IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.12.2023
Pronounced on	24.01.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition No.1616 of 2021
and C.M.P.No.12545 of 2021

1.Tarsem Singh

2.Rangit Singh ... Petitioners

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai – 600 003.

2.The Assistant Revenue Officer,
Zone-VII, Greater Chennai Coporation,
Ambattur, Chennai – 600 053. … Respondents

Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 06.03.2021 passed in M.T.A.No.18 of 2018 by the Principal Judge, City Civil Court, Chennai confirming the orders passed by the Taxation Appeals Tribunal, Corporation of Chennai in T.A.T.No.31 of 2017 dated 29.05.2018.

For Petitioner : Mr.J.Lakshminarayanan

For Respondents : M/s.P.T.Ramadevi
Standing Counsel

ORDER

The Civil Revision Petition has been filed challenging the fair and decreetal order passed in MTA.No.18 of 2018 dated 06.03.2021 by the Principal Judge, City Civil Court, Chennai, confirming the order passed by the Taxation Appeals Tribunal, Corporation of Chennai in T.A.T.No.31 of 2017 dated 29.05.2018 and dismissing the appeal filed by the revision petitioners.

2. The facts of this petition is that the revision petitioners are the appellants in M.T.A.No.18 of 2018 and the revision petitioners 1 & 2 are the owners of the building. The first petitioner has died on 13.08.2022. The property is situated at No.192/2, Nageswara, Vanagaram Road, Athipet, Chennai – 600 058 and a total extent of the building was 55400 sq.ft. and the said building was under the jurisdiction of Ambattur Municipality and a sum of Rs.2,00,104/- was levied as property tax for half-yearly by the Ambattur Municipality.

2.1. In the year 2010, a portion of the building constructed in the third floor was demolished and thus, the total extent of the building was reduced to 43387 sq.ft. and the property tax of Rs.2,00,104/- was levied for the entire extent of 55,400 sq.ft from the year 2010 to second half of the year 2014 and the said property tax was paid without any default or whatsoever.

2.2. The provisional Notice 7 dated 14.11.2014 revising the property tax II/2011-2012 from Rs.2,00,104/- to Rs.3,52,200/-was issued by the Zonal Revenue Department and the revision petitioners have also submitted their objections to the said notice on 23.12.2014, before the Revenue Officer. On 14.03.2017, the revision petitioners received another Notice 10/Final Assessment Notice from the Greater Chennai Corporation stating that the Annual Rental Value for their property is fixed as Rs.32,76,250/- and half yearly Tax after the discount was fixed as Rs.2,81,760/-. They were further called upon to pay the arrears amount of Rs.15,20,930/-. Aggrieved over the said order, the revision petitioners have preferred an appeal before the Taxation Appeal Tribunal, Chennai – 600 003, after paying the old tax plus

50% of enhancement till 2/2016-17 amounting to Rs.10,61,000/- and receipts were also issued by the authorities in respect of the said payment on 22.05.2017. However, the Tribunal without properly appreciating the legal contentions raised by the revision petitioners, dismissed the appeal on 29.05.2018. Against the said dismissal order dated 29.05.2018 passed by the Taxation Appeal Tribunal, Chennai, the revision petitioners have preferred an appeal before the Principal Judge, City Civil Court, Chennai in M.T.A.No.18 of 2018, which was also dismissed on 06.03.2021. Aggrieved over the above order dated 06.03.2021, the petitioners has come forward with the present civil revision petition.

3. Learned counsel for the petitioner submitted that the assessment was revised only in regard to their property in that area and other properties were not revised by the Corporation. The revision of the property tax was done by the respondent corporation under section 137 B of the City Municipal Corporation Act, 1919 and if there is an escapement of assessment or if the property has been under-assessed, the revision petitioners in the capacity as assesses are entitled to know about it. However, the revision petitioners were

squarely deprived of the principles of natural justice. Therefore, retrospective revision is unsustainable in law and the same is liable to be set aside.

4. Learned counsel for the petitioner further submitted that none of the objections of the revision petitioners in regard to the provision notice were taken into consideration by the respondents, while passing the final Assessment Notice-10 dated 14.03.2017 and it is totally a non-speaking order.

5. Learned counsel for the petitioner further placed reliance on the judgment of this Court in W.P.No.44098 of 2016 dated 27.03.2017 and the same was totally lost sight of by the Appellate Court. In the said case, it was squarely reiterated that even assuming that the objections raised by the owner of the property is not sustainable, the reasoning of such rejection must be reflected in the final assessment order itself. So as to justify that the same has been made by application of mind to the objections raised by the revision petitioners.

6. Learned counsel for the revision petitioners further submitted that initially the property was a cottage industry. Then, it was used as "Godown" at the time of the merger of erstwhile Ambattur Municipality with Chennai Corporation. The revision petitioner's property was used as "Godown" and assessment was properly carried out by the erstwhile Ambattur Municipality. Nothing has changed in respect of nature of building and its usage after merger. The Courts below grossly failed to see that the property was as an industrial plot and the property is situated within the industrial estate. Further, the building planning permission was sanctioned by then Ambattur Municipality dated 01.02.2006 vide B.L.No.1454/2006 clearly portrays the building as "Cottage Industry". Property Assessment done by the erstwhile Ambattur Municipality vide Assessment Number 100122 also reflects the same and there is no valid materials on record to treat the property as commercial one.

7. Learned counsel for the petitioner further relied on the judgment of this Court in W.P.No.21601/2017 dated 11.08.2018, in which it was held that the petitioner cannot be liable to pay property tax fixed for non-residential

premises by the Chennai Corporation and they have to necessarily adopt the Industrial Tariff adopted by the erstwhile Municipality. In the light of the aforesaid judicial pronouncement, the findings of the learned judge in paragraph 5 of the order requires to be brushed aside as devoid of merits and the revision petitioners are entitled to succeed in the present case. Further, the findings of the learned judge with regard to treating the said premises as commercial in the order is liable to be rejected. Since no commercial activity is carried out in the said premises. In order to establish that the activity may be called a commercial activity, there must be some element of sale or exchange of goods offered there, goods in specie such as it takes place in a market place, or there may be only an activity undoubtedly of a commercial nature.

8. Learned counsel for the petitioner further submitted that the revision petitioner's primary contention is that no notice was issued to them and no inspection of the property was carried out in their presence. The revision petitioners raised the objection at the initial stage itself, before the second respondent and also squarely reiterated the same before the Tribunal and the

said vital aspect was totally lost sight of by the authorities and also by the Tribunal and Appellate Court, which clearly portrays total non-application of mind and in the said circumstances interference by this Court is warranted and the impugned assessment is liable to be set aside.

9. Learned counsel for the petitioner further submitted that no general revision has taken place and that nowhere the respondent/Corporation has increased the property tax from 2011 for the newly added areas like Ambattur, Alandur and Madhavaram. Moreover, neighbouring properties of the revision petitioners' have not been subjected to any revision of property tax and that the tax collected from the year 1998-99 continues to be collected from them. However, the property of the petitioners alone have been singled out and subjected to revision of property tax without any valid basis. Hence, he prayed this Court to set aside the order passed in M.T.A.No.18 of 2018 dated 06.03.2020 and allow the present civil revision petition.

10. Per contra learned standing counsel appearing for the respondents corporation submitted that the revision petitioners was using the property as

cottage industry from 01.12.2006 upto the year 2010 and in the year 2011, Ambattur Municipality merged with the Greater Chennai Corporation and in the year 2014 notice 7 was issued to the revision petitioners and the revision petitioners raised objection and the same was considered and the final assessment order was passed by the respondent corporation on 14.03.2017.

11. Learned standing counsel appearing for the respondents further submitted that the property tax was enhanced from Rs.2,00,104/- to Rs.3,52,195/- and thereafter, it was reduced to Rs.2,81,760/- since the portion of the property i.e., 3rd floor has been demolished and the sq.ft. of the building has been reduced from 55,400 sq.ft. to 43,385 sq.ft.

12. Learned standing counsel appearing for the respondents further drew the attention of this Court to the order passed by the Taxation Appeal Tribunal, wherein, the monthly rental value and the tax calculation of the subject building based on the details relating to plinth area, usage, occupancy, type of construction and the scheduled basic rate of tax for assessing the property tax. The building consist of ground plus third floors in

total measuring 43,387 sq.ft. out of which 4,3186 sq.ft. is used for non-residential tenanted permanent and 201 sq.ft. is non-residential tenanted Semi-Permanent structure. The commercial used multiplier is by 3 and the subject property is not used for any industrial purpose.

13. Learned standing counsel appearing for the respondents further submitted submitted that the revision petitioners are paying the tax regularly till and there is no tax arrears and the details of the tax payments made by the revision petitioners was also submitted before this Court. The objections raised by the revision petitioners were considered and opportunity was also given and after that only the final assessment notice dated 14.03.2017 was issued to the revision petitioners, calling upon them to pay the assessed property tax.

14. Learned standing counsel appearing for the respondents denied the contention made by the learned counsel for the petitioner that no general revision has been taken place on newly added areas like Ambattur, Alandur and Madhavaram and the neighbouring properties of the revision petitioners

have not been subject to any revision to property tax and the property of the petition alone has been singled out re-assessed. She would further submit that the general revision of assessment of property tax was done in the entire area, after the merger of the Ambattur Municipality with the Greater Chennai Corporation in the year 2011 and it is not correct and false to contend as the above by the revision petitioners.

15. Learned standing counsel appearing for the respondent would further submit that the subject matter property is used as a "Godown" by the State Bank of India and not used for any Cottage Industry as claimed by revision petitioners, even though the property is situated at the Ambattur Industrial Estate area.

16. Heard the learned counsel on either side and perused the materials available on record.

17. It is an admitted fact that the subject property was initially within the jurisdiction of Ambattur Municipality and subsequently merged with the

Greater Chennai Corporation in the year 2011. The subject matter property was used as a cottage industry from 01.02.2006 to upto the year 2010. The total extent of the property was 55,400 sq.ft. and the property tax was Rs.2,00,104/- from 2010 to II half of 2014. Subsequently, the third floor of the property was demolished in the year 2010 and the total extent has been reduced to 43,387 sq.ft. The property tax was enhanced from Rs.2,00,104/- to Rs.3,52,195/- and to 3,53,200/-. The final assessment notice/notice 10 was issued on 14.03.2017, after taking into consideration the objection raised by the revision petitioners and also the fact that the third floor of the building was demolished in the year 2010 and the extent has reduced from 55,400 sq.ft. to 43,387 sq.ft. and the property tax to be payable was arrived at Rs.2,81,760/- from the earlier assessment of a sum of Rs.3,52,195/-

18. **It is not only the property of the revision petitioners which has been re-assessed as contended by the learned counsel for the revision petitioners but all the buildings have been re-assessed for the simple reason that a single property will not be re-assessed by the municipality or the corporation, if any re-assessment or revision of property tax will**

be done, it will be done for the entire area. The property was initially used as a cottage industry and subsequently as "Godown". Hence, it cannot be said that it is used for industrial purpose and the corporation has rightly assessed the property as used for commercial purpose. The revision was done for all the properties in the Corporation. The revision petitioners were given opportunities to raise their objections and they have filed their objections and the same was considered by the respondent corporation before passing the final assessment notice on 14.03.2017. So, it is not correct to say on the part of the revision petitioners that no opportunity was given. The details of the extent of the land used for non-residential tenanted permanent and non-residential tenanted semi-permanent structure was also submitted along with the monthly rental value based on plinth area, usage and basic rate runs before the Taxation Appellate tribunal, which is evident in paragraph 16 of the order passed by the Tribunal. Since the monthly rental value was not submitted by the revision petitioners to the Corporation, the Corporation assessed the monthly rental value of the building and the tax was levied as per the taxation rules of the

corporation. The details of the property tax calculation was also extracted in the order of the Taxation Appeal Tribunal at paragraph 16, by which, it is crystal clear and evident how the property tax is assessed by the Corporation, what is the percentage and the multiplier adopted by the respondent/corporation and in this case, the commercial multiplier is by 3 for commercial usage and not for industrial purpose.

19. **Learned counsel for the petitioner submitted that the revision petitioners is paying the property tax regularly without any arrears till date and without prejudice to the pending Civil Revision Petition, before this Court and the petitioner has also given a letter to that effect to the second respondent corporation. When this Court directed the counsel for the revision petitioners to produce the copy of the letter, he was not able to produce the same and from that it is clear that there is no such letter submitted as claimed by the revision petitioners for paying the property tax without prejudice.**

20. **It is also pertinent to note that after the merger of the**

Ambattur Municipality with the Greater Chennai Corporation in the year 2011, the property is not used as cottage industry and now it is used as "Godown" and leased out to State Bank of India. From this, it is evident that the property is used for commercial purpose and not for industrial purpose as claimed by the revision petitioners. Considering the points of being a nationalized bank using the property which has extent of 43,387 sq.ft has a godown may be paying a huge amount as rent and the extent as well as the area in which the properties situated viz., Ambtattur Industrial Estate, the property tax had been assessed by the respondent corporation.

21. The learned counsel for the petitioner relied on two judgments of this Court, which was mentioned supra. However, the first judgment is not applicable in this case on hand for the reason that in this case the objection raised by the petitioner was considered by the respondent corporation and then only, the final assessment notice dated 14.03.2017 was issued to the revision petitioners.

22. Further, the second judgment relied by the revision petitioners is also not applicable for the reason that in the case on hand, before merger, the building was used as cottage industry and after the merger, the said building was used as a "Godown". Hence, the corporation cannot be asked to adopt the industrial tarrif as there is no industrial activity taken place in the property and at present, the property is used as a godown by the nationalized bank viz., State Bank of India. The Appellate court has also rightly held that the judgment relied by the revision petitioners is not applicable to the case on hand. The property was revised under section 137 B of the City Municipal Corporation Act, 1919. For better appreciation, the said section is extracted hereunder:

> *"137-B. Power to assess in case of escape from assessment – nothwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year, (or has been assessed in any half year or year at a rate lower than the rate at which he is assessable or, in the case of property tax has not been duly assessed in any half year or year consequent on the building or land concerned having escaped proper determination of its annual value), the commissioner may, at any time within (six years) from the date on which such*

person should have been assessed, serve on such person a notice asssessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made thereunder shall so far as may be apply as if the assessment was made in the half year or year to which the tax or fee relates."

23. The rental value has to be calculated on the basis of basic rate run, but in the case of commercial building, it is thrice the basic rate. As per the Ambattur Municipality Resolution No.116 dated 21.04.2008 for the property at B-zone, the basic rate is reduced from Rs.2.75 per sq.ft. to 2.25 per sq.ft and it is not in dispute and according to the respondents, **since the property is used as a "Godown" it has to be treated as commercial use and value to be calculated as thrice the basic rate of Rs.2.25 (i.e., Rs.2.25X3=6.75 per sq.ft) and using the property as a "Godown" is different from using the property as industry and the Taxation Appellate Tribunal has discussed in paragraph 10 of the order in detail about the difference between the commercial use and industrial use and if there is some manufacturing activity then, it can be framed as industrial use. However, the subject matter property is used for some other purpose**

that too by the State Bank of India as a "Godown" and since the bank has no manufacturing activity, it has to be treated as commercial use only. Moreover, no evidence has been placed even before the Taxation Appeal Tribunal or the Appellate Court or before this Court to show what is the actual rent received by the revision petitioners from the State Bank of India.

24. Initially, the property was calculated under industrial tarrif and now at commercial tariff and there is no dispute in this regard by the revision petitioners as well as respondent corporation. If the classification is changed, then section 137-B of the City Municipal Corporation Act, 1919 is correct for assessing the property and that is what done by the respondent corporation in the case of the revision petitioners.

25. In view of the above factual matrix of the case and for the foregoing reasons, the fair and decreetal order passed by the Principal Judge, City Civil Court, Chennai in M.T.A.No.18 of 2018 dated 06.03.2021 does not want any interference by this Court and the same is hereby confirmed.

26. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

24.01.2024

vm
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

vm

To:

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai – 600 003.

2.The Assistant Revenue Officer,
Zone-VII, Greater Chennai Coporation,
Ambattur, Chennai – 600 053.

C.R.P.No.1616 of 2021

24.01.2024