IN THE HIGH COURT OF JUDICATURE; AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

APPEAL SUIT No.1508 of 1997

BETWEEN:

Food Corporation of India,

represented by its District Manager,

FCI, Vijayawada.

.. **Appellant/**

Plaintiff

AND

Gram Panchayat, Epuru,

represented by its Executive Officer,

Epuru Panchayat.

.. **Respondent/**

Defendant

DATE OF JUDGMENT PRONOUNCED: 28.08.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether reports of Local newspapers

   may be allowed to see the judgments? YES/NO

2. Whether the copies of judgments may be marked to Law Reporters/Journals. YES/NO

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment ? YES/NO

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.No.1508 of 1997

JUDGMENT:

The unsuccessful plaintiff in O.S.No.163 of 1988 on the file of the Principal Subordinate Judge, Eluru (hereinafter referred to as 'trial Court'), preferred this appeal challenging the decree and judgment dated 14.08.1997, where-under a suit filed by the plaintiff for declaration that the notice dated 26.02.1988 as arbitrary and illegal and for consequential injunction, was dismissed.

2. For convenience of reference, the status of the parties before the trial Court in O.S.No.163 of 1988 is adopted throughout the judgment.

3. The plaintiff is a statutory body having its office at Vijayawada at Krishna District. The defendant is Gram Panchayat, Epuru. The plaintiff constructed two godowns for storage of food articles within the limits of defendant in the year 1986. The defendant levied property tax for the godowns at Rs.60,880.12 paise on the basis of capital value furnished by the plaintiff and paid property tax.

4. The plaintiff also constructed four more godowns for the same purpose within the limits of defendant-Gram Panchayat in the year 1987. The defendant levied property tax at Rs.1,21,760.57 paise basing on the capital value furnished by the plaintiff and issued a special notice. Thereupon, the plaintiff preferred appeal to revise the tax which ended in dismissal on the ground of limitation.

5. The levy of tax by defendant is not in according to law and imposition of tax at Rs.0.80 paise per hundred is illegal and arbitrary. Hence, the suit for the aforesaid

reliefs.

6. The defendant filed written statement contending that levy of tax on capital value is as per G.O.Ms.No.282, dated 12.03.1965 and the defendant also passed resolution to levy property tax @ 0.80 paise per hundred. Hence, the assessment cannot be questioned by the plaintiff in court of law.

7. Based on the above pleadings, the following issues were framed by trial court.

1. Whether the plaintiff is entitled for declaration and injunction prayed for?
2. Whether the suit is not maintainable without exhausting the remedies available under the A.P. Gram Panchayat Act and Rules framed thereunder?
3. To what relief?

8. During the course of trial, on behalf of plaintiff, P.W.1 was examined and Exs.A.1 to A.43 were marked and on behalf of defendant, D.W.1 was examined and Ex.B.1 was marked.

9. Upon hearing the argument of both the counsel and considering oral and documentary evidence on record, the trial Court concluded that the levy of tax is strictly in compliance of the provisions of the Act and the same cannot be declared as arbitrary or capricious and dismissed the suit.

10. Aggrieved by the decree and judgment of the trial Court, the present appeal is preferred on various grounds.
The main contentions are as under:

a. the defendant is not permitted to levy property tax without any G.O., issued by the Government under Section 71 of the Act and thereby, levy of tax is illegal;

b. the defendant is incompetent to levy tax on the godowns as they belongs to the Government and that there is no evidence on record to establish that the defendant Gram Panchayat complied the provisions of the Act in substance.

Therefore, the findings of the trial Court are erroneous and liable to be set aside and requested to re-appraise the evidence and pass a decree in favour of the plaintiff as prayed for.

11. During the course of arguments, Sri M. Ratna Reddy, Advocate for the appellant, would contend that the buildings belonging to Food Corporation of India are exempted from tax as they belongs to the Government and no tax can be levied on it.

In addition to the said contention, he specifically contended that the levy of property tax on the basis of the capital value is erroneous and at best, the defendant is entitled to levy tax only basing on the rental value, but the trial Court did not consider this contention in proper perspective and committed an error, and finally, he prayed to allow the appeal setting aside the decree and judgment of the trial Court.

12. Per contra, learned counsel for the defendant argued totally in support of the findings recorded by the trial Court, specifically raising a contention that unless the Government exempts by an order exempting the buildings belonging to the plaintiff for payment of tax, the defendant Gram Panchayat is competent to levy property tax on the godowns. The provisions of the Act provide to levy tax either on the basis of annual value or of capital value. Therefore, the levy of tax by the defendant is totally in accordance with law and the trial Court did not commit any error and prayed for dismissal of the appeal.

13. Considering rival contentions and perusing the decree and the judgment of the trial Court so also the oral and documentary evidence on record, the points that arise for consideration are as follows:

1. Whether the buildings belonging to the plaintiff Food Corporation of India are exempted from levy of property tax by the defendant Gram Panchayat under the provisions of the Act?
2. Whether the levy of tax based on capital value is in accordance with law, if not the demand made by the defendant for payment of Rs.60,880.12 + Rs.1,21,760.57 paise is illegal and arbitrary?
3. Whether the demand of Rs.60,880.12 + 1,21,760.57 ps. for the assessment years 1986-87 and 1987-88 be declared as illegal and arbitrary?
4. Whether the plaintiff is entitled for consequential permanent injunction?

14. **<u>Point No.1:</u>**

The first and foremost contention of the plaintiff is that the godowns belonging to the

Food Corporation are exempted from levy of property tax by the Gram Panchayat. This contention was negatived by the trial Court on the ground that the buildings belonging to the plaintiff are not exempted under the provisions of the Act, except by a Government order. This finding is challenged before this Court again on the basis of the provisions of Section 70 of the Act.

A perusal of Section 70(4) of the Act, the Government may exempt specified classes of houses from tax. Section 70(4) of the Act, the same is extracted as hereunder;

"(4) The Government may make rules providing for-

i. the exemption of specified classes of houses from the tax;

ii. the manner of ascertaining the annual or capital value of houses or the categories into which they fall for the purposes of taxation;

iii. the persons who shall be liable to pay the tax and the giving of notices of transfer of houses;

iv. the grant of exemptions from the tax on the ground of poverty;

v. the grant of vacancy and other remissions; and

vi. the circumstances in which, and the conditions subject to which, houses constructed, reconstructed or demolished or situated in areas included in, or excluded from, the village, during any year, shall be liable or cease to be liable to the whole or any portion of the tax.

It is clear from Section 70(4) of the Act that an order from the Government is required exempting from levy of property tax. Admittedly, the Government did not pass any order exempting the buildings belonging to the plaintiff, Food Corporation of India.
On the other hand, in cross-examination of P.W.1, he admitted that the plaintiff owned and possessed godowns at different places including Vijayawada and property tax is being paid for the said godowns. Therefore, it is clear from the evidentiary admission of P.W.1 that the Food Corporation is not exempted from payment of property tax and no Government order was passed exempting payment of property tax by the plaintiff. In those circumstances, the plaintiff is not entitled to claim exemption from payment of property tax to the defendant Gram Panchayat without any Government order, so, this contention cannot be accepted for the above reason. Hence, the finding of the trial Court is free from any legal infirmity and the same is hereby sustained holding this point in favour of the defendant and against the plaintiff.

15. **Point No.2:**

The second contention raised by the learned counsel for the appellant both in the grounds of the appeal and in the arguments is that levy of property tax is based on capital value and is against the provisions of Section 70 of the Act. At this stage, it is relevant to advert to Section 70(1)(b) of the Act and is extracted hereunder for better appreciation:

> "House-tax: (1) The house-tax referred to in clause (a) of sub-section (1) of Section 69 shall, subject to the rules in Schedule II and to such other rules as may be prescribed, be levied on all houses in the village on any one of the following basis, namely;
>
> (a) annual rental value, or
>
> (b) capital value, or
>
> (c) such other basis as may be prescribed".

A bare look at Section 70(1) of the Act, the property tax can be levied on the basis of annual rental value or capital value or on such other basis as may be prescribed. Thus, Section 70(1)(b) of the Act provides levy of property tax on the basis of capital value. Therefore, the contention that the levy of property tax on the basis of capital value is illegal cannot be sustained in view of Section 70(1)(b) of the Act.

16. The main contention of the plaintiff is that unless the Government permits to levy tax in general rules by passing an order, the Gram Panchayat is incompetent to revise the tax or levy tax against the plaintiff. Under Section 70 of the Act and under G.O.Ms.No.282 dated 12.03.1965, the capital value of the property can be taken for levy of property tax. If the value of the building construction and land furnished by the plaintiff is taken into consideration, the levy of property tax at Rs.60,880.12 + 1,21,760.57 ps for the years 1986-87 and 1987-88 is in accordance with the provisions of the Act. If the levy is during general revision a Government order is required, but the levy is on newly constructed building for which no notification by Government is required. Hence the contention of the plaintiff that in the absence of Government Order tax cannot be levied is unsustainable.

17. **Point No.3:**

In view of my findings on points 1 and 2, the assessment of levy of tax by the defendant against the plaintiff is in accordance with law and the counsel for the appellant/plaintiff did not question non-compliance of any provisions of the Act in substance and in effect. In the absence of such challenge, no examination is required to find out the compliance of statutory provisions of the Act while levying property tax in substance and in effect. Therefore, the levy of property tax on 6 godowns belonging to the plaintiff cannot be declared as arbitrary and illegal. Hence, I find no illegality in the finding recorded by the trial Court in declining to grant a decree for declaration that the demand notice dated 26.02.1988, as illegal and arbitrary. Accordingly, the point is held against the plaintiff and in favour of the defendant.

18. **Point No.4:**

According to my findings on points 1 to 3, the plaintiff is not entitled to the primary relief of declaration under Section 34 of Specific Relief Act, 1963, thereby the question of granting consequential relief of permanent injunction does not arise. Hence, I hold that the plaintiff is not entitled to claim consequential permanent injunction restraining the defendant and its men from recovery of property tax under Ex.A6-demand notice. Accordingly, the point is held against the plaintiff and in favour of the defendant.

19. **Point No.5:**

In view of my findings on points 1 to 4, I find that the appeal is devoid of merits and deserves to be dismissed.

20. In the result, the Appeal is dismissed, but without costs in the circumstances of the case. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 28-08-2015

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