(2014) 11 MAD CK 0484

In the Madras High Court

Case No : Writ Petition Nos. 14298 and 14299 of 2010 and MP. Nos. 1 and 1 of 2010

G. Rajarathinam APPELLANT

Vs

The Corporation of Chennai RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0484

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—While WP.No. 14298 of 2010 is filed by the petitioner, challenging the impugned order of final assessment passed under the provisions of the Chennai City Municipal Corporation Act, 1919, in respect of the petitioner''s property and demanded property tax, WP.No. 14299 of 2010 is filed by the petitioner, seeking a writ of Mandamus, to direct the respondents to forbear from taking or threatening to take proceedings against him in connection with his property at Door No. 98/260/262, TVK Road (Royapettah High Road), Royapettah, Chennai-14 except in accordance with and as contemplated by Chennai Metropolitan City Municipal Corporation Act, 1919 and the rules made thereunder.

2. Earlier the petitioner approached this court by filing WP.No. 22034/2009, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the second respondent therein in connection with the notices to occupiers of premises Nos. 260-262/98 Royapettah High Road, Chennai-14, namely the respondents 3 to 8 herein in Bill No. 0178 Ward 95 dated 22.10.2009 and quash the same and direct the respondents 1 and 2 therein to forbear from taking any distrait or coercive steps to collect the alleged arrears of property tax of the above premises. This Court by order dated 10.2.2010, allowed the writ petition by directing the petitioner to submit a fresh representation or objections giving all details to the second respondent, Assistant Revenue Officer, Zone VI,

Corporation of Chennai, Chennai, within a period of two weeks from the date of receipt of a copy of this order and thereafter, the second respondent shall fix a date for enquiry and then pass final orders on merits and in accordance with law. Pursuant to the said order, notice was issued on 20.4.2010, calling upon the petitioner to appear before the Commissioner, Corporation of Chennai, Chennai on 26.4.2010 for personal hearing.

3. The petitioner appeared and submitted his objections in writing, stating that the old half yearly property tax is Rs.75,837/- and the same is sought to be revised as Rs.1,17,301/- and the increase is Rs.41,464/- which is 54.67% and the same is not proper, since there is no addition on the building and there is no suspension of facts. It is further stated in the petitioner''s objections that the building was constructed during the year 1978-1980 and the age of the building is 30 years and all the tenants are very old and the rental income is very less compared to a new building in the same area during the year 2002 (1/01-02). It is further submitted that the enhancement of the property tax for new building as well as old building of the same line is untenable and therefore, requested to accept the petitioner''s representation. Thereafter, the first respondent by communication dated 4.6.2010 informed the petitioner that as the petitioner was accepted that there is no dispute in area for the building and usage vide Dn.95 Bill No. 0178, Door No. Old.No. 260/262 New No. 98, Royapettah High Road, Royapettah, Chenna-14, final notice is ordered and is sent along with this communication. However, the first respondent has not enclosed any final notice order along with the said communication. Hence, the petitioner made a representation dated 14.6.2010, requesting to provide him the copy of final notice as ordered by the first respondent. Pursuant to the same, copy of the final notice was furnished to the petitioner.

4. It is the case of the petitioner that after this court remanded the matter to the respondents for fresh consideration, the petitioner has duly submitted his objections, pointing out that the building is very old and there is no change in the building and there is no addition and suppression of facts, in justifying the revision of the property tax. Further more, it is submitted that the petitioner''s building cannot be taxed at the same rate, in which new buildings are taxed in the area.

5. In my considered view, the procedure that should be followed by the respondents on receipt of the petitioner''s representation is to issue provisional assessment notice, indicating as to how the enhancement of the property tax is proposed to be demanded from the petitioner and what are the circumstances under which the property tax is sought to be revised, more particularly, the building in question is 30 years old and there is no additional construction put up in the building during the past 30 years. When that being the procedure, the respondents cannot straight away afford opportunity of personal hearing to the petitioner and issue final assessment notice. It is to be noted that the opportunity of personal hearing should be meaningful opportunity and not for the

purpose of satisfaction of this Court to show that the respondents are complied with the earlier order passed by this court. Hence, since the respondents have not followed the procedure by issuing provisional assessment notice and straight away issued the final assessment notice, the petitioner has been put to serious prejudice. As such, the impugned proceedings is bad in law and is in violation of the principles of natural justice and is liable to be quashed.

6. In the result, both the writ petitions are allowed and the impugned final assessment notice issued by the first respondent is quashed, however, with liberty to the respondents to issue a provisional pre-assessment notice, clearly indicating the grounds on which revision of assessment is proposed to be made, with proposed calculation and on receipt of the same, the petitioner is entitled to submit his objections and thereafter, affording opportunity of personal hearing to the petitioner, the respondents shall pass final assessment order, demanding property tax. Till such time, the petitioner shall continue to remit the property tax as per the original order of assessment, without any default. No costs. Consequently, connected miscellaneous petitions are closed.

