HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.14320 of 1999, 7211 of 2000 & 7895 of 2001

COMMON ORDER: *(Per Hon'ble Sri Justice* S.V.Bhatt*)*

The parties to these writ petitions are same.

The issue arises under the Panchayat Raj Act, 1994 (for short 'the Act').

The petitioner challenges notice of the 1st respondent dated 25.03.1999 demanding a sum of Rs.1,60,868.24 Ps towards property tax for the year 1998-99; notice dated 03.03.2000 demanding a sum of Rs.48,260.49 Ps towards balance property tax for the year
1998-1999 and Rs.1,58,199.56 Ps for the year 1999-2000; and notice dated 06.03.2001 demanding a sum of Rs.1,58,199.56 Ps towards property tax for the year 2000-2001, respectively, as null, void and inoperative.

The petitioner prays for consequential relief to restrain the
1st respondent from proceeding further in S.T.C.Nos.144 of 1999
and 41 of 2000 in the Court of II Class Magistrate, Dhone for
non-payment of property tax.

The case of petitioner in these three writ petitions is substantially common and the pleadings in W.P.No.14320 of 1999 are referred for brevity and would suffice the narration of case stated in other two writ petitions.

The petitioner is a company incorporated under the Companies Act. The petitioner established a cement factory at Cementnagar, Kurnool District and is operating the same.

The petitioner as an ancillary facility constructed and developed a township at Cementnagar for the residence of its employees. The petitioner claims to have provided roads, water, electricity, drainage etc., in the said township at Cementnagar.

It is the case of petitioner that firstly the petitioner is providing the basic amenities to employees/residents of township at Cementnagar and secondly the Gram Panchayat/1st respondent as a local body is not providing any service in the township or to the residents of township. On the request of petitioner and in accordance with Section 76 of the A.P. Gram Panchayat Act, 1964 (for short 'the Act 2/1964'), Resolution No.70 dated 12.10.1984 was passed by the Gram Panchayat to receive 70% of house tax amount demanded for the house properties in township. In other words, through the resolution dated 12.10.1984, 30% of house tax payable by the petitioner was reduced or compounded by the Gram Panchayat and the amount payable is 70% of the demand. At the first instance, the reduced rate of house tax was operated for the periods 1984-85, 1985-86 and 1986-87. The case of petitioner is that in spite of agreeing to receive 70% of the house tax, the Panchayat received full house tax from the petitioner.

The petitioner, for whatever reason, could not avail the benefit of 30% house tax reduced by the Gram Panchayat. The petitioner relies upon agreement under Section 76 of Act 2 of 1964 entered into between the parties.

The Government issued G.O.Ms.No.400 dated 17.08.1993.

The relevant portion reads as follows:

> "The Government, after careful examination of the proposal in question with reference to the rules issued in G.O.Ms.No.458, Panchayat Raj, dated 27.05.1966 and G.O.Ms.No.569, P.R., dated 02.07.1977 under Section 76 of A.P. Gram Panchayats Act, 1964, hereby permit the Gram Panchayat, Cementnagar to compound 50% of house demand for the years 1985-86 to 1991-92 as per the details shown in para 5 above and receive 70% of house tax demand duly collecting the Library Cess for each year in full and actual demand. Since the Gram Panchayat has already collected the tax for 1985-86 to 1988-89 and 1990-91 in full, the Gram Panchayat, Cementnagar, is

directed to adjust the 30% of house tax already collected for the years 1985-86 to 1990-91 against
the demand of house tax due to it from the factory for the years 1989-90 and 1991-92 after deducting 30% of house tax demand for the said two years and then collect the balance amount if any, from the factory or in case any amount is still found in excess, the Gram Panchayat should adjust such excess amount paid by the factory in the next years demand i.e.,for 1992-93. The Cementnagar Gram Panchayat is also hereby directed to collect the Library Cess in full each year for the above period from M/s Panyam Cements and Mineral Industries Ltd., Cementnagar."

The Gram Panchayat issued the impugned demand notices for the years 1998-1999, 1999-2000 and 2000-2001 for 100% property tax, without adjusting the 30% excess payment available with it.

The case of petitioner is that for the period 1985-86 till 1991-92 the parties entered into agreement for payment of 70% of house tax. The petitioner, notwithstanding the agreement, paid in full the house tax demanded by the Gram Panchayat without availing
30% remission. The petitioner relies upon G.O.Ms.No.400 dated 17.08.1993 for adjustment of the balance amount of 30% lying with the Gram Panchayat. Therefore, the petitioner asserts that it is not under legal obligation to pay house tax demanded through the impugned notices.

With effect from 25.05.1994, "the Act" is in operation and Section 72 of the Act corresponds to Section 76 of Act 2 of 1964.

The legal grounds canvassed by the petitioner are that the
1st respondent is under obligation to give effect to the resolution dated 12.10.1984 read with G.O.Ms.No.400 dated 17.08.1993 and having received 100% house tax for the periods 1985-86 to 1991-92 against 70% house tax payable by the petitioner, the Gram Panchayat is under legal obligation to adjust the amount against the impugned notices and if any balance is payable, such amount alone is required to be demanded from the petitioner. The learned counsel Sri D.Ravi Shankar Rao placed strong reliance upon Section 72 of the Act and G.O.Ms.No.400 dated 17.08.1993.

The short point for consideration is whether the petitioner is entitled for adjustment of 30% amount available with the 1^{st} respondent for the periods referred to above.

As already noticed, G.O.Ms.No.400 dated 17.08.1993 provides for adjustment of amount available with the 1^{st} respondent for future years i.e., 1989-90, 1991-92 and at best 1992-93. The Government Order specifically refers to adjustment of alleged excess amount received by 1^{st} respondent from petitioner for the periods 1985-86 to 1992-93. The petitioner, admittedly, is not having agreement for the period starting from 1995-96 till the issue of impugned notices. Admittedly, the Government did not pass orders for adjustment of house tax payable for the subject years. Perusal of G.O.Ms.No.400 makes it clear that adjustment of 30% amount if any available with 1^{st} respondent is for two spells stated in the GO. Therefore, the case of petitioner expanding the direction for adjustment is factually untenable. In our considered view, the adjustment of 30% amount is not supported by material and there is no provision in the Act facilitating such adjustments. The property tax is payable under the Act and if the petitioner claims exemption or adjustment, such exemption or adjustment should be traceable to the scheme of the Act and Section 72 of the Act is not attracted to the fact situation. The averments and the material available on record do not establish that the petitioner has made out a case for grant of any relief.

The writ petitions fail and are, accordingly, dismissed.
No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 04.06.2015

Lrkm