THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.S.A.No.35 OF 2010,
C.M.S.A.No.36 OF 2010,
C.M.S.A.No.37 OF 2010,
C.M.S.A.No.38 OF 2010,
C.M.S.A.No.39 OF 2010
AND
C.M.S.A.No.40 OF 2010

COMMON JUDGMENT:

All these appeals arise out of orders dated 30.04.2010 passed by the Principal Senior Civil Judge, Eluru in C.M.A.Nos.9, 11, 16, 17, 24 and 25 of 2008 confirming the orders passed by the Commissioner, Eluru Municipal Corporation in the respective Revision Petitions.

2. The appellant in all these appeals is one and the same.

3. The appellant is assessee of properties under different assessment numbers within the territorial limits of Eluru Municipal Corporation, the respondent herein.

4. The details of assessment of properties, year of assessment etc. are as follows:

CMA No. and year	R.P.No.	Assessment No.	Door No.	Special notice date	Old tax	Proposed tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)
9 of 2008	265/A6/07	1075022191	13-2-51	23.09.07	Rs.8560/-	Rs.17,868/-
11 of 2008	416/07	1075027325	4-2-22	22.09.07	Rs.18813/-	Rs.41743/-
16 of 2008	267/A6/07	1075022233	13-6-50/B	23.09.07	Rs.3103/-	Rs.5182/-
17 of 2008	A3/303/07	1075024721	22C-1-59	23.09.07	Rs.18066/-	Rs.45865/-
24 of 2008	419/07	1075027852	4-10-B	22.09.07	Rs.4686/-	Rs.8203/-
25 of 2008	321/07	1075005265	7511	22.09.07	Rs.16105/-	Rs.25,750/-

5. The respondent during general revision of property tax within the

Municipal Corporation, Eluru issued notices referred in Column No.5 of the above table, proposing to enhance the tax in Column No.7 from the existing tax in Column No.6 of the above table. Against the special notices, the appellant preferred revisions before the Commissioner, Eluru Municipal Corporation in Column No.2. Thereupon, the respondent issued an endorsement dated 23.09.2007 confirming the proposed enhancement of tax and demanded for payment of the same at the enhanced rate.

6. Aggrieved by the orders under revisions in Column No.2, the appellant preferred appeals in Column No.1 of the above table and all the appeals were dismissed by the Principal Senior Civil Judge – appellate authority under the Greater Hyderabad Municipal Corporation Act (for short 'the Act) by orders dated 30.04.2010. Aggrieved by the said orders, the appellant preferred the present appeals on various grounds challenging the proposed assessment.

7. The following are the substantial questions of law raised in para 7 of the grounds of appeals and they are as follows:

(i) ***Whether the respondent is not under an obligation to comply with the procedural requirements of law even in the case of enhancement of tax to 50% of existing tax?***

(ii) ***Whether the respondent is bound by the Government Orders directing enhancement of tax or compliance with Sections 218, 219 and 220 of Greater Hyderabad Municipal Corporation Act, 1955 as applicable to respondent corporation and whether failure to comply with the provisions of law results in setting aside the orders of enhancement of tax?***

(iii) ***Whether non compliance with the provisions of the Act in enhancement of tax is a curable defect within the meaning of Section 684 of the Act?***

8. As seen from the orders under challenge in CMAs passed by the Principal Senior Civil Judge, Eluru, the learned Judge concluded that

the proposed enhancement is in accordance with law in compliance of G.O.Ms.No.707 M.A. and U.D., dated 21.09.2007 and that the respondent complied with the mandatory procedure prescribed under the Act in effect and in substance. Now the said finding is challenged in these appeals raising several questions of law referred supra.

POINTS 1 AND 3:

9. The first and third questions are general in nature and question No.2 is specific about non compliance of Sections 218, 219 and 220 of the Act. Before going to decide the other questions, I would like to decide question No.2 in all these appeals. Section 218 of the Act prescribes public notice to be given when valuation of property in any ward has been completed. In a ward Assessment Book, the Commissioner shall give public notice thereof and of the place where the ward Assessment Book or a copy of it, may be inspected and such public notice shall be published in the Andhra Pradesh Gazeettee and in the local daily newspapers and also by posting play cards in conspicuous places throughout the ward.

10. According to Section 219 of the Act, every person who reasonably claims to be the owner or occupier of some premises entered in the Assessment Book or the agent of any such owner or occupier shall be permitted, free of charge, to inspect and to take extracts from any portion of the said book which relates to the said premises and any person not entitled under sub-section (1) to inspect and take extracts from any portion of the Assessment Book free of charge shall be permitted to do so on payment of such fee as shall from time to time be determined in this behalf by the Commissioner, with the approval of the Standing Committee.

11. Section 220 of the Act permits the complaints against the amount of rateable value entered in the ward assessment book to be received by the office of the Commissioner. In fact, this ground was not urged before the revisional authority as seen from the revision filed against the

assessments. None of the grounds raised in the revision petition falls within Sections 218, 219 and 220 of the Act while questioning the proposed enhancement under the notice. Similarly, before the appellate authority i.e. Senior Civil Judge, no other point was urged in the grounds of appeal. The procedure contemplated under Sections 218 to 220 of the Act is a matter of evidence. If such question was urged before the revisional authority or at least before the appellate authority, the respondent will have an opportunity to produce material about compliance of Sections 218, 219 and 220 of the Act, but no such question was raised before the primary authority and the appellate authority, for the first time this Court cannot permit such plea in the second appeal, as, there was no opportunity for the respondent to produce evidence before the revisional authority and appellate authority to establish compliance of Sections 218 and 220 of the Act. Hence, the question of non compliance of Sections 218 and 220 of the Act cannot be permitted to be urged before this Court for the first time in the second appeal. Therefore, I hold that the appellant is not entitled to raise such question for the first time in the second appeal and on that ground the appeal cannot be allowed. Accordingly, these points are answered against the appellant and in favour of the respondent.

<u>POINT No.2</u>

12. Learned counsel for the appellant pointed out certain procedural non-compliance and as it is a substantial question of fact, the same was considered by the appellate Court in CMAs. However, during the arguments, learned counsel for the appellant drawn the attention of this Court in W.P.No.23951 of 2012 filed by him, challenging the revision of tax for the year 2011-12 proposing to enhance the tax from Rs.28,220/- to Rs.40,911/- for half year, which is the subject matter of C.M.A.No.36 of 2010. While deciding the writ petition, this Court made a strong observation against the respondent-Municipal Corporation pointing out gross violation of rules while proposing to enhance the tax and disposing of the revision petition in a most casual manner and quashed

the revisional order passed in General Revision Petition No.1075000373, dated 02.01.2012. On the strength of the said order, learned counsel drawn attention of this Court to the revisional order passed in C.M.A.No.36 of 2010, which is almost in the similar lines.

13. No doubt, this Court set aside the revisional order passed by the 2nd respondent, which is the subject matter of writ petition on the ground that the revisional authority did not specify reasons for proposed enhancement while issuing endorsement, but in the present case, specific reasons were mentioned in Telugu on the right hand corner of the lower part of the endorsement/notice. However, the endorsement cannot be sufficient for the proposed enhancement, but the said order was questioned before the Senior Civil Judge, who disposed of the appeal confirming the order assigning reasons. Therefore, on the strength of the order in W.P.No.23951 of 2012, it is difficult to hold that the order passed by the appellate authority is illegal.

14. The main endeavour of the learned counsel for the appellant is that it is for the respondent to prove that it has complied with the mandatory procedure prescribed under the Act in substance and in effect and the burden is always on the respondent-Municipal Corporation. But here, though the writ petition was disposed of, in a most casual manner the respondent issued endorsement in compliance of Section 222 of the Act. In CMAs, the Senior Civil Judge has discussed the matter in extensive and concluded that the respondent-Municipal Corporation has complied with the mandatory procedure prescribed under the Act as it is a pure question of fact. When the issue raised before this Court other substantial question of law, non compliance of procedure prescribed under the Act, in fact, it is a question of fact for the reason that certain procedure is prescribed under the Act and G.O.Ms.No.707, dated 21.09.2007 and it is of course a matter of evidence to be produced before the concerned authority by producing the publication of gazettee etc., as required under the provisions of the Act. The appellate authority having considered the

facts and circumstances of the case and the material produced before it held that the respondent has complied with the mandatory procedure prescribed under the Act in substance and in effect. The said finding is based purely on a substantial question of fact. In the second appeal, it is difficult to upset the concurrent findings of both revisional authority and the appellate authority i.e Senior Civil Judge, Eluru unless the reasoning given by the said authorities is perverse, but I find no such perversity.

15. One of the contentions raised by the learned counsel for the appellant is that non compliance of mandatory procedure is not a curable defect within the meaning of Section 684 of the Act, which reads as follows:

> *Informalities and errors in assessments, etc. not to be deemed to invalidate such assessment, etc:-*
>
> *(1) Any informality, clerical error, omission or other defect in any assessment made or in any distress levied or in any notice, bill, schedule, summons or other documents issued under this Act, or under any rule or bye-law may thereunder, may at any time as far as possible be rectified.*
>
> *(2) No such informality, clerical error, omission or other defect shall be deemed to render the assessment, distress, notice bill, schedule, summons or other document invalid or illegal, if the provisions of this Act and the rules and bye-laws made thereunder have in substance and effect been complied with; but any persons who sustains any special damage by reason of any such informality, clerical error, omission or other defect shall be entitled to recover compensation in the same by suit in a Court of competent jurisdiction."*

16. The saving provision under Section 684 contemplates that informalities and errors in assessments etc. not to be deemed to invalidate such assessment and it contemplates that if the provisions of the Act and the rules and bye-laws made thereunder have been complied with in substance and in effect, such informalities will not render the assessment, distress, notice etc., as invalid or illegal. In a

case, though the publication under Section 218 of the Act was not given, the owners of the premises were served with special notices in compliance of Section 220(2) of the Act with regard to the proposed increase in the property tax and then avail the remedy of filing their objections and the special damage or prejudice if any caused to the owners of the building, the assessment cannot be challenged.

17. Here the only contention of the appellant is that non compliance of Sections 218, 219 and 220 of the Act in substance and in effect. In fact, the respondent did not produce any material regarding compliance of Section 218 of the Act i.e. publication etc. But, still the appellant availed the remedy of filing objections and an endorsement dated 23.09.2007 was issued by the respondent. Therefore, no prejudice would be caused to the appellant. Even if the respondent did not comply the procedure contemplated under Section 218 of the Act. Hence, I find that non compliance of Section 218 of the Act would not vitiate the entire assessment in view of Section 684 of the Act. So far as non compliance of other provisions are concerned, there is concurrent finding by the revisional authority and appellate authority, which did not call for interference of this Court in the second appeal.

18. In view of my foregoing discussion, I find no ground warranting interference by this Court. Since the order of Senior Civil Judge in CMAs is concerned, I do not find any illegality or infirmity in it and consequently, the appeals are devoid of merit and are liable to be dismissed.

19. Accordingly, the appeals are dismissed. There shall be no order as to costs.

20. Miscellaneous petitions, if any, filed in these appeals shall stands closed.

M.SATYANARAYANA MURTHY

23.06.2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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