THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.M.S.A.No. 9 OF 2012

JUDGMENT:

The present appeal is preferred, under Section 282 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act of 195'), by the assessee of the house bearing door No. 7-3-107 situated at Gaganpahad, Rajendra Nagar Mandal, Hyderabad. The appellant possessed industrial premises referred above and it was assessed to tax at Rs.11,556/- for the year 2008-2009. Thereafter, a special notice was issued proposing to enhance the tax to Rs.1,15,412/- *p.a.* on the ground that the appellant extended the built-up area of the building from 5,274.36 square feet to 24,765 square feet. On receipt of the special notice, the appellant submitted its objections to the 1st respondent. Thereupon, the 1st respondent passed an order confirming the tax.

2. Aggrieved by the same, the appellant filed M.A.No. 12 of 2011 on the file of the Court of Chief Judge, City Small Causes Court, Hyderabad (for short, 'the trial Court'). Upon considering material and hearing argument of both counsel, the trial Court allowed the appeal in part setting aside the tax imposed for the period from 2007 to 2010 while confirming the tax assessed for the assessment year 2010-2011 @ Rs.1,15,412/-.

3. Aggrieved thereby, the present appeal is preferred raising several grounds touching substantial question of fact. The entire grounds of appeal did not contain any substantial question of law as required under Section 100 of the Code of Civil Procedure (for brevity, 'C.P.C.'). However, this Court admitted the appeal on 19-11-2012 without framing any substantial question of law.

4. Upon hearing argument of learned counsel for the appellant *in extenso*, the substantial question of law involved in this appeal is as follows:

"Whether the assessment of tax at Rs.1,15,412/- is in accordance with law after due compliance with the statutory provisions of the Act of 1955?"

5. Admittedly, the appellant is the owner of the property and it was assessed to Rs.11,556/- *p.a.* by the 1st respondent when the built-up area was 5,274.36 square feet. Thereafter, the appellant allegedly extended the built-up area to 24,765 square feet. However, this was disputed by the appellant before the appellate authority but this was not accepted. The *factum* of extending the built-up area is a pure question of fact and it cannot be looked into in the second appeal within the ambit of Section 100 of C.P.C.

6. Yet, another contention of learned counsel for the appellant is that the 1st respondent did not comply with the statutory provisions; while assessing the property to tax, did not consider the tax assessed against neighbouring property and no facilities were provided by the respondents. On perusal of entire material including the grounds urged before this Court, the appellant did not raise any contention about non-compliance of the statutory provisions of the Act of 1955 in subsistence and in effect. There is no pleading as to violation of any statutory provision while assessing the property. The appellant can question the procedure followed by the respondents while assessing the property but not quantum of tax. In the absence of any pleading about violation of any statutory provision under the Act of 1955 while assessing the property to tax, such plea cannot be entertained at the stage of second appeal for the first time.

7. One of the contentions of learned counsel for the appellant is that the respondents did not take into consideration tax assessed to neighbouring property which is purely a question of fact and it is required to be proved before the trial Court. Since the above question is pure question of fact and

not question of law, I find no reason to set aside the order of the trial Court passed in M.A.No. 12 of 2011 dated 14-12-2011.

8. The trial Court, after elaborate discussion of entire material available on record, concluded that the respondents assessed the property to tax in accordance with law and, though it is now assailed before this Court, no specific illegality in the decree and judgment of the trial Court is brought to my notice. Therefore, I find no ground to interfere with the finding of the trial Court and the appeal is liable to be dismissed.

9. The appeal is, accordingly, dismissed confirming the decree and judgment dated 14-12-2011 passed in M.A.No. 12 of 2011 on the file of the Court of Chief Judge, City Small Causes Court, Hyderabad. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 18-06-2015.

JSK