THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.41552 OF 2016

DATED : 13.12.2016

Between :

Pailla Gopal Reddy S/o.Yadireddy,
Aged 38 yrs, Occu : Business,
R/o.Sri Raghavendra Swamy Complex,
Sagar Road, Miryalaguda,
Nalgonda District.

.. Petitioner

And

State of Telangana,
Rep., by its Secretary,
Municipal Administration Department,
Secretariat, Hyderabad & others

.. Respondents

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

<u>WRIT PETITION No.41552 OF 2016</u>

<u>ORDER</u> :

Heard Sri P. Prabhakar Reddy, learned counsel for the petitioner and Sri N. Praveen Kumar, learned Standing counsel for Respondents 2 and 3.

2. Petitioner claims to be the owner of Sri Raghavendra Swamy Complex, Miryalaguda. Petitioner claims to have constructed building consisting of cellar, stilt, ground and four upper floors, after obtaining permission from the respondents. The building permission was granted on 08.07.2010. Petitioner completed the construction in the year 2013. Since there were some minor deviations, petitioner applied for regularization on 28.01.2016 and the same is pending. The property tax demand was made on the petitioner. The property tax demand notice dated 03.11.2014 would show that such demand is made retrospectively from the year 2012, during which time, the building was under construction. Huge amount of arrears was mentioned as due by the petitioner and penalty is levied. Further notice was issued on 23.05.2015 containing similar demand. Petitioner filed Revision before the competent authority on 15.12.2015. Alleging that the said Revision is not disposed of, but coercive action is being taken on the petitioner, he filed W.P.No.9949 of 2016. This Court having noticed that the revision was not filed as required by the Taxation Rules, while disposing of the writ petition granted liberty to the petitioner to file revision in appropriate form and also directed to deposit an amount of Rs.1,70,000/-.

3. Alleging that when petitioner went to deposit the amount as directed by this Court, the respondents refused to receive the amount and as his revision is not considered petitioner filed W.P.No.19747 of 2016. This Court disposed of the said writ petition by order dated 21.06.2016 directing the respondent-Municipality to accept the amount as directed in W.P.No.9949 of 2016 and to consider the revision of the petitioner.

4. The Commissioner passed orders on 29.09.2016 rejecting the request of the petitioner and directed him to pay the amount quantified in the proceedings. Petitioner challenges the said order of the Commissioner in this writ petition.

5. Learned counsel for the petitioner submits that the earlier revision filed by the petitioner was not in accordance with the prescribed format and therefore, this Court directed the petitioner to file revision in proper form. Accordingly, petitioner filed revision on 06.04.2016 raising various contentions. There is no reference of the revision filed by the petitioner on 06.04.2016 and reference is made only with regard to the earlier revision dated 15.12.2015. Learned counsel specifically contended that the subsequent revision is not even considered while passing orders. He further submits that the question of levying property tax when the building was under construction and was not in occupation is illegal. The construction of the building was completed only in the year 2013 and occupation was taken much later. Therefore, the property tax can be levied only from the date when the occupation is granted.

6. Learned Standing counsel was directed to produce the record concerning the order impugned. Having produced the record, it is seen that though there is reference to the direction issued by this Court in W.P.No.19747 of 2016 to pass orders, the notice for hearing was issued, based on the revision filed by the petitioner on 15.12.2015. Even in the order there is no discussion of the contentions urged by the petitioner in his revision petition. It is pertinent to notice that while disposing of W.P.No.19747 of 2016, this Court specifically directed to dispose of the revision filed by the petitioner on 06.04.2016. The casual manner in which a quasi-judicial authority passed this order is amply reflected in this case. Though petitioner filed revision on 06.04.2016 as directed by this Court in W.P.No.9949 of 2016 and though this Court directed specifically to consider the revision filed on 06.04.2016 in W.P.No.19747 of 2016, the Commissioner does not even refer to the revision filed by the petitioner on 06.04.2016. However, when petitioner raised specific ground against levying of property tax from the year 2012 on the ground that the building was under construction and was not completed, but construction was only completed in the year 2013, the question of imposing property tax retrospectively would not arise, this ought to have been specifically considered and the decision ought to have been made before directing the petitioner to pay the tax as demanded.

7. A perusal of the original file produced would show that there is a printed format in consideration of revision petitions and the printed format is filled up. Therefore, there was no consideration at all by the Commissioner, inspite of direction issued by this Court. The said action of the Commissioner amounts to disobedience of

the directions of this Court, in addition to abdicating his power and not exercising the power in proper manner more particularly when his decision is effecting financially a citizen living in the Municipality. Having regard to these facts, the order impugned is liable to be set aside.

8. Accordingly, the Writ Petition is allowed. The Commissioner-3rd respondent is directed to comply with the earlier orders of this Court in W.P.No.19747 of 2016 and pass appropriate orders after duly taking note of the objections filed by the petitioner. Petitioner shall be given personal hearing with advance notice of date of hearing and after consideration of the submissions of petitioner, appropriate decision be made by passing a reasoned order and communicate to the petitioner. The Commissioner is cautioned to be careful in future and if such a conduct comes to the notice of this Court in any other proceedings, the matter would be viewed seriously. Petitioner is directed to pay the undisputed amount of Rs.1,70,000/-, within a period of three (3) weeks from the date of receipt of copy of this order, which he has been paying for the previous years, as tax for the year 2016-17. Until a decision is made and communicated to the petitioner, no coercive action shall be taken against the petitioner. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

13th December, 2016
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