THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS SECOND APPEAL No.42 OF 2010

JUDGMENT:

The unsuccessful appellant before the Chief Judge, City Small Causes Court, Hyderabad, preferred this appeal challenging the decree and judgment, dated 19.10.2010, in M.A.No.43 of 2009.

2. For convenience of reference, the parties will be referred to, as the appellant and the respondents herein.

3. Appellant is owner and possessor of house bearing D.No.1-8-702/10/A/8,9A/2, Nallakunta, Hyderabad, admeasuring an extent of 475 square yards having purchased the same under a registered sale deed, dated 10.07.1963. Since the date of purchase, he has been in possession and enjoyment of the same. Thereafter, he constructed a residential-cum-commercial portion in plot Nos.11A/1 and 11A/2 out of the total extent of 475 square yards, after duly obtaining the sanctioned plan vide plan No.A/Open/9/1/2006, dated 27.11.2007 from the respondent authorities. As per the sanctioned plan, he commenced construction of residential house in the remaining left over area in plot No.11A/2, but due to paucity of funds and due to old age, he could not complete further construction. While the matter stood thus, he received notice on 09.08.2007 issued by the 2nd respondent demanding him to pay an amount of Rs.19,360/- towards Vacant Land Tax on the basis of annual ratable value of Rs,77,44,000/-. After receipt of notice, he got issued reply notice on 03.09.2007, at the time of oral hearing before the Deputy Commissioner, he submitted his objections. But, without considering the objections, the respondents confirmed the assessment and issued a demand notice on 21.01.2009 directing to pay a sum of Rs.94,864/- upto the end of 31.03.2009. However, the appellant got issued reply

notice on 13.02.2009 to the 2nd respondent questioning the levy tax on vacant land on house bearing D.No.1-8-702/19/A/8 to 9A/2 since 1964 including abutting area under construction. But, the respondents did not consider his request and confirmed the tax.

4. Aggrieved by the demand notice, vide Bk.No.732, dated 21.01.2009, issued by the 2nd respondent, the appellant filed M.A.No.43 of 2009 before the Chief Judge, City Small Causes Court, Hyderabad. The learned Chief Judge, City Small Causes Court, Hyderabad, after considering the oral and documentary evidence, dismissed the appeal. Aggrieved by the said judgment and decree, the present appeal is filed by raising the several contentions including the substantial question of law.

5. Learned counsel appearing for the appellant would submits that as per Section 212 of the Grater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act, 1955'), the Municipalities are not entitled to levy tax on partly constructed buildings and thereby the judgment of the first appellant Court is illegal and hence, he prays to set aside the impugned judgment. In support of his contention, drawn the attention of Court to the judgment reported in **K.RAJIV V. GOVERNMENT OF ANDHRA PRADESH AND OTHERS**[1]**.**

6. On the other hand, learned counsel for the respondent appearing for the respondents would submits that the order under challenge is in accordance with law and supported in all respects.

7. Considering rival contentions and the material available on record the point that arises for consideration is:

> Whether the impugned assessment issued by the 1st respondent assessing the property tax on vacant land or construction upto basement level is in accordance with law or not?

8. Undoubtedly, the appellant applied permission for construction of building in the vacant site and obtained approval from the respondents vide permit No.1172/66/07 under file No.8/OP/9/1106. The contention raised before the appellant Court as well as the Commissioner is that the appellant raised only construction partly due to paucity of funds and old age and he could not complete the further construction. The endorsement issued by the Municipal Corporation is totally silent as to the raising of construction. However, the endorsement, dated 9.08.2007, discloses that the respondents assessed property tax on vacant land. In **K.RAJIV's case (1 supra)** this Court held at para 11 reads as follows:

> *"Now, we shall refer to Section 212 of the Act which deals with the procedure of determining the rateable value. Section 212 insofar as it is relevant for the present case is extracted hereunder:*
>
> *"212 (2) Any vacant land not exceeding three times the plinth area of the building including its site or a vacant land to the extent of one thousand square metres, whichever is less shall be deemed to be adjacent premises occupied as an appurtenant with the provisions of this section and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be deemed to be adjacent premises occupied as an appurtenant with the provisions of this section and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be levied thereon at two per cent of the estimated capital value of land."*

In fact, in the facts of the above judgment, the validity of Section 212 (2) of the Act, 1955 was not under challenge. The Division Bench of this Court took a view that it is *ultra vires.*

9. According to Section 212 (2) of the Act, any vacant land not exceeding three times of the plinth area of the building including its site or a vacant land to the extent of one thousand square metres, whichever is less shall be deemed to be adjacent premises occupied as an appurtenant to the building, and assessed to tax in accordance

with the provisions of this section and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be levied thereon at 0.50 per cent of the estimated capital value of the land, provided that in the case of above vacant lands where garbage is being dumped and unhygienic conditions are prevailing a penalty of 0.25% of the capital value shall be levied till the garbage is lifted and unhygienic conditions cases.

10. Therefore, Section 212 (2) of the Act, 1955 permits the respondents to levy tax on vacant land subject to conditions specified therein. In the instant case, the appellant consistently contended before the revisional authority as well as appellant Court that after obtaining approval, he raised building and he completed to some extent but could not complete the total building due to paucity of funds and old age. Thus, the partly constructed building is in existence.

11. According to learned counsel for the appellant, the building was raised upto basement level above the ground. As per Section 2 (3) of the Act, 1955, ***'building' includes a house, out-house, stable, latrine, godown, shed, hut, wall, fencing, platform and any other structure whether or masonry, bricks, wood, mud, metal or of any other material whatsoever***.

Therefore, accepting the contention of learned counsel for the appellant that the appellant constructed building upto basement level above ground, it comes within the definition of Section 2 (3) of the Act, 1955. As the building in question was partly constructed, it is liable for levy of property tax under the provisions of the Act, 1955.

12. When the appellant raised construction to some extent that is upto basement level, levying tax on vacant land is illegal and at best the respondents would have levied tax (house tax) on the partly

constructed building as it falls within the definition of Section 2 (3) of the Act, 1955. Therefore, assessing property tax on vacant land, though partly constructed building is in existence, is contrary to the Act, 1955 and it is liable to be set aside. But, the revisional authority and the appellate Court did not take into consideration the partly constructed building, which was constructed upto basement level and dismissed the appeal while confirming the order passed by the revisional authority. In view of existence of partly constructed building in the site, the judgment of the appellant Court is liable to be set aside.

13. Accordingly, the Civil Miscellaneous Second Appeal is allowed setting aside the judgment and decree, dated 19.10.2010, in M.A.No.43 of 2009 passed by the Chief Judge, City Small Causes Court, Hyderabad. In view of submission made by learned counsel for the appellant about construction the building upto basement level, the respondents are at liberty to levy tax on the party constructed building in question treating the same as building within the definition of Section 2 (3) of the Act, 1955 from the date of proposed levy of tax by complying the provisions of the Act, 1955. There shall be no order as to costs. Miscellaneous petitions, if any, in this appeal shall stand closed.

M.SATYANARAYANA MURTHY,J

JULY 10, 2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt: 10.07.2015

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[1] 2014 (1) ALD 170 (DB)