(2004) 09 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No''s. 15086 and 15087 of 1997

C.J. Santhosh Reddy — APPELLANT

Vs

Corporation of Madras — RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) WritLR 206

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : G. Vijay Anand, for the Appellant; C. Ravichandran, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The petitioner has filed both the above writ petitions praying to issue a writ of Certiorari, to call for the records of the

respondents demanding additional property tax by demand notice respectively dated 25.09.1997 and 16.08.1996, for the periods 1/93-94 to

1/97-98 in respect of the premises No.34, Palani Andavar Koil Street, Madras.26 (W.P.No.15086 of 1997) and also for the periods 1/93-94 to

2/96-97 in respect of premises No.90, Arcot Road, Kodambakkam, Chennai.24 and quash the said demand notices.

2. From the affidavit filed in support of the above writ petition W.P.No.15086 of 1997, what comes to be known is that the petitioner is the co-

owner of the property in question along with his sibling and mother having inherited the same from his father late Jayarama Reddy; that the

property-tax has been paid upto the date of impugned notice in time at Rs.992/- per half year; that all of a sudden the respondents demanded

Rs.9735/-per half year for the period from the periods 1/93-94 to 97-98, arbitrarily and hence, the petitioner has come forward with the prayer

extracted supra.

3. The same petitioner has filed W.P.No.15087 of 1997 for a similar relief for the assessment years 1/93-94 to 2/96-97 in respect of the property

bearing door No.90, Arcot Road, Kodambakkam, Chennai.24 making similar allegations and stating that the property-tax has been paid upto the

date of impugned notice in time at Rs.913-45 per half year; that all of a sudden the respondents demanded Rs.4698/-per half year from the

periods 1/93-94 to 2/96-97, arbitrarily and hence, the petitioner has come forward with the prayer extracted supra.

4. The second respondent filed his counter-affidavits in both the above writ petitions and would submit that the petitioner had failed to file revision

petition before the Commissioner, Corporation of Chennai against the order of revision of property tax within 15 days from the date of receipt of

the order and has filed the above writ petitions only to circumvent the limitation; that the respondents would further submit that after giving wide

publicity in the local newspapers and conducting General Survey, revised the property tax as per the Government''s instructions; that since the

petitioner has not applied for mutation in his name, he cannot maintain the above writ petitions; further, the petitioner has not filed the Return within

the stipulated time, as required under the Madras City Municipal Corporation Act; that the revised assessment was made only in accordance with

the guidelines approved by the Council of the respondent corporation and also by the Government and ultimately, the second respondent pray for

the dismissal of the above writ petitions.

5. Heard both.

6. During arguments, learned counsel appearing on behalf of the petitioner would submit that the property-tax has been enhanced to ten times

without the least opportunity for the petitioner-owner to set in his objections or to offer his reasons counter to their enhancement though in violation

of the principles of natural justice, the order of enhancement of the house-tax has been arbitrarily made on the part of the respondent Corporation.

Learned counsel would further apprise this Court that they could raise the taxes only prospectively and no retrospective effect would be given to the past period and it is a case wherein for the period from 93-94 to 97-98 that is for a period of five years, the order was passed enhancing the

tax by way of demand notice dated 25.09.1997 so far as it is concerned with the first writ petition in W.P.No.15086 of 1997 and the demand

notice dated 16.09.19997 in the second writ petition above in W.P.No.15087 of 1997; on such strong legal grounds and offering other reasons,

the counsel would ultimately pray to quash both the demand notices served on the petitioner.

7. On the part of the learned counsel appearing on behalf of the respondent, he would cite Rule 1-C of the Municipalities Corporation Rules as the

answer for non-compliance of the legal requirements particularly, giving effect to the requirement of a show cause notice prior to enhancement of

the taxes.

8. Thus giving an opportunity for the petitioner-tax payer either to object or to set in reasons as to how such enhancement would be unreasonable

or arbitrary and without such opportunity since the taxes have been raised 10 times than what he has been paying already, the petitioner would

only become entitled to the relief sought for and Section 1-C is not the answer for no opportunity afforded for the petitioner prior to the

enhancement of the taxes, the opportunity is a necessity in the sense that there would have been sufficient time or chance afforded for the petitioner

for making some representation before the authorities concerned as to why the enhancement should not have been done or even as to how the

enhancement works prejudicial to the interest of the petitioner and since the consequence of such enhancement is susceptible to prey heavily on the

petitioner, an opportunity for the petitioner being heard prior to such enhancement of tax is a must and necessity and since the respondent

Corporation has not thought it fit to issue a show cause notice to the effect as to why the tax should not be enhanced to the extent as it has been

done, and therefore, this Court is inclined to accept the arguments of the learned counsel for the petitioner and hence the following order.

In result,

(i) both the above writ petitions, for the foregoing reasons, stand allowed;

(ii) that the impugned demand notices, respectively, dated 25.09.1997 and 16.08.1996 issued by the respondents which are the subject matters in both the writ petitions are quashed;

(iii) however, the respondent would also be at liberty to pass any such orders that is required in the circumstances of the case in the matter of

enhancement of taxes, following the procedures established under law and the legal norms required as proposed by the upper forums of law;

