IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: C.M.S.A.No.9 OF 2010

Between:

S.M.A.Khadar

.. Petitioner(s)

And

Vijayawada Municipal Corporation.

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 16.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local news papers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment 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

C.M.S.A.No.9 OF 2010

ORDER:

This Civil Miscellaneous Second Appeal arises out of the order dated 15.10.2008 passed by the Principal Senior Civil Judge, Vijayawada in C.M.A.No. 8 of 2010 confirming the order passed by the Commissioner, Vijayawada Municipal Corporation dated 00.01.2008.

2. The appellant is the owner of house bearing No.12-11-23, R.R.Appa Rao Street, Vijayawada and initially the property tax was assessed at Rs.7214/- for half year and later the respondent issued a revised special notice on 30.10.2007, which was served on the appellant on 15.11.2007. As per the notification dated 29.09.2007 the respondent proposed to enhance the tax to Rs.36,022/- per half year in pursuance of G.O.Ms.No.732 (M.A. & U.D.), dated 29.09.2007.

3. The only contention before the appellate Court is that the Assistant Commissioner without conducting proper enquiry and without giving an opportunity of hearing, to the appellant passed the order in routine manner enhancing the proposed tax from 27,652/- to 36,022/- for half year. Thus, the respondent did not afford reasonable opportunity to the appellant to raise his objections and the procedure adopted by it is against the principles of natural justice and prayed to set aside the order passed by the revisional authority.

4. The Principal Senior Civil Judge, Vijayawada upon hearing the arguments of both the counsel observed that a notice was issued to the appellant as per the provisions of the Greater Hyderabad Municipal Corporation Act (for short 'the Act) fixing date of hearing on the objections, but the appellant did not attend the enquiry before the Assistant Commissioner, Municipal Corporation, Vijayawada, and therefore, did not accept the contention of the appellant with regard to the violation of principles of natural justice and dismissed the appeal

confirming the order passed by the revisional authority vide order dated 15.10.2008.

5. Aggrieved by the said order, the present appeal is filed raising several contentions including the substantial questions of law which are four in number.

6. All the four alleged substantial questions of law are more or less substantial questions of fact and not the law.

7. During the course of hearing, learned counsel for the appellant would submit that no opportunity was afforded to the appellant at the time of hearing the objections by the Assistant Commissioner, Vijayawada Municipal Corporation against the revision and sought setting aside the decree and order passed by the Principal Senior Civil Judge, Vijayawada, in C.M.A.No.8 of 2008.

8. Considering the contention of the appellant, the substantial question of law that arises for consideration is:

> **Whether the respondent complied with the procedure under Sections 222 and 223 of the Greater Hyderabad Municipal Corporation Act, if not, whether the assessment of tax at Rs.27,652/- for half year is vitiated?**

POINT:

9. As seen from the allegations made in the grounds of appeal before the Principal Senior Civil Judge, Vijayawada, in C.M.A.No.8 of 2008, the only contention urged was that the respondent did not afford reasonable opportunity and no intimation about hearing of the revision was given in pursuance of Sections 222 and 223 of the Act. The Principal Senior Civil Judge held that a notice was served in compliance of Sections 222 and 223 of the Act, but the appellant herein (assessee) failed to appear before the Assistant Commissioner on the date and time fixed in the said notice and thereby, the respondent confirmed the tax at Rs.26,650/- and dismissed the appeal.

10. The service of notice under Section 222 of the Act is pure

question of fact. However, if such notice is not served such assessment is against the principles of natural justice.

11. As seen from the material available on record, the respondent served a special notice dated 30.10.2007 and receipt of which was acknowledged by the appellant on 15.11.2007 and filed objections before the Assistant Commissioner, Vijayawada Municipal Corporation. Moreover, on the date fixed for hearing, the appellant/assessee did not appear before the Assistant Commissioner, as held by the appellate Court. According to Section 222 of the Act, the Commissioner shall cause all complaints so received to be registered in a book to be kept for this purpose and shall give notice in writing, to each complainant, of the day, time and place when and where at his complaint shall be investigated.

12. Section 223 of the Act prescribed the procedure for hearing of complaint and according to Clause (1) at the time and place so fixed, the Commissioner shall investigate and dispose of the complaint in the presence of the complainant, if he shall appear, and if not, in his absence.

13. In the present case, notice under Section 222 of the Act was issued, but the appellant/assessee did not appear before the Assistant Commissioner, Vijayawada Municipal Corporation at the time and date fixed for hearing of the complaint. Hence, the Assistant Commissioner proceeded to decide the revision in the absence of the appellant/assessee in terms of Sub-section (1) of Section 223 of the Act and passed the order, which in my view is not against the principles of natural justice, since sufficient opportunity was afforded to the appellant/assessee to appear before the Assistant Commissioner. Hence, I find no legal infirmity in the order dated 15.10.2008 passed by the Principal Senior Civil Judge, Vijayawada, in C.M.A.No.8 of 2008 and the same is hereby confirmed holding this point against the appellant and in favour of the respondent.

14. Accordingly, the appeal is dismissed, but without costs.

15. Pending miscellaneous petitions in the appeal, if any, shall stands dismissed. No costs.

M.SATYANARAYANA MURTHY,J

16.07.2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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