IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.19196 of 2020
and W.M.P.No.23783 of 2020

Sailesh R.Mehta …. Petitioner

-Vs-

1.The Commissioner
Corporation of Chennai
Ripon Buildings, Chennai 600 003.

2.The Assistant Revenue Officer
Zone IX, Greater Chennai Corporation
Revenue Department, No.1, Lake Area
4th Cross Street, Nungambakkam
Chennai 600 034. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus Calling for the records relating to the impugned demand letter undated .03.2020 signed on 20/03/2020 (Received on 25/08/2020 Letter No.M.aa.9 Va.thu.Na.Ka. no.R3/Spl/2020 on the file of the 2nd respondent where by unilaterally revised the Annual Value and property tax on and from second half of 2003-2004 at Rs.4,67,630/- and on and from 2nd half of 2009 -2010 at Rs.5,26,195/- relating to the property (in which the petitioner is co-owner )at old Door No.559 New No.528 anna Salai Teyanmpet chennai 600 018 with retrospective effect and demanding a sum of Rs.7,57,244/- after adjusting the excess amount collected under the guise of property tax without issuing final order of Rs.1.03,16,667/- and quash the same as without Jurisdiction, arbitrary pre-reserved, pre-determination and against the Principal of natures justice and consequently direct the respondents to adjust the excess amount colected of Rs.1,03,16,667/- for future property tax for the period commencing from 1st Half of 2021.

For Petitioner : Mr.P.C.Hari Kumar

For Respondents : Mr.K.Raja Srinivas
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus Calling for the records relating to the impugned demand letter undated .03.2020 signed on 20/03/2020 (Received on 25/08/2020 Letter No.M.aa.9 Va.thu.Na.Ka. no.R3/Spl/2020 on the file of the 2nd respondent where by unilaterally revised the Annual Value and property tax on and from second half of 2003-2004 at Rs.4,67,630/- and on and from 2nd half of 2009 -2010 at Rs.5,26,195/- relating to the property (in which the petitioner is co-owner )at old Door No.559 New No.528 anna Salai Teyanmpet chennai 600 018 with retrospective effect and demanding a sum of Rs.7,57,244/- after adjusting the excess amount collected under the guise of property tax without issuing final order of Rs.1,03,16,667/- for future property tax for the period commencing from 1st Half of 2021.

2. With regard to the property of the petitioner in old Door No.559 , New No.528 Anna Salai, Teyanmpet, Chennai 600 018, there has been a property tax assessment with retrospective effect from the Half Year of 2003-04 to the extent of Rs.4,67,630/- and from 2009-10, there was an assessment for Rs.5,26,195/-. This order issued by the respondent Corporation signed / dated 20.03.2020 and served on 25.08.2020 is under challenge.

3. The case of the petitioner is that, initially the assessment was made prospectively with effect from Half Year of 2003-04, as against which the petitioner made an appeal before the Appellate Committee unsuccessfully, then they approached the Taxation Appellate Tribunal, where the Tribunal, after having considered the merits of the case, set aside the said order of assessment with retrospective effect from the Half Year-2 of 2003-04 and remitted the matter back to the respondent Chennai Corporation for giving proper notice with working sheet to the appellant ie., the petitioner herein and after considering his objection if any, to fix the Half Year tax in accordance with law. The Taxation Appellate Tribunal further directed the petitioner to pay 50% of the enhanced tax during the pendency of the re-assessment proceedings.

4. Pursuant to the said order, according to the petitioner, as projected by the learned counsel for the petitioner, no notice had been given to the petitioner and no working sheet has been given as directed by the Tribunal along with the show cause notice, before making the assessment as directed by the Tribunal.

5. However, without giving any notice or working sheet, straight away now the impugned order has been passed, whereby the said assessment has been made for Rs.4,67,739/- for the

second Half Year of 2003-04 onwards and from second Half Year of 2009-10, it was further revised to Rs.5,26,195/-. Therefore, the said order which is impugned herein passed by the respondent Corporation is not in accordance with the direction issued by the Appellate Tribunal and therefore, on that ground itself the order impugned is liable to be interfered with, he contended.

6. However, Mr.Raja Srinivas, learned Standing Counsel appearing for the respondent Corporation, relying upon the averments made in the counter affidavit filed on behalf of the respondent Corporation would contend that, 50% of the enhanced tax was directed to be paid during the interregnum and to some extent, it has been paid. But, for the remaining period it has not been paid and that is a violation on behalf of the petitioner and insofar as the allegation made that no notice had been served and no calculation memo or working sheet has been served on the petitioner is concerned, the calculation sheet has been furnished to the petitioner. That itself can be treated as show cause notice, for which the petitioner could have responded to, but he has not responded. Therefore, it cannot be complained now by the petitioner that the order of the Tribunal has been violated by the respondent Corporation. However, the fact remains that only in accordance with the order passed by the Appellate Tribunal the re-assessment order has been passed and accordingly the impugned order does not require any interference, he contended.

7. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

8. It is the definite case on the part of the petitioner that, no notice as directed by the appellate Tribunal has been served on the petitioner along with the calculation sheet.

9. In this regard, though some dispute has been raised by the learned Standing Counsel for the respondent Corporation with regard to the supply of the calculation sheet, there is no evidence to establish that the show cause notice or notice has been served on the petitioner, which in fact has been mandated by the order of the Tribunal.

10. Even otherwise, if at all any revision has been made, notice must be given to the owner of the property, without which suo-motu revision normally would not be permitted to take place and here in the case in hand, when a specific direction was given by the Tribunal to the respondent Corporation to give notice before going for revision of property tax after the remand order passed by the Tribunal, certainly the notice being mandated, should have been issued to the petitioner and in the

absence of any such notice being served on the petitioner, it can very well be construed that, the impugned order, on that ground alone, is considered as a vitiated one. Therefore, this Court has no hesitation to hold that, the impugned order will not stand in legal scrutiny.

11. In view of the afore stated reasons, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order is set aside and the matter is once again remitted back to the Chennai Corporation for reconsideration.

- It is made clear that during the reconsideration process, a notice / show cause notice shall be issued to the petitioner within two weeks from the date of receipt of a copy of this order.

- On receipt of the same, the petitioner shall respond to the said show cause notice within a period of two weeks thereafter. At the time of responding to the show cause notice, it is open to the petitioner to submit any further inputs with regard to the grounds to be urged by the petitioner for seeking any lesser revised tax, which includes the dispute with regard to the built up area etc.,

- After getting such input and the reply to be submitted within a period of two weeks indicated above, it is open to the respondent to make an assessment from the year 2003-04 in accordance with law and pass a revised order within a period of four weeks thereafter.

- It is made clear that, till the final order is passed, the petitioner shall continue to pay the 50% of the revised tax without fail for every Half Year.

- It is also made clear that, in respect of the revision commencing from the second Half Year of 2003-04, the then prevailing market rate of the building in question as well as the annual rental value shall be taken into account for the purpose of revision of tax and that shall not be on the basis of the current market value of the property as well as the annual rental value of the property.

12. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

KST

To

1.The Commissioner
Corporation of Chennai
Ripon Buildings, Chennai 600 003.

2.The Assistant Revenue Officer
Zone IX, Greater Chennai Corporation
Revenue Department, No.1, Lake Area
4th Cross Street, Nungambakkam
Chennai 600 034.

+1cc to Mr.P.C.Hari Kumar, Advocate SR.No.17493

+1cc to Mr.K.Raja Srinivas, Advocate SR.No.18330

W.P.No. 19196 of 2020

MT(CO)
GMY(22/04/2022)