HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.3966 of 2006

ORDER:

Heard counsel for the petitioners. Though the counter affidavit is filed on behalf of the 2nd respondent Corporation, when the matter is called, there is no representation.

In the present writ petition, the petitioners challenged the demand notice bearing No.420, dated 01.10.2005, issued by the 2nd respondent Corporation in respect of the premises bearing No.32-3-7, Ward No.17, Rajahmundry, for the half year commencing from October, 2005 to March, 2006, as illegal and arbitrary and consequently, direct the respondents not to insist for payment of tax at the enhanced rate in respect of the said premises.

The facts of the case are that the father of the 1st petitioner herein was the absolute owner and possessor of the abovesaid premises. After his lifetime, the 1st petitioner succeeded to the said property and is in peaceful possession and enjoyment of the same. The assessment number is 29401. The original tax for the said premises was Rs.200/- for half year and it was proposed to be raised to Rs.1,633/- in the year 1993. In view of the abnormal increase, the 1st petitioner filed O.S.244 of 1994 on the file of the Court of the Additional Junior Civil Judge, Rajahmundry, seeking a declaration that enhancement of tax to Rs.1,633/- from the existing tax of Rs.200/- per half year is illegal. The said suit, after contest, was decreed. In the month of March, 2002, when another demand notice, dated 22.06.2002, was issued increasing the tax to Rs.2,351/- for half year and further claiming a sum of Rs.42,146/- towards arrears in violation of the decree passed earlier, the 1st petitioner filed E.A.No.599 of 2003 seeking leave to arrest the defendant therein and send the 2nd respondent Commissioner to civil prison. The said demand notice was withdrawn. Once again, on 22.07.2002, the 1st petitioner was served with fresh demand notice requiring to pay a sum of Rs.49,087/- out of which Rs.42,146/- was shown as arrears. Aggrieved by the same, an appeal in A.S.No.190 of 2002 was filed on the file of the II Additional Senior Civil Judge (FTC), East Godavari District, Rajahmundry. After enquiry, the said appeal was allowed by judgment and decree, dated 20.08.2004 directing the 2nd respondent Commissioner herein to assess the tax afresh by following the procedure contemplated under Sections 218 to 223 of the Hyderabad Municipal Corporation Act (for short, "the Act") and communicate reasoned order after disposal of the complaint, if any.

During the pendency of the writ petition, the 1st petitioner died on 01.01.2017 and the 2nd petitioner being his daughter came on record as the legal representative.

Learned counsel for the petitioners would contend that even after the appeal was allowed on 20.08.2004 the impugned notice dated 01.10.2005 demanding tax @ Rs.2,351/- for half year was issued without complying with the directions given the learned II Additional Senior Civil Judge. Therefore, the present writ petition is filed. He would also contend that the mandatory procedure under Sections 218 to 223 of the Act contemplates that before resorting to enhancement/increase of the property tax of any building, the concerned authority has to follow the procedure relating to the ratable value how to be determined, calling for information of the returns from the owner or occupier by the Commissioner, hearing of the said objections and when the said procedure is to be completed.

Admittedly, a perusal of the counter affidavit filed on behalf of the 2nd respondent would not indicate that such procedure is followed in this case. To substantiate his contention, he relied on **Shan Zahoor v. Vijayawada Municipal Corporation, Vijayawada, Krishna District**[1]. The relevant portion reads as under:

> "A perusal of the scheme of the Act discloses that the steps under Section 212 and the Rules are confined to the stages division of the Corporation into various Zones, classification of the buildings with reference to the type of construction and use to which they are put and determination of annual rental value. This exercise is general in nature, and not with reference to the individual buildings. The assessment of tax on the basis of the classification of the buildings and determination of ARV begins with the preparation of Assessment Book under Section 214. It provides for entering of four independent aspects, with reference to each and every building. They are referred to in the preceding paragraphs. A reading of the said entries discloses that preparation of assessment book is not a mechanical process of applying the criteria, evolved under Section 212 and the Rules, to each and every

[1] 2004 (4) ALD 245

building. Though the same may constitute a valid basis, it is not the absolute consideration for assessing a building to tax. For example, Clause (d) of Section 214 directs the following information be entered:

> "if any such building or land is not liable to be assessed to the general tax, the reasons of such non-liability."

From this it is evident that the Corporation is vested the discretion to exempt a building or land from levy of the general tax, but after furnishing the reasons in support of such a decision.

Section 218 mandates that once the Assessment Book under Section 214 is ready, the Commissioner shall give public notice thereof and the place where the Assessment Book or a copy of it can be inspected. The mode of publication is also stipulated. Section 219 enables the assessees not only to inspect the Assessment Book, but also to take extract of it, free of cost, if it relates to his own premises or on payment of costs, if it relates to some other premises. The purpose underlying this section is to enable the assessee to make out a point by way of comparison of his premises with those of any others in the area. The starting point for submission of the complaints or objections for such assessment is the publication of notification under Sub-section (1) of Section 220. While it is not known as to whether the Assessment Book as provided for under Section 214 is prepared at all, there is no dispute that Steps, Sections 218, 219 and Sub-section (1) of Section 220, were not taken at all. The non-compliance with the above said provisions is sought to be explained away, by stating that it is only an infirmity or irregularity and cannot constitute any illegality.

In its wisdom, the Legislature thought it appropriate that once an assessment book is prepared under Section 214, a notice of its being ready and available for inspection has to be published. When there was some ambiguity as to the mode of publication, it amended the Act in the year 1969 and made the publication of notifications under Sub-section (1) of Section 20 in Official Gazettes, mandatory. When the Legislature thought it fit that the interests of the citizens are protected by having reposed to such a procedure, it is not for the Courts to hold that it is not necessary to publish those notices. Such a pronouncement by Courts would amount to repealing of Sections 218, 219 and Sub-section (1) of Section 220, from the Act. Enactment or repealing of a provision of law is within the prerogative of the Legislature. The Courts cannot usurp the same. The only occasion for the Courts to remove a provision from a statute book is, by striking it down as being unconstitutional when challenged and on being satisfied. Such an occasion did not arise so far, in the context of the said provisions."

After going through the contents of the affidavit as well as the counter affidavit filed on behalf of the 2nd respondent, it appears the 2nd respondent Corporation has not followed the mandatory procedure contemplated under the provisions of Sections 218 to 223 of the Act. In fact, going by the language employed in the said provisions, it is the bounden duty of the 2nd respondent Corporation that it shall scrupulously follow the procedure and it cannot be said that under Section 218 of the Act need not be followed at all and if such an interpretation is given, the very purpose of the provisions would be rendered otiose.

In the case on hand, before filing the present writ petition, the 1st petitioner herein filed an appeal in A.S.No.190 of 2002 questioning the demand notice, dated 22.06.2002, issued in respect of the subject premises fixing the tax at Rs.2,351/- for half year. After hearing, the said appeal was allowed and the Commissioner of the 2nd respondent's Corporation was directed to assess the tax afresh by following the procedure contemplated under Sections 218 to 223 of the Act and after disposal of the complaint, if any, communicate a reasoned order to the assessee. In spite of the said direction and as the procedure contemplated under Sections 218 to 223 of the Act is mandatory while enhancing/increasing the tax, the 2nd Corporation cannot issue a demand notice without adhering to the said provisions and also without complying with the direction given in A.S.No.190 of 2002 by the II Additional Senior Civil Judge (FTC), East Godavari District, Rajahmundry. Though the 2nd respondent has stated in the counter affidavit that from the year 1983-84 the revision of the property tax has been made for every 10 years, still the 2nd respondent Corporation is bound to follow the procedure as contemplated under the provisions as stated supra. Therefore, viewed from any angle, the action of the 2nd respondent Corporation in issuing the impugned demand notice bearing No.420, dated 01.10.2005, in respect of the premises bearing No.32-3-7, Ward No.17, Rajahmundry, fixing the property tax at Rs.2,351/- for half year cannot be sustained and the same is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned demand notice bearing No.420, dated 01.10.2005, issued by the 2nd respondent Corporation. However, it is open to the 2nd respondent Corporation to issue a fresh demand notice after complying with the procedure as contemplated under Sections 218 to 223 of the Act. No costs.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE P. KESHAVA RAO

Date: 08.12.2017.
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