HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.M.S.A.No.43 of 2012

JUDGMENT :

The appellant, a private limited company, has been carrying on business in tobacco and its allied products since 1930 and the respondent-the Guntur Municipal Corporation assessed the property tax of appellant company under Assessment No.53087. The respondent issued proceedings in Roc.No.9283/2001/AB dated 27.12.2005 and the same was challenged before the Court as is unenforceable for the assessment years 2001-01/1 to 2001-02 to a tune of Rs.49,570/- per half year and to a tune of Rs.79,372/- per half year and to set aside the said proceedings, the appellant filed A.S.No.1 of 2006 before the Principal Senior Civil Judge, Guntur.

2. Initially, the respondent enhanced the property tax and the same was challenged by the petitioner by filing O.S.No.372 of 1995 before the Additional Subordinate Judge, Guntur, whereunder the enhancement was declared as illegal.

3. While the matter stood thus, the Corporation issued impugned proceedings No.9523/2001/A8 dated 27.12.2005, which was served on the appellant on 30.12.2005, wherein the respondent assessed the property tax against the appellant from 1993-94/1 onwards and directing the appellant to pay an amount of

Rs.49,570/- from 2000-01/1 to 2001-02/2 i.e., for four half years each and further from 2002-03/1 to 2005-06/2 i.e., for eight half years to a tune of Rs.79,372/- per each half year, demanded total tax of Rs.9.09,878/- and directed the appellant to pay an amount of Rs.3,42,036/- after adjusting an amount of Rs.5,67,842/- paid through cheques by the appellant.

4. Aggrieved by the same, the appellant filed A.S.No.1 of 2006 before the Principal Senior Civil Judge, Guntur, but the learned Judge upon hearing argument of both counsel dismissed the appeal on various grounds.

5. It is stated by the appellant that aggrieved by the notice dated 05.12.2000, the appellant filed objections on the same day, but the objections were not considered and the respondent passed order dated 11.11.2002 without affording any opportunity to the appellant and thus the order is in violation of Sections 222 and 223 of the Act.

6. Aggrieved by the decree and judgment of the Principal Senior Civil Judge, Guntur, the present appeal is filed raising several contentions. The only substantial question of law raised before this Court is that

> "Whether non-compliance of Sections 222 and 223 of the Act vitiates the assessment?"

7. During the course of arguments of the learned counsel for the appellant would contend that non-compliance of Sections 222 and 223 of the Act vitiates the entire proceedings and placed reliance on a judgment of

this Court in **S.Shakuntala and another v. Additional Commissioner, Municipal Corporation of Hyderabad, Secunderabad Division and another**[1]**.**

8. Whereas, the learned counsel for the respondent argued totally in support of the judgment of the Principal Senior Civil Judge's Court, Guntur.

9. Admittedly, proceeding dated 27.12.2005 was issued by the respondent demanding payment of tax of Rs.9,09,878/- for different years. Though objections were filed before the respondent, but he passed orders without considering the objections raised by the appellant. No notice was served intimating about the date of hearing of the objections preferred by the appellant and no order was passed after considering various objections raised by the appellant.

10. Section 222 of the Act contemplates notice to complainants of day fixed for investigation their complaints. According to it, Commissioner shall cause all complaints so received to be registered in a book kept and shall give notice in writing, to each complainant, of the day, time and place when and where at his complaint shall be investigated.

11. Section 223 of the Act deals with procedure for hearing of complaints and according to it

> (1) at the time and place so fixed, the Commissioner shall investigate and dispose of the complaint in the presence

of the complainant, if he shall appear, and if not, in his absence,

(2) For reasonable cause to be recorded, the Commissioner may, from time to time, adjourn the investigation, and

(3) When the complaint is disposed of, the result thereof shall be noted in the book of complaints kept under Section 222 and necessary amendments, if any, shall be made in the assessment book.

12. On close analysis of the requirement under Section 222 and 223 of the Act and on overall consideration of the facts, a notice in writing is required to be issued to the complainant informing the time, date and place, when and where the complaint shall be investigated. In the instant case, no such notice under Section 222 of the Act was issued, but passed the order on the date when the objections were received by the respondent without affording any reasonable opportunity. Deciding such representation, without compliance of Section 222 and 223 of the Act and in the absence of notice, is nothing but violation of principles of natural justice. Learned counsel for the appellant drawn the attention of the Court on the decision of this Court in Shakuntala's case (supra), wherein it held that

> *There are two situations in which the Commissioner is under an obligation to give a written special notice to the owner or the occupier of the premises specifying the nature of the entry and also informing him that any complaint against the same will be received in his office at any time within 15*

days from the date of service of the special notice. The situations are: (1) where any premises have been entered in the assessment book for the first time as liable to payment of property-taxes; and (2) where the rateable value of the premises liable to payment of tax has been increased.

The present case falls under the second category. The provisions of Section 223 are enacted to ensure that the complaints are investigated in the presence of the complainants and if for any reason, a complainant is absent, it also enables the Commissioner to adjourn the case for investigation from time to time, if reasonable cause is shown. Sub-section (3) of Section 223 of the Act directs that after the disposal of the complaint, the result of the same shall be noted in the book of complaints kept under Section 222 of the Act and to make necessary amendments, if any, in the assessment book in accordance with the result. It is implicit in sub-section (3) of Section 223 of the Act that the result of the disposal of the complaint should be communicated to the complainant. The mere fact that there is no specific requirement under sub-section (3) does not absolve the Commissioner of this responsibility. On disposal of the complaint, the Commissioner is bound to communicate the result of the complaint to the complainant by a reasoned order as Section 282 of the Act entitles him to challenge that order in appeal before a Judge as defined under the Act."

13. By applying the above principles to the present facts of the case, it is clear that the respondent had violated the obligation imposed under Sections 222 and 223 of the Act and the same is totally violative of principles of natural justice since the representation was disposed of without affording reasonable opportunity.

14. Therefore, I find that it is a fit case to remand the matter for fresh consideration adhering the procedure contemplated under Section 222 and 223 of the Act after setting aside the order under challenge.

15. Accordingly, the judgment of the Principal Senior Civil Judge, Guntur, is hereby set aside directing the respondent/revisional authority to dispose of the revision adhering to the procedure contemplated under Sections 222 and 223 of the Act, within two months from the date of receipt of this order, after affording reasonable opportunity to the appellant.

16. Miscellaneous Petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

7th July 2015.

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[1] 1996 (2) ALT 723 (D.B.)