(2013) 03 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 4349 of 2010 and M.P. No''s. 1 and 2 of 2010

Dr. K. Vijay Kumar APPELLANT

Vs

The Commissioner, The Asst. Commissioner, Coimbatore and The Commissioner, Chennai RESPONDENT

Date of Decision : 28-03-2013

Acts Referred:

Citation : (2013) 03 MAD CK 0074

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : B. Nedunchezhiyan, for the Appellant; R. Sivakumar for RR-1 and 2 and Mr. R. Rajeswaran, Spl. G.P. for R-3, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The petitioner has challenged the demand of property tax made by the second respondent in Assessment No. 216533

for the year 2008 in Property Tax Book, seeking to quash the same and to direct the respondents 1 and 2 to make the revisional assessment in

accordance with the rules and recommended guidelines. The case of the petitioner is that he is running hotel business in Door No. 95-A, Devi &

Co., Santhu, Coimbatore, in the name and style of ""Anand Vihar"" and had been paying the property tax regularly to the respondents. The

respondents assessed the property in Assessment No. 216533 and determined the annual value of the property. While so, the respondents issued

an order of revised assessment for the period from 1.4.2008, raising the tax amount to 75% (approximately) and demanded the petitioner to pay

the same. The impugned demand notice was served on the petitioner on 6.8.2009. The petitioner did not receive any notice, there was no inspection of the property in question and he was not given opportunity to contest, before the enhancement of the half-yearly property tax. The

petitioner alleges that when once the fair rent is fixed under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, there is no

provision for re-fixation of fair rent. The property tax originally fixed, after demolition, was based on the fair rental value of the property, and

therefore, the respondents have no power to revise the fair rental value and enhance the property tax. The petitioner was not given the benefit of

property tax discount based on the depreciation, depending upon the age of the building. There is no new construction or any addition or alteration

made to the existing structure and therefore, there is no basis for revision of tax. The petitioner''s building was not assessed zone-wise and the

respondents have not given effect to the order of the Taxation Appellate Tribunal. The respondents ignored the guidelines laid down by the third

respondent with regard to the property tax Returns, master list, demarcation, preparation of maps, depreciation, occupation, nature of building, use

of building, ceiling, etc., and did not follow the provisions of the Coimbatore City Municipal Corporation Act and therefore, the impugned action of

the respondents is against the provisions of the said Act and violative of the principles of natural justice and fair play. To the impugned demand, the

petitioner filed objections, dated 12.10.2009, explaining the details, but no orders are passed by the respondents on the same. Hence, he has filed

this Writ Petition for the relief stated above.

2. Learned counsel on either side submitted that the issue involved in this Writ Petition is no longer res-integra, in view of the decision of this Court

in a batch of Writ Petitions in W.P. No. 26891 of 2008, etc., dated 13.2.2009 and also the subsequent order of this Court, dated 6.10.2009 in

W.P. No. 20126 of 2009, which are quoted hereunder:

Order dated 13.2.2009 in W.P. No. 26891 of 2008, etc., batch:

3. The proposed enhancement, as seen from the impugned demand, is indicated to be a flat 75%. Such adhoc increase without notice is not what

is provided by the Statute for the purpose of general revision of property tax.

3. Section 121 of the Coimbatore City Municipal Corporation Act, 1981, deals with the levy of property tax. Sub section (1) of Section 121

mandates the levy of property tax on all buildings and lands within the City. Sub section (2) of Section 121 deals with the levy of property tax for a

newly constructed building and for an addition or alteration made to an existing building. Sub section (3) to sub section (5-A) deals with

reassessment or general revision. Since they are relevant for our present discussion, they are extracted as follows:-

121. Levy of property tax.-(1) The property tax shall be levied on all buildings and lands within the City.

(2)(a) In relation to any building newly constructed or where any addition or alteration has been made to any existing building the owner or

occupier of such building;

(b) where the title of any building or land is transferred, such transferee;

(c) in relation to any building or land, in the event of death of the person primarily liable to the payment of property tax, the person on whom the

property is transferred, shall furnish to the Commissioner within such dates as may be prescribed, a return for such building or land containing such

details as may be prescribed for the assessment or reassessment of the property tax to the said building or land.

(3) In the case of reassessment or general revision of any property tax leviable under this Act, the owner or occupier of any building or land shall

furnish to the Commissioner within such time as may be prescribed, a return in such form containing such details as may be prescribed for the

assessment of property tax to such building or land.

(4) If any owner or occupier of any building or land fails to furnish a return as required under sub-section (2) of sub-section (3) or furnishes an

incomplete or incorrect return, the Commissioner or any person authorised by him in this behalf, shall cause an inspection to be made and also to

make such local enquiries as may be considered necessary and based on such inspection and information collected, shall prepare a return and a

copy of the return shall be furnished to the owner or occupier of the building or land.

(5) On receipt of a return under sub-section (2) or sub-section (3) or on the basis of the return prepared by the Commissioner under sub-section

(4) and after considering the objections, if any, received, the Commissioner shall determine the tax payable in accordance with the provisions of

this Act and shall send an intimation to that effect to the person concerned.

(5-A) In the case of failure to furnish a return under sub-section (2) or sub-section (3), the Commissioner, in addition to the tax determined under

sub-section (5) direct the owner or occupier of any building or land to pay by way of penalty, a sum of rupees two hundred and fifty or five per

cent of the tax determined under sub-section (5) whichever is higher.

4. It is seen from sub sections (3), (4), (5) and (5-A) that the revision or reassessment of the property tax may be made only after an opportunity

to the Assessee to submit his objections. But the impugned demand notice discloses that no opportunity was given to the petitioners, as per the

above statutory provisions.

5. In tune with the mandate contained in sub sections (3), (4) and (5) of Section 121 and similar mandates contained in other City Municipal

Corporation Acts, the Commissioner for Municipal Administration also issued guidelines in Roc. No. 63012/07/R1, dated 20.2.2008. As per

these guidelines, all Assessees are required to file Self Assessment Returns in the prescribed format. On the basis of the returns, the revision has to

be ordered. If no returns are filed, it is open to the Commissioner under sub section (4) of Section 121 to cause an inspection and collect

information on the basis of which a return may be prepared by the Office of the Commissioner. Such return can be served on the owner or

occupier, calling upon him to submit his objections. After receiving the objections, the revision may be ordered by the Commissioner. These

procedures have also not been followed by the respondent before ordering a flat increase of 75% under the impugned demand notices. Therefore

the impugned demand notices are liable to be set aside.

6. Accordingly, all the writ petitions are allowed, setting aside the impugned demands. The Commissioner of Corporation is directed to follow the

guidelines and the statutory provisions, arrive at the revision of annual value and property tax on provisional basis, serve the same on the petitioners

calling upon them to file objections and thereafter pass final assessment orders after considering the objections of the petitioners and after taking

note of the guidelines issued by the Commissioner for Municipal Administration. No costs. Consequently connected miscellaneous petitions are

closed.

Order dated 6.10.2009 in W.P. No. 20126 of 2009:

3. It is seen from the impugned demand that the property tax is sought to be revised from Rs. 849/- per half year to Rs. 17,710/- per half year.

According to the petitioner, the petitioner did not receive any notice at all. The revision itself is based upon a resolution passed by the Corporation

Council only on 03.06.2008. As per the resolution, the ceiling limit is fixed for the enhancement of the property tax in respect of various categories

of buildings. Such ceiling limit was fixed by taking into account G.O.Ms. No. 150, Municipal Administration and Water Supply Department dated

12.11.2007 and G.O.MS. No. 110, Municipal Administration and Water Supply Department dated 23.06.2008.

4. Obviously the impugned demand is in violation of the resolution and the Government orders. Therefore the writ petition is allowed, the impugned

demand is set aside and the second respondent is directed to undertake a revision in accordance with the Government orders by issuing a notice

and giving an opportunity to the petitioner. No costs. The connected miscellaneous petitions are closed.

Following the abovesaid orders, dated 13.2.2009 in W.P. No. 26891 of 2008, etc. batch and dated 6.10.2009 in W.P. No. 20126 of 2009, this

Writ Petition is also allowed. The impugned demand notice is set aside. The first respondent-Commissioner of Coimbatore City Municipal

Corporation, is directed to undertake the revision of property tax in accordance with the relevant Government Orders on the subject, for the

relevant period in question, follow the guidelines issued by the third respondent-Commissioner of Municipal Administration, adhere to the statutory

provisions, arrive at the revision of annual value and property tax on provisional basis, serve the notice of the said revisional assessment of property

tax on the petitioner calling upon him to file objections, consider the said objections of the petitioner, give personal hearing to him and thereafter

pass final assessment orders. No costs. The Miscellaneous Petitions are closed.

