THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition No.4214 of 2015

ORDER:

Heard Smt.T.V.Sridevi, Learned Counsel for the petitioner, and Sri S.Lakshmi Narayana Reddy, Learned Standing Counsel for the respondent, and with their consent, this revision is disposed of at the stage of admission.

Aggrieved by the enhancement in property tax and the special notice dated 30.09.2011, issued pursuant thereto, the petitioner invoked the jurisdiction of the Principal Junior Civil Judge, Anakapalle, filing O.S.No.145 of 2012. She filed I.A.No.488 of 2012, under Order 39 Rules 1 and 2, requesting the Court to grant temporary injunction restraining the respondent-Municipality from collecting the enhanced tax. The Learned Principal Junior Civil Judge, by his order in I.A.No.488 of 2012 in O.S.No.145 of 2012, dated 27.08.2012, granted temporary injunction on condition that the petitioner-plaintiff paid the old tax and $1/4^{th}$ of the enhanced tax pending disposal of the Suit. Aggrieved thereby the respondent-Municipality carried the matter in appeal to the X Additional District Judge, Visakhapatnam at Anakapalle, by way of C.M.A.No.53 of 2014. The appellate Court allowed the Civil Miscellaneous Appeal and modified the order of temporary injunction as under:

> "temporary injunction is granted in favour of petitioner/plaintiff restraining the respondent/defendant municipality and its men from collecting the total enhanced property tax in respect of plaint schedule property pending disposal of main suit subject to payment of old undisputed property tax + half (½) amount in the enhanced property tax pending disposal of main suit by petitioner/plaintiff to respondent/defendant municipality and that the arrears in enhanced property tax shall be paid by petitioner/plaintiff to respondent/defendant municipality within three (3) months from the date of this Order i.e., for the period covered by demand notice till 31.03.2015;"

Smt.T.V.Sridevi, Learned Counsel for the petitioner, would submit that enhancement in the levy of tax is without jurisdiction; and the appellate Court had erred in directing the petitioner to pay the old undisputed property tax plus half of the enhanced property tax pending disposal of the Suit. On the other hand Sri S.Lakshmi Narayana Reddy, Learned Counsel for the respondent, would rely on the judgment of this

Court in **P.Ranga Reddy v. Kurnool Municipality**[1] in support of his submission that the Suit itself is not maintainable as the A.P. Municipalities Act provides for the remedy of revision. Learned Counsel would further submit that the validity of the levy of property tax, and its collection, are matters which would, ordinarily, not be examined by this Court in revisional proceedings.

The question whether the action of the respondent-Municipality, in enhancing the property tax, is without jurisdiction or not are matters for examination in the main Suit. Likewise the submission of Sri S.Lakshmi Narayana Reddy, Learned Counsel for the respondent, that the Suit itself is not maintainable is also a matter which necessitates examination in the main Suit.

The order of the appellate Court directing payment of one half of the enhanced property tax cannot be said to be so patently illegal as to justify exercise of jurisdiction under Section 115 CPC. While no interference is called for in this regard, the appellate Court has erred in not extending the same benefit to the arrears of property tax also, and in directing the petitioner to pay arrears of the enhanced property tax in its entirety. Suffice it if the order of the appellate Court is modified to the limited extent that, instead of paying the entire arrears of enhanced property tax, the petitioner is directed to pay the entire arrears of the old undisputed property tax, plus half of the arrears of the enhanced property tax, within two months from today. Failure on the part of the petitioner to pay the said amount within the aforesaid period, would automatically result in vacation of the present order; and it shall then be open to the respondent-Municipality to proceed and take action in accordance with law.

The Civil Revision Petition is, accordingly, disposed of. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:20.11.2015.
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[1] 2008 (6) ALT 343