THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.S.A. No. 36 of 2012

JUDGMENT:

The appellant, aggrieved by the order, dated 27.10.2009 in M.A.No.13 of 2009 passed by the Chief Judge, City Small Causes Court, preferred this appeal challenging the order passed therein.

The parties to the appeal will be referred as appellant and respondent for convenience.

The appellant is the owner of the premises bearing door no. 10-3-191/1, situated at Humayun Nagar, Hyderabad, and assessed to tax proposed to enhance at Rs.1,87,640/- per annum and issued a demand notice for the years 2007-2008 and the same was questioned by the assessee by filing revision before the first respondent Municipal Commissioner, Greater Hyderabad Municipal Corporation, but the respondent did not interfere with the proposed assessment in revision. Aggrieved by the same, the appellant preferred M.A.No.105/2006 before the Chief Judge, City Small Causes Court and the same was allowed remanding the matter to the first respondent with specific direction to issue notice to the respondent fixing date of his appearance and dispose of the revision petition.

In compliance of the above direction, the first respondent issued notice, dated 17.04.2007, informing that the date fixed for personal hearing was 19.04.2007 and requested to appear at 03.30pm., personally or through their advocate, but the appellant did not appear either in person or through his agent as requested by the first respondent. Therefore, the first respondent, having no other alternative, confirmed the order of assessment.

Aggrieved by the same, the appeal in M.A.No.13 of 2009 was filed before the Chief Judge, City Small Causes Court and Chief Judge, City Small Causes Court, confirmed the order of first respondent, holding that an opportunity was given to the appellant as required under Sections 222 and 223 of the Hyderabad Municipal Corporation Act (for short, 'the Act') and dismissed the appeal.

Aggrieved by the order passed by the Chief Judge, City Small Causes Court in M.A.No.13 of 2009, the present appeal is filed before this court raising several contentions. Among those contentions, the appellant urged three grounds which raises a substantial question of law. The first ground is that the Chief Judge, City Small Causes Court, did not consider the provisions of the Act while disposing the Municipal Appeal and that the Appellate Court did not decide the basis of assessment of tax without considering the earlier judgment and committed an error in dismissing the Municipal Appeal No.105 of 2006.

On a perusal of the above three grounds, none of them give rise to a substantial question of law except the first contention that the Appellate Court did not consider the provisions of the Act.

During the argument, learned counsel for the appellant submitted that the Appellate Court did not consider the direction issued earlier in M.A.No.105 of 2006 and the effect of the order passed by the Chief Judge, City Small Causes Courts, in the said appeal and after remand of the matter to the first respondent, no notice, as directed by the Chief Judge, City Small Causes Court, was issued affording reasonable opportunity to the petitioner to appear before the first respondent and express his grievance, either personally or through his agent, and thereby, the order passed by the first respondent is not in accordance with law and secondly, the order under appeal is also not in accordance with law.

Whereas the counsel for the respondent supported the order passed by the Appellate Court in all respects more particularly about compliance of Sections 222 and 223 of the Act by issuing notice, dated 17.04.2007, fixing date for hearing as 19.04.2007 at 03.30 pm., and prayed to dismiss the appeal by confirming the order of the Chief Judge, City Small Causes Court.

Considering the rival contentions, the sole point that arises for consideration is:

> Whether the first respondent complied the direction issued in M.A.No.105 of 2006 by issuing notice in compliance of Sections 222 and 223 of the Act, if not, whether the order passed by the Chief Judge, City Small Causes Court, is liable to be set aside?

POINT:

Undoubtedly, the Municipal Corporation initially proposed to assess the property tax at Rs.1,87,644/- per annum basing on the rental value prevailing by then and in compliance of various government orders issued from time to time for fixing of ratable value of the buildings. Against the said assessment, the appellant assessee preferred a revision petition before the first respondent which ended in dismissal confirming the proposed tax Rs.1,87,644/- per annum. The order of the first respondent was challenged before the Chief Judge, City Small Causes Court, in M.A.No.105 of 2006 and upon hearing the argument of counsel, the Chief Judge, City Small Causes Court, disposed of M.A.No.105 of 2006 and remanded the matter by setting aside the impugned assessment directing the respondent to issue notice, afford reasonable opportunity and dispose of the revision petition in accordance with law, these facts are not in dispute actually.

The only grievance of the appellant assessee is that the first respondent did not comply with the direction by issuing any notice more particularly, alleged notice, dated 17.04.2007, and thereby, the confirmation of assessment is illegal. On a bare look at the judgment under challenged before this court, it is evident that the respondent issued notice dated 17.04.2007 and filed copy of notice along with acknowledgment, evidencing receipt of the notice dated 17.04.2007 before the Appellate Court, whereunder the date of appearance was fixed as 19.04.2007 and requested the appellant to appear at 03.30pm., either in person or through his agent. The said document was considered by the Chief Judge, City Small Causes Court and came to a conclusion that the direction issued by this court in M.A.No.105 of 2006 is strictly adhered to by the first respondent and for failure of the appearance of the appellant-assessee, the first respondent passed the order, impugned.

Issue of notice under sections 222 and 223 of the Act, is purely a substantial question of fact and the Appellate Court already came to a conclusion that a notice, in compliance of the direction issued in M.A.No.105 of 2006, was issued. Even otherwise, according to Sections 222 of the Act, the Commissioner shall cause the complaints so received to be registered in a book to be kept for this purpose and shall give notice in writing to each complainant about the date, time, place, and when and where such complaint shall be investigated. Section 223 of the Act prescribes procedure for hearing of complaints according to which when the time and place is so fixed, the commissioner shall investigate and dispose of the complaint in the presence of the complainant, if he appears in person and if not, in his absence. For reasonable cause to be recorded, the commissioner may, from time to time, adjourn the investigation. When the complaint is disposed of, the result thereon shall be noted in the book of complaints as mentioned in Section 222 of the Act and necessary amendments, if any, shall be made in accordance with law. Such result shall also be mentioned in the assessment book. On over all consideration of the language used under Sections 222 and 223 of the Act, notice in writing is required to be issued to the complainant informing date, time, place or when and where the complaint shall be investigated. In the present case, in compliance of Sections 222 and 223 of the Act, notice, dated 17.04.2007, was issued and copy of the same was filed along with acknowledgment evidencing receipt of notice dated 17.04.2007 by the appellant assessee whereunder the time, date and place of hearing was fixed in compliance of Section 223 of the Act. Upon the failure of the appellant assessee before the commissioner in person or through his agent, the first respondent passed impugned order. Thus, it is clear from the record that the order was passed only for default of the appellant assessee in accordance with sub-section (1) of Section 223 of the Act. Therefore, there is absolutely no error, much less any manifest error, in the judgment of the Appellate court warranting interference of this court since the material on record established compliance of Sections 222 and 223 of the Act. Hence, the contention of the appellant assessee lacks merit and the appeal deserves to be dismissed. Accordingly, the point is answered.

In the result, the appeal is dismissed by confirming the order passed in M.A.No.105 of 2006 by the Chief Judge, City Small Causes Court, Hyderabad. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 09.07.2015
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