THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

WRIT PETITION Nos.6508 and 12271 of 2017

COMMON ORDER: ***(Per VRS,J)***

The Kakatiya Urban Development Authority, which is a statutory authority constituted in terms of Section 3 of the Andhra Pradesh Urban Areas (Development) Act, 1975, has come up with these writ petitions, challenging the action of the respondents in taking coercive steps and recovering a sum of more than Rs.14.00 crores.

2. Heard Mr. A. V. Krishna Koundinya, learned senior counsel for the petitioner, and Mr. T. Vinod Kumar, learned senior standing counsel for the Income Tax Department, appearing for the 1st respondent.

3. For the assessment years 2009-2010 to 2013-2014, the petitioner was assessed and a series of demands for the amounts ranging from Rs.6,70,00,000/- to Rs.33,35,00,000/- was made. All these assessments are the subject matter of five different appeals pending on the file of the Income Tax Appellate Tribunal in I.T.A.Nos.326 to 330/Hyd/2017.

4. Though the appeals were filed in February, 2017 within the period of limitation, garnishee orders were issued to the Bank by the

proceedings, dated 20.02.2017. Challenging the garnishee orders, dated 20.02.2017, the petitioner came up with the first writ petition, W.P.No.6508 of 2017. In the said writ petition, this Court granted an interim order to the following effect:

> *"Heard Mr. A.V.Krishna Koundinya, learned senior counsel appearing for the petitioner.*
>
> *Mr. T. Vinod Kumar, learned standing counsel for the Income Tax Department (Telangana), takes notice for the 1st respondent.*
>
> *Issue notice to the respondents 2 and 3, returnable by two (2) weeks.*
>
> *The petitioner is a statutory authority created under the Andhra Pradesh Urban Areas (Development) Act, 1975. By the order of attachment, the 1st respondent has already taken away a sum of Rs.6,81,77,548/-. The petitioner is not either an individual or a corporate assessee, but a statutory authority. If the bank accounts are not permitted to be operated and if the entire account is drained out of funds, the functioning of the statutory authority will come to a grinding halt.*
>
> *Therefore, there will be an interim stay of further recovery, until the next date of hearing, and the petitioner is permitted to operate the bank accounts.*
>
> *Post after two (2) weeks."*

5. The said order was later clarified by a subsequent order, dated 22.03.2017, by the Bench of this Court. The order passed on 22.03.2017 reads as follows:

> *"Adjourned by two weeks.*
>
> *In the meantime, it is clarified that the Appellate Authority is free to pass orders on the stay application."*

6. Pursuant to the second order, the Tribunal took up the applications for stay and passed order on 30.03.2017. The operative portion of the said order reads as follows:

> *"We have carefully considered the rival contentions and perused the record. On a conspectus of the matter, we are of the view that it is a fit case for granting conditional stay. Since all the appeals are already posted for hearing on 13.06.2017,*

we hereby direct the assessee to pay a sum of Rs.8 crores, for all the years under consideration, on or before 31st March, 2017 and subject to payment thereon the balance outstanding demand is stayed. Assessee shall not seek any adjournment on the date fixed for hearing.

Learned counsel for the assessee submitted that the order of the Commissioner (Exemptions) having been served upon the assesee on 28.03.2017 it has to file appeals against that order and the same has to be clubbed along with the present appeals and at least on account of that factor it may take some time, as Act stipulates two months time to file appeals and to prosecute the matters.

No doubt, the Law permits time to file appeals within 02 months but we only advise the assessee to file appeals at the earliest so that the same can be clubbed along with the present appeals and can be taken up together. However, if there are genuine reasons for seeking adjournment, the Bench can take a decision to extend the stay already granted. With these observations, the stay applications filed by assessee are treated as partly allowed."

7. Immediately after the pronouncement of the order on 30.03.2017, the Assistant Commissioner of Income Tax wrote a letter to the Bank on the very same day, directing the Bank to remit a sum of Rs.8.00 crores. Challenging the said communication, dated 30.03.2017, the petitioner came up with the second writ petition, W.P.No.12271 of 2017.

8. The grievance of the petitioner in both these writ petitions is that before taking coercive action, the respondents did not follow the procedure prescribed by law and did not also grant a breather. Admittedly, the appeals were filed within the period of limitation. The grievance of the petitioner is that even before orders could be passed on the petitions for stay, a garnishee notice was issued first and then a conditional order of stay was granted by the Tribunal. The

garnishee order was effected to the extent of the condition imposed by the Tribunal in the stay petitions.

9. As we have pointed our earlier, the first writ petition challenges the proceedings of the Assistant Commissioner, dated 20.02.2017, by which the Bank was directed to remit a sum of Rs.54,72,00,000/-. By the time the petitioner came up before this Court, a sum of Rs.6,81,00,000/- had already been recovered by the Department. Therefore, by the interim stay granted on 23.02.2017, we directed further recovery to be put on hold. Though we modified the said order permitting the Tribunal to dispose of the stay petitions, the stay of further recovery was not lifted.

10. In view of the liberty granted by this Court, the Tribunal disposed of the stay petitions granting time to the petitioner up to 31.03.2017 to make the payment of Rs.8.00 crores. From the order of the Tribunal, it is not clear whether the Tribunal took note of the recovery already made to the extent of Rs.6,81,00,000/-, to come to the conclusion that Rs.8.00 crores should be paid by the petitioner for the grant of stay. In any case, the Tribunal granted time up to 31.03.2017 for the petitioner to comply with the conditional order.

11. Therefore, any letter that the ITO wanted to issue to the garnishee, could have been done only after the expiry of the deadline, namely, 31.03.2017. The Assistant Commissioner of Income Tax had no business to write the letter on 30.03.2017 itself, asking the Bank to

remit the amount of Rs.8.00 crores so as to enable the petitioner to comply with the conditional order. A letter written by a statutory authority, especially in the form of a garnishee notice, is a coercive action. No such coercive action could have been taken, when the petitioner had 24 hours more time to comply with the condition. Therefore, we are of the considered view that the letter written on 30.03.2017 by the Assistant Commissioner of Income Tax, directing the Bank to remit a sum of Rs.8.00 crores was completely violative of the stay granted by us and the conditional stay granted by the Tribunal, for the compliance of which, the petitioner had time till 31.03.2017.

12. The question that now remains is as to what should be done. According to Mr. T. Vinod Kumar, learned senior standing counsel for the Department, more than Rs.86.00 crores is due under the orders of assessment, which are the subject matter of five different appeals before the Tribunal. Therefore, the learned senior standing counsel submitted that in the light of the arguments advanced before the Tribunal, the condition imposed by the Tribunal to remit a sum of Rs.8.00 crores should be taken to be in addition to the amount of Rs.6.81 crores already recovered.

13. But unfortunately, we cannot take note of what transpired in a Court, from anything other than what is reflected in the proceedings before the Court or the Tribunal. In the order passed on 30.03.2017 by the Tribunal, there is no indication whether the amount of Rs.8.00

crores was arrived at, after taking note of the amount already recovered. We cannot go on presumptions and surmises. The best way of resolving this issue is to remit the matter back to the Tribunal to address this question. But, we do not intend to do that, in view of the fact that the appeals were posted to 03.10.2017 for final disposal, and an order of remand to take a fresh look at the stay petitions, would only postpone the final hearing of the appeals.

14. Therefore, in the light of the two things, namely, (a) that the letter written by the Assistant Commissioner of Income Tax, dated 30.03.2017, was clearly violative of the two stay orders, one passed by this Court and another passed by the Tribunal, and (b) that the order of the Tribunal is not indicative of whether the amount already recovered was taken note of for imposing the condition, we are left with no alternative except to direct the Department to refund the amount of Rs.6.81 crores. Hence, the Writ Petitions are disposed of, directing the Department to refund the amount of Rs.6.81 crores to the petitioner. However, the same shall be subject to the final orders passed by the Tribunal in the appeals.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J.

16th August, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

Writ Petition Nos.6508 and 12271 of 2017
(disposed of)

16th August, 2017

cbs

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*THE HON'BLE SMT. JUSTICE T. RAJANI

+W.P.Nos.6508 & 12271 of 2017

% 16-08-2017

M/s. Kakatiya Urban Development Authority,
Hanamkonda, Warangal. .. Petitioner

Vs.

$ The Assistant Commissioner of Income Tax,
Warangal and others .. Respondents

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>HEAD NOTE:

! Counsel for petitioner	: Mr. A.V.Krishna Koundinya
^ Counsel for 1st respondent	: Mr. T. Vinod Kumar, learned senior standing counsel for the Income Tax Department
^ Counsel for 2nd respondent	: Mr. B.S. Prasad
^ Counsel for 3rd respondent	: None

? CASES REFERRED : ---