THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.8127 OF 2017

ORDER:

In this writ petition, the petitioner seeks a mandamus declaring the action of respondent No.2, demanding huge amount towards property tax without assessment and exacting cheque for Rs.5,00,000/- on 04.03.2017 and also an undertaking to pay Rs.48,85,181/- by 10.03.2017, as being illegal and arbitrary. A consequential direction is sought to respondent No.2 not to take any coercive steps against the petitioner for payment of property tax, and to return the cheque bearing No.682488 dated 04.03.2017

Facts, in brief, are as follows:

The petitioner, a partnership firm, entered into a lease agreement with respondent No.5, on 05.11.2012, for an extent of land admeasuring Ac.0.75 cents for establishment of cold storage unit. The cold storage unit was constructed in an area of 60,000 sq.ft, with storage capacity of 6000 metric tons, and is being used for storing agricultural produce brought to respondent No.5 – Agricultural Market Committee. The petitioner states that their source of income is hire charges/rental charges paid by the users of the cold storage. The cold storage was constructed by February, 2013, and is in operation since then. The allegation is that, on 04.03.2017, the respondent – authorities barged into the petitioner's premises and demanded Rs.53,85,819/-; and, the authorities had since coerced to put lock and key on the cold storage unit, a cheque was given for Rs.5.00 lakhs, and further gave an undertaking to pay the balance amount by 10.03.2017. Petitioner states that the undertaking was given only on account of coercion by respondent – authorities; at no point of time, notice was given proposing to assess the property tax; since they entered into lease agreement with respondent No.5, it is the responsibility of respondent No.5 to pay property tax; as a sum of Rs.10,000/- p.a. is being paid to respondent No.5 towards property tax, they were under *bona fide* belief that property tax would be paid by respondent No.5 – Agricultural Market Committee; and, if proper assessment is made, petitioner is ready and willing to pay property tax legitimately due to the respondent – Corporation.

In the counter affidavit filed by respondent – Corporation, it is asserted that petitioner's property was inspected and they constructed 13,015 sft RCC, 750 sft ACC, 1,242 sft Generator room, First Floor 13,015 ACC, Second Floor 13,015 ACC, Third Floor 13,015, Fourth Floor 13,015 ACC, for RCC and Generator was assessed @ Rs.5/- per sft; Rs.3/- per sft for office, Rs.2.5 per sft. for ACC slabs; tax assessed was at Rs.15,04,236/- p.a; and, as the petitioner was due since 2013, the total property tax payable is Rs.53,85,819/-. It is further asserted that, as the petitioner had constructed the cold storage unit without permission, in terms of Section 220A of the Greater Hyderabad Municipal

Corporation Act, penal rates are applicable for unauthorized constructions; and notices were served on respondent No.5, owner of the property. Respondent – Corporation, therefore, prays for dismissal of the Writ Petition.

In their reply, petitioner asserts that, without prejudice to the fact that internal partition was made, it cannot be treated as an independent unit and, as such, the calculation made by respondent – authorities is totally unauthorized and irrational. Though the petitioner is willing to accept the figures and method adopted by the respondent – Corporation but, however, the arithmetic calculation made by the respondent – Corporation of Rs.15,04,236/- is incorrect and the proper figure would be only Rs.2,36,222/- and, for three years, the property tax would be around Rs.7.00 lakhs. Hence, the petitioner prays for allowing the writ petition.

Since the facts are not being in dispute, the only issue that requires to be considered is whether the action of respondent – Corporation, in putting lock and key to the premises of the petitioner, is legal and valid. Now it is practically admitted and undisputed that the petitioner was given notice demanding property tax. Under the Greater Hyderabad Municipal Corporation Act, 1955 (the Act) notice demanding property tax is required to be preceded by issuance of bills in terms of Section 266 of the Act specifying the details of period and tax payable. Only thereafter, if the amount is not paid within the stipulated period, the amount can be collected by resorting to the procedure under Section 269 of the Act. Tax demand can be made either from the owner of the property or the occupier. In terms of Section 276 of the Act, where a demand is not satisfied in spite of service of notice on the owner, the same can be collected by issuance of demand on the occupier. In the present case, the land is owned by respondent No.5 and the property required to be imposed tax is the cold storage unit owned by petitioner. In other words, before property tax is demanded, necessary assessment and determination has to be made with respect to tax payable. The cold storage unit is an independent unit and not being either regular or commercial or residential unit. Ratable value, which is the basis for determination of property tax, is required to be arrived at before quantum of tax to be determined. With respect to properties like cold storage etc. determination has to be made by issuing notice, and basing on generally acceptable principles.

In the present case, it is an admitted fact that no notice has been given to the petitioner, and the coercive methodology adopted by respondent – Corporation cannot be sustained and the demand can also be said to be in violation of the procedure prescribed. In the circumstances, interest of justice would be served if the demand is set aside, and liberty is given to the respondent – Corporation to make fresh assessment of the property tax duly following the procedure prescribed for the period commencing from 2013 onwards. At any rate, petitioner is required to pay certain amount towards property tax as on date. Considering the fact that the petitioner had already paid Rs.5.00 lakhs, it would be appropriate to direct the petitioner to pay a further sum of Rs.5.00 lakhs within a period of ten days from the date of receipt of a copy of this order. However, the tax paid shall be subject to the final assessment.

While disposing of the Wit Petition, it may not be out of place to mention the caution made by the Supreme Court in **Dabur India v. State of U.P.**[1], wherein it was held that even legitimate tax collection have to be made in a correct manner and arm-twisting methodology cannot be adopted for collection of even legal dues. In the circumstances, this Court has no hesitation to deprecate the practice adopted by respondent – Corporation in the present case.

The Writ Petition is disposed of accordingly. No costs. Consequently, miscellaneous petitions pending, if any, shall stand disposed of as infructuous. No order as to costs.

CHALLA KODANDA RAM,J

Date:11.04.2017
Note:CC three days
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[1] (AIR 1990 SC 1814),