HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.10895 of 2015

DATED:18.06.2015

Between:
D.A.V. Public School,
Hyderabad.

… Petitioner

And

The Greater Hyderabad Municipal Corporation,
Hyderabad
Represented by its Commissioner,
Hyderabad and another.

….Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.10895 of 2015

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard learned counsel for the parties. Rule. By consent of learned counsel for the parties, the writ petition is heard for final disposal forthwith.

The writ petition impugns the proceedings/order issued by respondent No.1, dated 19.3.2015, whereby, the petitioner's prayer for exemption of tax has been rejected.

This Court while issuing notice on 17.4.2015, passed the following order:

> "We are of the prima facie view that the order passed by the Commissioner is not in conformity with our judgment and order passed previously on the question of exemption as well as the valuation and the quantum of property tax. We therefore stay the operation of the impugned order. At the same time, we restrain the Municipal Corporation to take any coercive measures against the petitioner."

The petitioner-Educational Institution had filed Writ Petition No. 3895 of 2015 challenging the notice issued by the respondents, demanding property tax. The writ petition was disposed of vide order dated 20.2.2015, by the following order.

> "We feel the matter can be disposed of finally, without any counter-affidavit, as the learned Standing Counsel for the Greater Hyderabad Municipal Corporation suggests, upon instructions, that no

counter need to be filed at this stage.

We find from the writ petition that without considering the petitioner's objection and contention that it is an Educational Institution and it should be exempted from paying any property taxes, impugned demand has been made. Secondly, it is submitted that even if such exemption is not granted, then the property tax demanded is highly disproportionate and there is no basis for such current demand and the arrears. In fact, there has been no consideration of the representation, and no hearing was given. We find substance in the contention of the petitioner.

Therefore, we direct the Municipal Corporation Authority to give a notice to the petitioner and decide the issue of exemption raised. The petitioner will be free to produce the materials and evidences before the officer, who will objectively decide the matter, whether exemption can be granted to the petitioner or not. If any decision is taken adversely against the petitioner, reasons must be given, and in that case, the valuation and the amount of property tax questioned by the petitioner shall also be examined, after giving hearing to the petitioner. The entire exercise shall be completed by the respondent authority within a period of eight weeks from the date of communication of this order. Till such decision is taken, no coercive measures shall be taken against the petitioner. The demand as made is accordingly set aside.

The Writ Petition is accordingly allowed.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. There will be no order as to costs."

The Commissioner, thereafter, vide order dated 19.3.2015, in pursuance of the order passed by this Court on 20.2.2015, decided the issue of exemption afresh. The order passed by the Commissioner reads thus:

"The Hon'ble High Court, A.P. and Telangana has passed orders vide reference 1st cited, that "the Court has set aside the Demand Notice issued and directing the Corporation to examine the representation seeking exemption of tax under Section 202 1(bb) of HMC Act, by putting them on Notice and affording an opportunity of hearing. It was made clear not to take any coercive steps in the meantime."

On the directions of the Hon'ble High Court, the Commissioner, GHMC has called the applicant for hearing on 13.3.2015. As per the request of the applicant the hearing was postponed to 16-03-2015. During the hearing the applicant has submitted that,

a) His School is being on no profit no loss basis. The fee collected is spent on Logistics and Salaries.

b) That School upto 10th Class may be exempted as per Section 202 1 (bb).

c) The calculation has to be made on the basis of year of construction and Floor No.

d) An increase of 600% is shown against the G.O. which stipulates a maximum 100% increase.

The applicant's request has been examined carefully in the light of Hon'ble High Court directions and it is found that the request for exemption is not possible, since Section 202(bb) of HMC Act reads:

(2) The General tax shall be levied in respect of all buildings and lands in the city except;

(c) buildings and lands solely used for purposes connected with the disposal of the dead.

(d) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose.

(bb) educational institutions upto 10th class, the buildings, of which are donated by Charitable Institutions of Philanthropists, which are depending on the grant-in-aid by the Government for the maintenance and such other educational institutions which are not running purely on commercial lines, but serving the cause of primary education which the Government may consider from time to time.

In the light of the above, the request of the applicant for exemption of tax cannot be considered. The other requests also cannot be considered since no documentary proof is submitted about the age of the building and the G.Os. as mentioned in their request letter."

From a bare perusal of the order, it is clear that the Commissioner has not recorded reasons, as observed in the order of this Court dated 20.2.2015. The Commissioner has simply reproduced the relevant provision (Section 202(bb) of HMC Act) and observed that in the light of the said provision, the request of the petitioner cannot be considered. He ought to have recorded reasons as to why the petitioner-educational institution is not covered by the provisions contained in Section 202, in particular, Sub-Section (1) (bb) thereof. It appears that the Commissioner did not read the order of this Court carefully. We are, therefore, constrained to set aside the order dated 19.3.2015 passed by the Commissioner, and direct him to decide the issue of exemption afresh with a speaking order as directed by this Court vide order dated 20.2.2015. We hope that at least now the Commissioner will read the order dated 20.2.2015 very carefully and shall record reasons, if any adverse decision is to be taken against the petitioner. We expect the Commissioner to decide the issue of exemption as expeditiously as possible, and preferably within a period of three months from the date of receipt of this order.

With these observations, the Rule is made absolute.

The writ petition is accordingly disposed of.

Consequently, pending miscellaneous applications shall also stand disposed of. No order as to costs.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

18th June, 2015

Pnb