many averments in the writ affidavit and several grounds raised in the writ affidavit, submits that the impugned order has been made by third respondent in an appeal made by writ petitioner being appeal dated 15.03.2019. To be noted, according to learned counsel this appeal is directed against upward revision of property tax for writ petitioner's property at '79 and 80, Millers Road, Kilpauk, Chennai-600 010' [hereinafter 'said property' for the sake of convenience and clarity].

3. Learned counsel submitted that the half yearly property tax for said property was originally Rs.47,090/-, it was enhanced to Rs.1,13,015/- with effect from I/2018-2019 i.e., first half year of 2018-2019. It is submitted that thereafter, half yearly property tax was further revised and raised to Rs.3,45,935/- vide notice dated 31.01.2019 and this notice was challenged in the aforementioned appeal dated 15.03.2019. Learned counsel also points out that thereafter, writ petitioner had filed earlier writ petition being W.P.No.10024 of 2019 and W.M.P.Nos.10596 & 10601 of 2019 assailing 31.01.2019 order and the same came to be disposed of by another Hon'ble single Judge vide an order dated 03.04.2019. The operative portion of the order is paragraph No.10 and the same reads as follows:

> '10. Insofar as the petitioner has filed an appeal against the impugned notice on 15.03.2019 is concerned, the 3rd respondent is directed to dispose the appeal after hearing the petitioner within a period of six (6) weeks from today, upon condition that the petitioner remit the balance of the demand as per notice dated 09.10.2018, i.e.,Rs.65,925/- (Rs.1,13,015/- - Rs.47,090/-) within a period of one

week from today and provides proof of compliance thereof at the time of hearing of the appeal. The demand raised in the impugned notice, in excess of 100% of the existing rates, shall be kept in abeyance till such time orders are passed by the third respondent.'

4. The earlier legal trajectory is mentioned above only for completion of facts, but the thrust of lone submission (notwithstanding very many averments and very many grounds raised in the writ affidavit) is, in the impugned order third respondent has merely stated that property tax for the writ petitioner's property was revised as was done in the case of other special type properties in the city and there is no rule for deviation of rules and regulations without elaboration or articulation.

5. Mr.NRR.Arun Natarajan, learned State counsel accepts notice on behalf of first respondent and Ms.S.Vaitheeswari, learned standing counsel for Chennai Corporation accepts notice on behalf of respondents 2 to 4.

6. Learned State counsel and learned Standing counsel for Chennai Corporation submit that a statutory appeal against the impugned order of third respondent is available to writ petitioner inter-alia under Rule 12 of the 'Taxation Rules' forming part of Schedule IV of 'Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919)' {hereinafter 'said Rules' for the sake of convenience and clarity} which was earlier known as Madras City Municipal Act, 1919, and therefore, shall hereinafter be referred to as 'MCMC Act' for the sake of convenience and clarity.

7. Learned Revenue counsel submits that the arguments of writ petitioner even on an extreme demurer, at best qualify only as a ground of appeal, but is not compelling enough warrant interference in writ jurisdiction on the teeth of alternate remedy.

8. As the writ petition turns on a short point, with the consent of the aforementioned all learned counsel, the main writ petition is taken up.

9. A careful perusal of the matter brings to light that this matter turns entirely on alternate remedy rule, as there is no disputation or disagreement between the parties that alternate remedy is available to writ petitioner by way of appeal to the 'Taxation Appellate Tribunal' ['TAT'] under Rule 12 of said Rules. Alternate remedy rule is no doubt not an absolute rule. In other words, alternate remedy rule is discretionary and it is

a self-imposed restraint qua writ jurisdiction. However, Hon'ble Supreme Court in a long line of authorities has repeatedly held that alternate remedy rule has to be very strictly applied with utmost rigour when it comes to fiscal Statute. This is inter-alia in Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others reported in (1985) 1 SCC 260], Satyawati Tandon [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] and K.C.Mathew [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C. reported in (2018) 3 SCC 85]. This long line of authorities is not exhaustive but illustrative.

10. Relevant paragraph in Dunlop case law is paragraph No.3 and relevant portion of the same reads as follows:

> '3. .... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'
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> (Underlining made by this Court to supply emphasis and highlight)

11. Satyawati Tandon principle was reiterated by Hon'ble Supreme Court in K.C.Mathew case. Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of

the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
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> 55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

12. To be noted, in K.C.Mathew's case, Satyawati Tondon principle has been reiterated, that paragraph has been extracted/reproduced supra and therefore relevant paragraph in Satyawati Tondon is not reproduced again to avoid this order becoming verbose.

13. Be that as it may, very recently i.e., on 03.09.2021, a

three member Bench of Hon'ble Supreme Court in Commercial Steel Limited case [Civil Appeal No 5121 of 2021, The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited] while reiterating the aforementioned Rule of alternate remedy qua fiscal Statutes has culled out exceptions to alternate remedy rule and held that interference in writ jurisdiction shall be only under exceptional circumstances and there is also an adumbration of the exceptions. Relevant paragraphs in Commercial Steel Limited case law are Paragraph Nos.11 and 12 and the same read as follows:

> '11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.
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> 12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

14. From the narrative, discussion and dispositive reasoning thus far, it comes to light that none of the exceptions qua alternate remedy rule are attracted in the case on hand and therefore, this is a fit case for relegating the writ petitioner to alternate remedy of appeal before TAT. To be noted, there is no limitation for filing appeal before TAT, there is only pre-deposit condition and that pre-deposit is 50% of differential component i.e., 50% of enhanced component, this Court deems it appropriate to not to dilate further on the same. Suffice to say that this Court is informed that TAT is a full-fledged Tribunal and it is functioning.

15. The sequitur to the discussion thus far is, there is no ground to interfere qua impugned order in writ jurisdiction on the teeth of adequate, ample and comprehensive alternate remedy available to writ petitioner, if the writ petitioner chooses to take alternate remedy legal route and approach TAT, it is made clear that TAT shall deal with the appeal on its own merits and in accordance with law, uninfluenced or untrammeled by any of the observations that have been made in this order.

16. If the writ petitioner chooses to file appeal before TAT, TAT shall dispose of the appeal as expeditiously as the business of TAT would permit and in any event, within four weeks from the date of presentation of appeal in TAT. Learned counsel submits that writ petitioner undertakes to cooperate qua this legal drill if the writ petitioner chooses to take the alternate remedy legal route.

17. Captioned Writ Petition fails owing to the reasons set out supra, however, captioned Writ Petition is disposed of, albeit preserving rights of writ petitioner qua alternate remedy by way of appeal before TAT. Consequently, connected miscellaneous petition is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
   Municipal Administration and
   Water Supply Department
   Fort St.George, Chennai-600 009.

2. The Commissioner
   Greater Chennai Corporation
   Ripon Buildings,
   Chennai-600 003.

3. The Deputy Commissioner (R&F)
   Greater Chennai Corporation
   Ripon Buildings
   Chennai-600 003.

4.The Assistant Revenue Office
Zone-08 Watd-103
Greater Chennai Corporation.

+1cc to Mr.Stalin, Advocate, S.R.No.54104
+1cc to the Government Pleader, S.R.No.54276

W.P.No.22223 of 2021
and
W.M.P.No.23442 of 2021

MG(CO)
CB(10/11/2021)