IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12..11..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.3973 of 2024

Sailesh R. Mehta and others
Rep. by Power a
Agents
Sailesh R.Mehta & Shishir R. Mehta
Old D.No.185, New D.NO.243,
Anna Salai, Chennai 600 006.

..... Petitioner

-Versus-

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

2.The Regional Deputy Commissioner (Central),
Greater Corporation of Chennai,
Shenoy Nagar,
Chennai 600 030.

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to praying to set aside the order dated 27.03.2024 27.03.2024 made in M.T.A.No.4 of 2022 on the file of the learned Principal Judge, City Civil Court, Chennai.

For Petitioner : *Mr.K.Elango for M/s.Krishna Law Associates*

For Respondent : *Ms.Aswini Devi Standing Counsel (Greater Corporation of Chennai) for RR1 and 2*

ORDER

This civil revision petition has been filed challenging the order dated 27.03.2024 passed by learned Principal Judge, City Civil Court at Chennai, dismissing the tax appeal in M.T.A.No.4 of 2022 against the order dated 05.04.2022 made in T.A.T.No.19 of 2021.

2.1 The subject property bearing Old D.No.185, New D.No.243, Anna Salai, Thousandlights, Chennai 600 006 was assessed to property tax upon the revision petitioner. The revision petitioner has been paying half-yearly tax at Rs. 1,41,332/-.

2.2 While so, during the year 2008, the respondent corporation enhanced the property tax to Rs. 2,47,586/- per half year w.e.f. II Half Years 2001-2002, and temporary notice was issued in that regard. As against that notice, the revision petitioner filed a writ petition in W.P.No.8699 of 2008. Thereafter, as per the directions of this court, the respondent corporation had given an opportunity to the revision petitioner to file an objection. The respondent corporation, upon considering the objections of the revision petitioner, revised the tax to Rs. 2,32,855/- per half year w.e.f. II Half Year 2001-2002 and issued a final order dated 10.09.2009. Aggrieved by it, the revision petitioner again approached this court by way of a writ petition in W.P.No. 23300 of 2009, and the said writ petition was disposed of on 07.10.2024 with a direction to the respondent corporation to give one more opportunity to the revision petitioner.

2.3 In pursuance of the order of this court, the respondent corporation, after considering the submissions made by the revision petitioner, issued a final order on 03.09.2020 levying the property tax at Rs. 3,32,665/- per half-year. Once again, the revision petitioner challenged the final order before this court by way of a writ petition in W.P.No.15552 of 2020, and pursuant to the directions of this court, a joint inspection had been conducted on 28.04.2021, and after hearing the revision petitioner, the respondent corporation had revised the tax at Rs. 3,27.665/- per half year w.e.f. II half year 2001-2002 and issued a final order dated 07.07.2021. Challenging the said order of the respondent corporation, the revision petitioner preferred an appeal in T.A.T.No.19 of 2021 before the Taxation Appeals Tribunal at Chennai. The Taxation Appeals Tribunal, by order dated 05.04.2022, dismissed the Tax Appeal, holding that joint inspection was conducted and measurement was taken only in the presence of the revision petitioner, and the final order also was passed. Challenging the said order, a further appeal was preferred by the revision petitioner before the learned Principal Judge, City Civil Court, Chennai, which was taken on file in M.T.A.No.04 of 2022. The learned Principal Judge by order dated 27.03.2024 dismissed the appeal on the ground that the entire property tax had been paid by the subsequent purchaser and hence, the revision had become infructuous. It is this order now put to challenge in the present revision.

3. Heard Mr.K.Elango, learned counsel for the revision petitioner, and Ms.Aswini Devi, learned standing counsel for the respondents.

4. The learned counsel for the revision petitioner, taking this court through the order of the appellate court, would submit that the appellate court had just narrated the submissions made on both sides and dismissed the appeal mainly on the ground that property tax had been paid by the subsequent purchaser of the property. Further, the inspection was done, and measurement of the property was taken down only in the presence of the revision petitioner. According to the learned counsel, the main grounds that were raised in the

appeal were that (i) the inspection report was not given to the revision petitioner; (ii) there was no calculation made applying the Rent Control Act to arrive at appropriate depreciation; and there was no discussion made by the tribunal on the matter.

5. The learned counsel for the revision petitioner would further submit that property tax was not paid by the subsequent purchaser of the property, and in fact, it was paid only by the revision petitioner pending appeal in M.T.A.No.4 of 2022 with protest and without prejudice to his right to establish his stand in the appeal. Therefore, the appeal ought to have been decided by the Principal Judge on merits.

6. The learned counsel for the respondent corporation would contend that the appellate court had considered the entire matter on merits and held that inspection was conducted in the presence of the petitioner and assessment was made after giving adequate opportunity to the revision petitioner, and therefore, the order of the tribunal as confirmed by the appellate court does not require any interference at the hands of this court.

7. In the light of the above submissions made on both sides, the point that arises for consideration in this civil revision petition is

Whether the appellate court has considered the entire merit of the case and arrived at a proper conclusion while deciding the M.T.A.No.04 of 2022?

8. As rightly pointed out by the learned counsel for the revision petitioner, the appellate Judge/Principal Judge at Chennai had recorded the submissions made on both sides before the Taxation Appeals Tribunal and the submissions made before the appellate court from paragraphs 2 to 10 very elaborately. In para 11 of the order, there was a discussion made with regard to the merits of the case.

9. The main ground that was raised in the appeal was that the age of the building was not at all taken into consideration and proper depreciation was not allowed. These aspects of the matter have not at all been considered by the appellate court. The appellate court has been swayed away by the inspection conducted in the presence of the revision petitioner. The appellate court further sways away by the reason that tax amount was paid pending proceedings. It is seen from the impugned order that the appellate court has recorded a finding to the effect as if the tax was paid by the subsequent purchaser of the property. But the documents placed before this court by the learned counsel for the

revision petitioner would go to show that it was the revision petitioner who paid the tax with protest and reserving his right to agitate the issue in the appeal that was pending before the Principal Judge/Appellate Judge. When the tax was paid by the revision petitioner himself on protest, reserving his right to get the matter adjudicated on merits, and at no point in time, the revision petitioner waived his right to prosecute the appeal, the appellate court ought to have decided the issue on merits. Admittedly, as rightly pointed out by the learned counsel for the revision petitioner, the appellate court has not gone into the merits of the appeal and simply dismissed the appeal on the ground that pending appeal, tax amount had been paid. Payment of property tax made during the pendency of the appeal would not amount to a waiver of the right to prosecute the appeal, not acceptance of the tax levied. Thus, this court is of the view that the impugned order is liable to be set aside and the matter is to be remanded back for fresh consideration by the appellate court.

In the result, the civil revision petition is allowed, and the order dated 27.03.2024 made in M.T.A.No.04 of 2022 on the file of the Principal Judge/Appellate Judge, City Civil Court, Chennai is set aside, and the Municipal Taxation Appeal in M.T.A.No.04 of 2022 is remitted to the learned Principal Judge, City Civil Court, Chennai for fresh consideration on merits and in accordance with law after giving an opportunity to both parties. The appellate Judge/Principal Judge shall consider the objections raised in the appeal in M.T.A.No.04 of while disposing of the appeal. The appeal shall be disposed of within a period of four months from the date of receipt of a copy of this order. No costs.

Index : yes / no 12..11..2024
Neutral Citation : yes / no
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To

1.The Principal Judge, City Civil Court, Chennai.

N.SATHISH KUMAR.J.,

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C.R.P.No.3973 of 2024

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