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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2023

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.16666 of 2022

Akbar Ali Yusuf Ali Estates
Rep.by o-owner Akbari H Madraswala ... Petitioner

Vs.

1.The Commissioner, Greater Chennai Corporation,
Ripon Buildings,
Sydenhams Road, Kannappar Thidal,
Periyamet, Chennai 600 003.

2.The Deputy Commissioner North (Revenue and Finance)
Zone 5/Revenue Department, Greater Chennai Corporation,
No.61, Basin Bridge Road, Old Washermenpet,
Chennai 600 021.

3.The Revenue Officer,
Greater Chennai Corporation,
Zone 5/Revenue Department,
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Old Washermenpet,
Chennai 600 021.

4. The Assistant Revenue Officer,
Zone 5/Revenue Department,
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Old Washermenpet, Chennai 600 021. ... Respondents

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Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order reference No.Z.O.5/RDC.No.R1/12162/2019 dated 28.05.2022 passed by the second respondent with respect to the property assessment Id No:05-060-03693-000 and to quash the same.

For Petitioner : Mr.P.Prabu

For Respondents : M/s.Aswini Devi.K
Senior Standing Counsel

**ORDER**

The petitioner has challenged the impugned order dated 28.05.2022 passed by the second respondent bearing Reference No. No.Z.O.5/RDC.No.R1/12162/2019.

2. The petitioner has also received a copy of the Final Assessment Notice No.10/18-19/108161 dated 12.07.2018 wherein a sum of Rs.27,50,339/- has been demanded as arrears of tax from the petitioner under Section 137 B of the Chennai City Municipal Corporation Act, 1919. The revised tax payable by the petitioner has been quantified as follows:-

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| *Period From* | *1st Half 2009-10 to 2nd half 2018-18* | *1st Half 2018-19* |
|---|---|---|
| Arms | 2,16,070 | 2,16,070 |

3. The records also indicate that earlier the petitioner had approached this Court in W.P.No.9604/2019 wherein the petitioner had challenged Notice No.10/2016 110-23/05 dated 17.03.2017 and Final Assessment Notice No.10/18-19/108161 dated 12.07.2018 and General Revision Notice dated 26.09.2018 bearing Reference No.E/1/2018-19/319319. The last mentioned notice was issued pursuant to General Revision Notice dated 26.09.2018. The said writ petition was disposed with the following observations:-

> "11. In the light of the trajectory, which this matter has taken and in the light of interim protection that has been granted to similarly placed assessees in other matters, there shall be an order of Status-quo of recovery till the disposal of the objections/financial assessment by the Regional Deputy Commissioner, subject to the conditions that the writ petitioner continues to pay half yearly property tax at the existing rate of Rs.2,16,070/- without delay or default qua time frame in this regard prescribed by rules under Chennai City Municipal Corporation Act, 1919."

4. It is pursuant to the aforesaid direction of this Court, the petitioner

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has given a revision/appeal. Challenge to the impugned order is on account of the exercise carried out by the respondent on 14.11.2006 wherein a detail assessment was made segregating the property under self occupancy and the property which was rented out for commercial purpose.

5. The learned counsel for the petitioner submits that the property tax increase to Rs.2,16,070/- from the period 2009-10 to 2017-18 is not an escapef assessment but a double taxation under Section 137(B) of the Chennai City Municipal Corporation Act, 1919. It is submitted that alleged escape of assessment in the hands of the petitioner cannot be countenanced as the total area under assessment is same both before and after the escape assessment notice i.e. in the year 2006 and 2018 and that there was no other revision.

6. It is further submitted that the exercise that was carried out in the assessment notice dated 14.11.2006 has not been carried out while demanding tax from the petitioner for the subsequent period covered by these impugned orders.

7. The learned Standing Counsel for the respondents on the other hand

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would submit that there is no change in the method of assessment nor in the measurement as alleged by the petitioner but had only applied proper BSR to the petitioner's property. It is submitted that order dated 07.6.2019 was passed in W.P.No.9604 of 2019, the measurement of the petitioner's property was once again after it was inspected by the Assessor in the presence of petitioner's representative after giving notice to the petitioner. He stated that after measurement of the property, a personal hearing was held on 23.12.2009 and 0510.2021 at 3.00 p.m.at the office of Assistant Revenue Officer, Zone-5, Greater Chennai Corporation and afforded an opportunity. The petitioner along with his counsel had also appeared and furnished a letter dated 23.12.2019 in the enquiry. After applying the appropriate BSR , the escaped assessment for the previous years was made which is permissible under Section 137B of the Chennai City Municipal Corporation Act,1919.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

9. A reading of the impugned order makes it clear that while disposing

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of the petitioner's appeal/revision petition, the respondent has not given a particulars and the basis for enhancing the property tax from the amount that was determined earlier as on the previous occasion in the year 2006. A similar exercise ought to have been carried before arriving at the amount of property tax that is said to have escaped assessment. Assessment cannot be made arbitrarily without giving particulars.

10. Consequently, the impugned order is set aside. The case is remitted back to the second respondent to pass a fresh order of assessment in line with the assessment that was completed on 14.11.2006. The petitioner shall however continue to pay a tax that as was directed to be paid by this Court in its order dated 07.06.2019 in W.P.No.9604 of 2019 going forward till the exercise is completed by the second respondent. This exercise shall be carried out by the second respondent, within a period of three months from the date of receipt of a copy of this order. Needless to state the petitioner shall be heard before passing such order.

11. This writ petition stands disposed of with th above observation.

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No costs. Consequently, connected miscellaneous petitions are closed.

25.08.2023

Index : Yes/No
Neutral Citation : Yes/No
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**C.SARAVANAN, J.**

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