THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.21066 of 2002

ORDER :

In this Writ Petition the petitioners are eighteen in number, and they are engaged in the business of running a Cold Storage Plants and Godowns.

2. According to them, they constructed the buildings which are being used for Cold Storage and Godowns as per the provisions of the Hyderabad Municipal Corporation Act, 1955 and the bye-laws framed thereunder. They contend that as per G.O.No.249 dt.23.05.1996, issued by the Municipal Administration and Urban Development Department, only 40% of the plot area is permitted to be constructed and the rest of the area is to be left open towards setbacks; and they had made constructions strictly in accordance with the same. They complain that notices had been issued in 2002 to each of the petitioners by the Guntur Municipal Corporation (2nd respondent) informing about the levy of vacant land tax, merely mentioning plinth area and the proposed vacant land tax without indicating capital value or the market value on the basis of which such vacant land tax is being assessed.

3. According to them, petitions were filed by each of the petitioners objecting to the proposed enhancement of vacant land tax, that there was an enquiry also and ultimately orders were passed without adverting to the contentions of petitioners. In particular, it is also alleged that under sub-Section (2) of Section 212 of the Act, there is an exemption up to 1000 Sq.Mts. or three times the plinth area for levy of vacant land tax, that this exempted area would definitely include the setbacks area which was left by the petitioners, and therefore, the vacant land tax, if any, has to be computed in the case of each of the petitioners in strict compliance with sub-Section (2) of Section 212 of the Act.

4. The counsel for petitioners also referred to the requirement of setbacks for buildings of this nature in the G.O.No.249 dt.23.05.1996 and sought to contend that the area covered by setbacks in any event cannot be subjected to levy of vacant land tax.

5. The 2nd respondent-Corporation however filed a counter saying that G.O.No.249 dt.23.05.1996 specifies the extent of area where construction is to be made in a plot and also lays down the extent of setbacks; but, nowhere does it state that the vacant land, which is so left by a building owner after making construction, cannot be subjected to vacant land tax. It is stated that excess vacant land is as per provisions of Section 212(2) of the Act and will not in any way exclude the set backs which are intended for commercial use by the owners.

6. This statement in the counter-affidavit is not correct because it is not the case of the 2nd respondent that any determination of the land which will be exempted from vacant land tax under Section 212(2) has been done by the 2nd respondent before passing orders confirming the assessment of vacant land tax in the case of any of the petitioners. Also, land left towards setbacks cannot be said to be intended for commercial use by owners.

7. In this view of the matter, the Writ Petition is allowed; and the orders confirming the vacant land tax passed against each of the petitioners without mentioning any details as to the market value on the basis of which the capital value was determined, are set aside. The 2nd respondent is directed to pass individual orders in the case of each of the petitioners after giving them the benefit under sub-Section (2) of Section 212 to the extent permissible after giving notice to each of the petitioners individually, hearing their objections and then pass a reasoned order in the case of each of the petitioners regarding the amount of vacant land tax which each of them is liable to pay.

8. Accordingly, the Writ Petition is allowed as above. No order as to costs.

9. In case, any such determination is made by the 2nd respondent and the petitioners are aggrieved by it, they are also given liberty to question the same in accordance with law.

10. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-10-2017
Ndr/*