IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.Nos.29465, 29471 & 29477 of 2018
and
W.M.P.Nos.34430, 34433, 34436, 34437, 34441 & 34444 of 2018
and
W.M.P.Nos.1932, 1965 & 1967 of 2019

R.P.Rajarajan Associates
Rep.by its Partner
P.Rajarajan
103, Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004. ..Petitioner in all W.Ps

vs

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2.The Assistant Revenue Officer,
Revenue Department,
Zonal Office IX,
Corporation of Chennai,
No.1, Lake Area,
4th Cross Street, Nungambakkam,
Chennai - 600 034. ..Respondents in all W.Ps

Prayer in W.P.No.29465 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents dated 20.06.2018 issued under Notice No.10/18-19/88382 final assessment with reference to 103, Dr.Radhakrishnan Road, Mylapore, Chennai - 600 004 and quash the same and further, direct the respondents to conduct proper enquiry in accordance with law once again and grant such further or other orders.

Prayer in W.P.No.29471 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents dated 22.06.2018 issued under Notice No.10/18-19/90941 final assessment with reference to 103, Dr.Radhakrishnan Road, Mylapore, Chennai - 600 004 and quash the same and further, direct the respondents to conduct proper enquiry in accordance with law once again and grant such further or other orders.

Prayer in W.P.No.29477 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to his impugned order dated 26.06.2018 passed in ZO IX RDC No.R3/3279/2017 and quash the same and further direct the respondents to conduct proper enquiry in accordance with law once again and grant such further or other orders.

For Petitioner : Mr.S.Babu
[in all W.Ps]

For Respondents
For R1 & R2 : M/s.Karthikaa Ashok
Senior Standing counsel
For Chennai Corporation
[in all W.Ps]

COMMON ORDER

The assessment of property tax as well as the order passed by the Commissioner, Chennai Corporation, confirming the property tax assessment are under challenge in these writ petitions.

2. The petitioner is R.P.Rajarajan Associates Firm, consists of father, mother and Son Mr.P.Rajarajan. The petitioner states that he purchased the property abutting No.105, Dr.Radhakrishnan Salai and No.103, P.S.Sivasamy Salai. It is a corner property and it is comprised of Ground floor plus mezzanine floor plus five floors. The petitioner purchased the subject property through a registered sale deed dated 18.08.2011 from M/s.Sabari Nest Inn Private Limited. The ground floor, Mezzanine floor portion in its entirety have been let out to a departmental store. The other floors, which originally comprised of a hotel, is not running property and closed the kitchen long back.

3. The learned counsel for the petitioner made a submission that, to convert the two Door numbers as one Door number, an application is made by the petitioners and the same is yet to be considered by the Corporation. The property tax assessment made, is not in accordance with the provisions of the Chennai City Municipal Corporation Act. Thus, the orders impugned are liable to be set aside.

4. The learned counsel for the petitioner states that there

are three assessment, one for Door No.103 and another for Door No.105, Dr.Radhakrishnan Salai, Mylapore, Chennai and the third one is at Door No.1, P.S.Sivasamy Salai, Mylapore, Chennai - 600 004. With reference to Door numbers available in the Revenue records from 1/1993-1994 for the subject property, the petitioner made a request to consolidate and allot one Door number. However, the said issue has not been considered.

5. It is further contended that Door No.1, P.S.Sivasamy Salai is no way connected with the petitioner's property.

6. The learned counsel for the respondent / Corporation disputed the contentions by stating that the petitioners are attempting to twist the facts and the property tax assessment is made by following the procedures as contemplated under the Act. As per the provisions of Section 99 and 100 of Chennai City Municipal Corporation Act, 1919, the buildings in the limits of the City of Chennai are assessed to property tax. The property tax assessment is made on the basis of the extent, type of roof and usage of property. The Annual Rental value of the property is fixed in accordance to the usage of the property at the time of assessment based on basic rate. The Usage of the building is devised into two category viz., (1) Buildings used for residential purpose and (2) Buildings used for non-residential purpose. As per Schedule IV Part 1A 1C (ii) and (vii) of the Chennai City Municipal Corporation Act, 1919, the total build up area and all infrastructures provided in the building has been taken into account for the purpose of assessment of property tax. The open area has not been assessed.

7. By elaborating the method of assessment of property tax, the learned counsel for the respondents contended that the property tax was assessed in accordance with the provisions of law and there is no infirmity as such. However, the original assessment made by the authorities were taken by way of an Appeal before the Commissioner, Chennai Corporation by the petitioner. The Commissioner, Chennai Corporation also confirmed the assessment by rejecting the appeal filed by the petitioners. In the order impugned passed by the Commissioner, it is categorically stated that, if at all the petitioner is not satisfied with the final notice for payment of property tax, the petitioner can made an Appeal to the Taxation Appellate Tribunal, Greater Chennai Corporation for redressal of his grievances. Instead of preferring an Appeal to the Taxation Appellate Tribunal, the petitioner has chosen to file the present writ petitions and therefore, the writ petitions are liable to be dismissed.

8. This Court is of the considered opinion that unification of Door Number is no way connected with the property tax. If at

all the petitioner made any request for any such unification, it should be considered. If at all an application is filed in this regard as far as the subject property is concerned, the buildings were measured and by following the procedures, the property tax assessment is made. Thus, the petitioner is bound to pay the property tax. However, the petitioner preferred an appeal to the Commissioner and the Commissioner also considered the grounds and confirmed the assessment order passed by the original authority. Thus, the petitioner has to approach the Taxation Appellate Tribunal for the purpose of redressing of his grievances, if at all the petitioner is not satisfied with the orders passed by the Commissioner, Chennai Corporation.

9. Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. Undoubtedly, writ proceedings may be entertained before exhausting the appellate remedy. However, it is to be ensured that there is an imminent threat or gross injustice warranting urgent relief to be granted. Mere violation of principles of natural justice is insufficient to entertain a writ proceedings under Article 226 of the Constitution of India, as every Writ Petition is filed based on one or the other ground stating that the principles of natural justice is violated or statutory requirements are not complied with or there is an illegality or otherwise. Thus, dispensing with an appellate remedy is to be granted cautiously in view of the fact that the very purpose and object of legislation providing an appellate remedy cannot be diluted nor the benefit be denied to the aggrieved person to exhaust the same. The statutory appellate authorities are the final fact finding authorities. Thus, the finding to be made by such appellate authorities with reference to the documents and evidences are of paramount importance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India.

10. The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority by following the procedures as contemplated, but not the decision itself. Therefore, the routine entertainment of a Writ Petition by dispensing with appellate remedy is not preferable and such an exercise would cause injury to the institutional hierarchy and the importance attached to such appellate institutions. The appellate institutions provided under the statute at no circumstances be undermined by the higher Courts. The appellate forums are the final fact finding authorities and more so, possessing expertise in a particular field. Thus, the finding of such appellate forums would be a valuable assistance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution

of India. The High Court cannot conduct a roving enquiry with reference to the facts and circumstances based on the documents and evidences. Based on the mere affidavits filed by the litigants, the disputed facts cannot be concluded. Thus, the importance of fact finding by the appellate forums is of more value for the purpose of providing complete justice to the parties approaching the Court of law.

11.The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

12. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal to the Taxation Appellate Tribunal within a period of six(6) weeks from the date of receipt of a copy of this order in a prescribed format and by complying with the provisions of the Act and the Rules. If at all any such appeal is received, the Tribunal shall consider and dispose of the same as expeditiously as possible in the manner known to law.

13. With these observations, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To
1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2.The Assistant Revenue Officer,
Revenue Department,
Zonal Office IX,
Corporation of Chennai,
No.1, Lake Area,
4th Cross Street, Nungambakkam,
Chennai – 600 034.

3.The Taxation Appellate Tribunal,
Chennai.

+3ccs to Mr.V.Anand , Advocate SR.No.31465

W.P.Nos.29465, 29471
& 29477 of 2018

PCH(CO)
A.SK(04.08.2021)