IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CMSA NOS. 34, 35, 36, 38, 39, 40, 41 of 2014 & 2 of 2015

Between:

Smt. Anumalisetty Lakshmi, W/o A. Nagesh

……Petitioner/Appellant

And

Greater Visakhapatnam Municipal Corporation represented by its Commissioner.

… Respondent

DATE OF JUDGEMENT PRONOUNCED: 14-08-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? 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. Nos. 34, 35, 36, 38, 39, 40, 41 of 2014 & 2 of 2015

COMMON JUDGMENT:

These Civil Miscellaneous Appeals are filed challenging the order dated 9.7.2014 passed by the Principal Senior Civil Judge, Visakhapatnam, in Tax Appeals, which are mentioned hereunder:

CMSA NO.	TAX APPEL NO.	DOOR NO.	ORIGINAL TAX IN 2004	SUBSQUENT ENHANCED TAX	ENHANCED BY SPEICAL NOTICE IN 2008	ENHANCED IN 2010
34/2014	39/20111	14-4	2,867/-	5,734/-	13,000/-	26,388/-
35/2014	32/2011	14-5	2,867/-	5,734/-	13,000/-	26,388/-
36/2014	35/2011	14-7	2,867/-	5,734/-	13,000/-	26,388/-
38/2014	30/2011	14-6	2,867/-	5,734/-	13,000/-	26,388/-
39/2014	31/2011	14-3	2,867/-	5,734/-	13,000/-	26,388/-
40/2014	36/2011	14-8	2,867/-	5,734/-	13,000/-	26,388/-
41/2014	38/2011	14-2	2,867/-	5,734/-	13,000/-	26,388/-
2/2015	34/2011	14-1	2,867/-	5,734/-	13,000/-	26,388/-

2. The Principal Senior Civil Judge, Visakhapatnam dismissed the appeals on the ground that no appeal lies against the attachment order passed by the Municipal Commissioner demanding payment of tax on or before 26.2.2011.

3. The appellants are owners of various buildings in

complex consisting of Ground + Four Floors with house bearing Door No. 14-4 covered by Survey No. 123P & 124 Part of Vepagunta Village. Initially the building was assessed at Rs. 2,876/- per half year per floor in the year 2004. Subsequently the same was enhanced to Rs. 5,734/- and thereafter, it was enhanced by way of special notice for Rs. 13,000/- per half year in the year 2008 and thereafter it was enhanced to Rs. 26,388/- per half year in the year 2010 by issuing a demand notice dated 19.10.2010 per year, all of a sudden. The respondent-GVMC without issuing any revision notice, issued attachment notice dated 16.3.2011 and that the appellant having no other option paid the demanded tax to the Municipal Corporation on 22.3.2011 and preferred the appeals, mentioned above, before the Principal Senior Civil Judge, Visakhapatnam. Upon hearing all the arguments of the counsel for the appellants, the Principal Senior Civil Judge, Visakhapatnam, held that the appeals against the attachment order are not maintainable under Section 282 of Greater Hyderabad Municipal Corporation Act, 1955 ('the Act' for short) and dismissed the appeals.

4. Aggrieved by the decree and judgment of the appellate Court, the present appeals are preferred raising several contentions mainly contending that the Municipal Corporation failed to follow the procedure prescribed under various provisions of Greater Hyderabad Municipal Corporation Act in effect and in substance and that the right value of the building was not fixed as per the notification

issued by the Municipal Corporation dated 19.12.2006 and that no demand notice was issued before issuing order of attachment for non-payment of property tax allegedly due. On account of non-compliance of procedure prescribed under the Act and Rules framed thereunder, the very demand notice and the subsequent attachment order are vitiated by illegalities and irregularities and prayed to set aside the attachment order issued by the respondent-Municipal Corporation allowing these appeals.

5. While arguing the matter, the learned counsel appearing for the appellants Sri Kuriti Bhaskar Rao, contended that though Section 282 did not cover the present situation to maintain an appeal, requested this Court to give liberty to file necessary representation or complaint before the Municipal Corporation against the attachment order and decide these appeals.

6. Per contra, Sri S. Lakshmi Narayana Reddy, Standing Counsel for GVMC, submits that when the appeals itself are not maintainable within the ambit of Section 282 read with Section 283(2) of Hyderabad Municipal Corporation Act, this Court need not give any liberty to file a representation or complaint before the Municipal Commissioner and argue totally in support of the findings recorded by the Principal Senior Civil Judge, Visakhapatnam in all the appeals.

7. At the stage of admission, the only question that arises for consideration is about the maintainability of the

appeals. Therefore, the following substantial question of law is framed by this court at the stage of admission.

"***Whether all these appeals are maintainable under Section 282 of Greater Hyderabad Municipal Corporation Act, 1955 against an attachment order issued for non-payment of property tax on the enhanced rate?"***

8. Admittedly, the challenge before the appellate Court is only the attachment order passed by the respondent-Municipal Commissioner for non-payment of tax at the enhanced rate but the main contention of the counsel for the appellants is that no general notice or special notice was issued before enhancing the property tax and that no demand notice was also issued demanding payment of tax on enhanced rate. When no notice was issued proposing enhancement of tax, the question of filing a complaint under Section 221 of Greater Hyderabad Municipal Corporation Act does not arise. Therefore, he has no opportunity to put-forth the grievance of the appellants before the Municipal Commissioner, who is the authority under Hyderabad Municipal Corporation Act.

9. Undoubtedly, no material is brought on record to establish that a general notice or special notice was issued by the Municipal Corporation before enhancing the property tax. Even otherwise, a lot of procedure is contemplated under the Act for assessment of property tax. Sections 197 to 228 of Hyderabad Municipal Corporation Act deal with the

procedure for assessment of property tax. Chapter VIII of Greater Hyderabad Municipal Corporation Act, 1955, commences from Section 197, which deals with taxation of Municipal Corporation, which provides for levy of different taxes such as taxes on lands and buildings etc. Levy of property tax commences from Section 212 to 226 of the Act and it provides fixation of annual rental value for levy of tax. Section 212 of the Act contemplates only rateable value as well as the percentage of tax that can be imposed on the lands and buildings depending upon the age, usage and location. The procedure for valuation of annual rental value under Section 212 as it stood before 1990, did not provide any public participation. Through Act 20 of 1989, the Section was amended with effect from 1.11.1990, provided for fixation of annual rental value of lands and buildings in accordance with the procedure prescribed, which in turn is contained in the Rules, specifically framed in the light of this amendment.

10. A plain reading of Section 212 and the Rules discloses that the Corporation shall divide the entire area within its jurisdiction into various Zones, on the basis of factors such as civil amenities like water, street lighting, roads and drains etc. After the division of the Corporation into territorial zones, the building situated in each zone shall be classified as follows, based on its nature of construction:

> *(a) RCC posh buildings: RCC buildings with superior quality wood, better type of flooring and sanitary fittings and attached bathrooms;*

(b) RCC ordinary buildings: RCC buildings with ordinary type of wood, ordinary flooring and sanitary fittings;

(c) Madras terraced or Jack arch roofed or tone slabs or slates roofed buildings;

(d) Mangalore tiled roofed or Asbestos roofed or GI roofed buildings;

(e) Country tiled buildings;

(f) Huts.

11. Further classification of the buildings in the sixth category depends upon usage of the buildings as provided under Rule 6 of the Hyderabad Municipal Corporations (Assessment of Property Tax) Rules, 1990 ('the Rules' for short) namely;

(a) Residential;

(b) Shops, shopping complexes;

(c) Public use, i.e., office complexes, public and private offices, Hospitals and Nursing Homes, Banks, Educational Institutions;

(d) Commercial purposes, i.e., Hotels, Lodges, Restaurants, Godowns and other business Establishments;

(e) Industrial purposes i.e., Factories, Mills, Workshops and other industries;

(f) Cinema theatres or Places of Public Entertainment.

12. Thereby 36 categories of buildings emerged for the purpose of fixation of annual rental value. During the course of this exercise two sets of draft and final notifications are required to be published (1) under Rule 3

and (2) under rule 7 of HMC (Assessment of Property Tax) Rules, 1990. Rule 3(2) provides publication of draft notification in a daily news paper having circulation in the district and complete draft notification in the District Gazette calling for objections and suggestions from the public so as to reach the Commissioner within 15 days from the date of publication of the draft notification, regarding the division of the Corporation into Zones and monthly or yearly rental values per square meter of plinth area in each zone. The Commissioner should consider the objections and suggestions if any, received in response to the said notification and revise the zones, fix monthly or yearly rent in Form 'A' and publish a gist of final notification in a local newspaper having circulation in the district and final notification in the District Gazette for information of the public. With the steps contemplated under Section 212 of the Act, annual rental value stands complied with. While the emphasis on the notification under Rule 3 of the Rules appears to be from month to month or from year to year with reference to its location, type of construction, plinth area, age of the building, nature of use to which it is put and such other criteria as may be specified. This notification under Rule 7 has to adopt proper classification of buildings in each zone as directed under Rules 5 & 6 of the Rules. The Commissioner shall issue a notification in Form 'A' furnishing the localities, areas included in the zone and particulars of door numbers included in the zone. Sections 214 to 227 of the Act discussed under the heading of

'Assessment Book'. Section 224 of the Act contemplates the Commissioner to keep a book, to be called 'the assessment book' in which the information contemplated under clauses (a) and (b) shall be entered in every financial year.

13. In the present case on hand, the appellants did not follow the procedure prescribed under the provisions of Greater Hyderabad Municipal Corporation Act. He simply filed the appeals making a bald allegation about the non-compliance of the procedure and in the same fashion he argued before this Court.

14. The appeal is filed against the order of attachment issued by the Municipal Commissioner for non-payment of property tax. Section 282 of the Act deals with appeals. For better appreciation, it is apposite to extract Section 282 hereunder:

> *Section 282. Appeals when and to whom to lie: (1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be hard and determined by the Judge.*
>
> *(2) but no such appeal shall be heard by the said Judge, unless:-*
>
> *(a) it is brought within fifteen days after the accrual of the cause of compliant;*
>
> *(b) compliant has previously been made to the Commissioner under Section 221 and such compliant has been disposed of;*
>
> *(c) a compliant has been made, by the person aggrieved within fifteen days after*

the first received notice of any amendment made in the assessment book under Section 225 and his complaint has been disposed of;

(d) in the case of an appeal against tax, the amount claimed from the appellant has been deposited by him with the Commissioner."

15. Under Section 282 of the Act, the appeal is not maintainable unless, the appeal is filed within 15 days after accrual of the cause of compliant. In case of appeal against Tax, the amount claimed from the appellant has been deposited by him with the Commissioner.

16. Section 283 of the Act deals with the *cause of complaint when deemed to have occurred: For the purpose of the last proceeding section, cause of complaint shall be deemed to have occurred as follows, namely:-*

(a) in the case of an appeal against a rateable value, on the day when the Commissioner under Section 221 against such value is disposed of;

(b) in the case of an appeal any amendment made in the assessment book, under Section 255 during the financial year on the day when the compliant made to the Commissioner by the person aggrieved against such amendment is disposed of.

17. If notices were issued under Sections 220 and 224

of the Act, after complying with the necessary procedure, the appellants will have an opportunity to submit their complaint and on receipt of such complaint, the Commissioner, who shall certify, under his signature and dispose of the complaint under Section 221 of the Act, and the complaint against finalisation of assessment book under Section 224 of the Act. The appellants made clear admission that a demand notice dated 19.10.2010 was received, but contended that it was issued without following procedure. When demand notice was issued, it can be questioned by filing objections, and file an appeal under Section 282 of the Act, if revision is decided against the appellants. Without questioning the demand notice, the present appeals against attachment order are not maintainable. But, in the present case, there is nothing on record to show that the Municipal Commissioner followed the procedure prescribed under Sections 220 and 224 of the Act. In such a case, the possibility of filing the complaint before the Commissioner under Section 220 does not arise. However, respondent is not called upon to prove compliance of procedure contemplated under the Act in effect and in substance, in such case, it is not appropriate to record any finding about non-compliance of procedure.

18. In the present case, there is no cause for complaint as contemplated under Section 283 of the Act, thereby, the question of filing appeals under Section 282 of the Act does not arise.

19. The Principal Senior Civil Judge, Visakhapatnam, after considering various provisions of Greater Hyderabad

Municipal Corporation Act, rightly concluded that the appeals are not maintainable against an order of attachment, under Section 282 of Greater Hyderabad Municipal Corporation Act. Even after reappraisal of entire relevant provisions by this Court with reference to facts on hand in these appeals, I find no legal infirmity warranting interference by this Court except to agree with the finding of the Principal Senior Civil Judge, Visakhapatnam. Therefore, I am totally in agreement with the finding of the Principal Senior Civil Judge, Visakhapatnam. However, liberty is given to the appellants to redress their grievances, if any, available under law before an appropriate Forum or Authority or under the Greater Hyderabad Municipal Corporation Act.

20. Giving liberty to the appellants as above, all these appeals are dismissed. There shall be no order as to costs.

21. Miscellaneous applications, if any, pending in these appeals shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 14.08.2015

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