THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.25579 of 2003

ORDER:

This Writ Petition is filed by the petitioner challenging the action of 2nd respondent in demanding vacant land tax under Section 212(2) of the Hyderabad Municipal Corporation Act, 1955 (for short "the Act").

2. According to the petitioner, she is the owner of land admeasuring 1694 sq. yds in Ward No.33/D, NH-5 road, Vijayawada on which there is a shed located.

3. The 2nd respondent had issued a special notice dt.13-06-2003 to the petitioner fixing gross rateable value of the plot of petitioner at Rs.86,64,000/- and proposing to levy property tax w.e.f. 01-04-2000 onwards. For 2000-01 assessment year and 2001-02 assessment year taking the area of the plot of petitioner as 2166 sq. yds, he assessed the vacant land tax of Rs.86,440/- and for 2002-03 and 2003-2004 at Rs.42,200/- taking the area of the plot as 2111 sq. yds. The petitioner was directed to submit objections to the said special notice.

4. On 02-08-2003, the petitioner gave a detailed representation specifically raising the contention that the area in her occupation is 1694 sq. yds, that the site is not at all vacant and so vacant land tax is not attracted.

5. No specific order considering these objections appears to have been passed by 2nd respondent though it is stated in the counter-affidavit that petitioner submitted certain documents and that thereafter there was a physical verification and then vacant land tax was levied at 1% per annum on 2166 sq. yds for the period from 01-04-2000 and 0.5% per annum on 2111 sq. yds w.e.f. 01-04-2002.

6. Learned counsel for petitioner contended that the financial year is unit of time for the levy of property tax or vacant land under the provisions of the Act, which has been adopted by the 2nd respondent, that the special notice proposing vacant land tax was itself issued on 13-06-2003, which is in the financial year 2002-03, and so there could not have been any proposal to levy vacant land tax for the financial years 2000-01 and 2001-2002. Reliance is placed on the Division Bench judgment of this Court in **the Himayatnagar Rate-payers Association, Hyderabad, and others Vs. The Government of Andhra Pradesh, Hyderabad and others**[1].

7. Learned counsel for petitioner also contended that when objections were raised to the proposed assessment, they ought to have been considered and it was not open for the 2nd respondent to levy and collect the amounts indicated in the special notice dt.13-0-2003 without passing the final order of assessment.

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[1] 1973(1) ALT 259

8. Learned Standing Counsel for 2nd respondent Ms.Jhansi did not dispute the principle laid down in **the Himayatnagar Rate-payers Association, Hyderabad** (1 supra) wherein this Court held that financial year is the unit time for levying the property and there is no scope for collecting tax after determining the rateable value retrospectively to a period beyond the financial year in which the assessment book is maintained. Therefore it has to be held that the levy and collection of vacant land tax for the financial years 2000-01 and 2001-02 at Rs.86,440/- is without jurisdiction and is unsustainable since the very proposal to levy vacant land tax on the land of petitioner was initiated by special notice dt.13-06-2003.

9. The counter-affidavit filed by 2nd respondent does not indicate that the objections raised by petitioner particularly with regard to the area of her plot were considered by 2nd respondent since there is no written order passed by 2nd respondent even according to counter-affidavit filed by 2nd respondent communicated to petitioner. When a special notice is issued inviting the objections and when objections are filed, it is the duty of the 2nd respondent to consider the same and he cannot ignore the same and proceed to demand and collect the vacant land tax mentioned in the special notice.

10. In this view of the matter, the action of 2nd respondent in demanding vacant land tax under Section 212(2) of the Act as per the

special notice dt.13-06-2003 is declared as illegal, arbitrary and contrary to the provisions of the Act. It is declared that the 2nd respondent is entitled to collect vacant land tax, if any, only from 2002-03 and not for any prior period thereto, after considering the objections filed by petitioner on 02-08-2003 and after passing a reasoned order in accordance with law in that regard and communicating the same to petitioner. If the petitioner is aggrieved by such a determination, petitioner is entitled to question the same in accordance with law.

11. The Writ Petition is allowed accordingly. No costs.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-10-2017
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