

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.43165 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“...to issue an appropriate order, writ or direction, more particularly one in the nature of writ of Mandamus declaring the notice in R.C.AC. 2/A9-140340/2011 dated 10-11-2017 issued by the 3rd respondent and the consequential seizure notice dated 16-12-2017 as being, illegal, arbitrary, without power and jurisdiction and without any provision and procedure traceable under Vijayawada Municipal Corporation Act, 1981 or any other rules and regulations in force and consequently to set-aside the same in the interest of justice and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

2. I have heard the submissions of learned counsel for the petitioner and of learned Standing Counsel appearing for respondents 2 and 3. I have perused material record.

3. By the impugned notice, dated 10.11.2017, the third respondent demanded the petitioner to pay, in all, a sum of Rs.31,23,132/- towards the pending property tax within seven days after receipt of the said notice and further stated that the same is payable by way of Demand Draft and that subject to the said payment, the amount to which the petitioner is entitled to exemption will be exempted.

4. Learned counsel for the petitioner would submit that now there is a threat of seizure of the property and that for non-payment of the property tax and for recovery of the same, the Corporation is not entitled to seize the property and such power is not vested in the officers of the Corporation and that in any event, the authority concerned is only entitled to attach movables and therefore, the threat of seizure of the property is

illegal. He would further submit that this notice was issued pursuant to the orders of the lower appellate authority in C.M.A.No.220 of 2011 and the petitioner is entitled to canvass the validity of the said order before this Court by filing a further appeal and that the time for filing such an appeal is still available to the petitioner and that in the meanwhile, the impugned notices were issued and that the petitioner is also taking appropriate steps for preferring an appeal against the orders in C.M.A.No.220 of 2011. He would further submit that till such an appeal is preferred, the interest of the petitioner may be protected.

5. Learned Standing Counsel forcefully submitted that after the Primary Appellate Authority determined the tax by passing an appropriate reasoned order, the same was challenged in Civil Miscellaneous Appeal and that the Civil Miscellaneous Appeal was dismissed confirming the order of the Primary Appellate Authority and that as there are concurrent findings of fact of two successive authorities, the petitioner is obliged to pay the tax as demanded in the impugned notice and that the Municipal Corporation is not required to wait till a further appeal is preferred by the petitioner and that therefore, without paying the property tax, as demanded in the impugned notice, the petitioner is not entitled to seek any reliefs, that too, without preferring the statutory appeal.

6. I have given earnest consideration to the facts and submissions. In the considered view of this Court, the writ petition can be disposed of with appropriate directions.

7. Accordingly, the writ petition is disposed of reserving liberty to the petitioner to prefer an appeal assailing the orders in C.M.A.No.220 of 2011 within the time allowed under law. Till such an appeal is preferred, the

impugned notices shall remain in abeyance subject to the condition that the petitioner shall deposit Rs.10,00,000/- (Rupees ten lakhs only) to the credit of the Commissioner, Vijayawada Municipal Corporation, by way of Demand Draft or Cheque drawn in favour of the Vijayawada Municipal Corporation. Out of the said amount, Rs.5,00,000/- (Rupees five lakhs only) shall be deposited within three weeks from the date of receipt of a copy of this order and the remaining Rs.5,00,000/- (Rupees five lakhs only) shall be deposited within three weeks thereafter. It is made clear that on failure of the petitioner to comply with the said direction, the respondents 2 and 3 are entitled to proceed further in the matter in strict accordance with procedure established by law. It is also made clear that the petitioner is entitled to make a request to the appropriate Court in the proposed appeal that may be filed, to consider the payment now directed to be made while seeking an interim order in the said appeal.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

M. SEETHARAMA MURTI, J

Date: 19.12.2017
 Note: Issue CC today
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