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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 7087 of 2010

Shri Gajanan Burange, S/o Shri Krishna Burange, Aged about 50 years, Proprietor Hotel Shivneri, Ward No. 14, Behind Bajaj Nursing Home, Link Road, Bilaspur, Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through – The Department of Urban Administration, Raipur (C.G.)

2. Bilaspur, Municipal Corporation, through- its Commissioner, Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Mr. Sunil Otwani, Advocate.
For Respondent No. 1	:	Mr. Gary Mukhopadhyaya, Govt. Advocate.
For Respondent No. 2	:	Mr. B. L. Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/04/2018

(1) The petitioner herein has invoked the jurisdiction of this Court under Article 226 of the Constitution of India calling in question the order passed by the Municipal Corporation, Bilaspur levying the penalty under Rule 11 of the Chhattisgarh Municipality (Determination of annual letting value of building/land) Rules, 1997 (henceforth “Rules, 1997”). Municipal Corporation, Bilaspur re-assessed the property tax for the years from 1998-99 to 2009-10 and directed the petitioner to pay property tax of Rs. 17,403/- and also imposed penalty to the extent of 5 times of the same i.e. Rs. 87,015/-.

(2) Learned counsel appearing for the petitioner would submit that impugned order so far as penalty part is concerned is bad and unsustainable in law as no opportunity of hearing has been given to the petitioner before imposing penalty to the extent of 5 times.

(3) On the other hand, counsel for the respondents would support the impugned order.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.

(5) Rule 11 of the Rules, 1997 provides for reassessment and imposition of penalty, which states as under:-

> "11. **Scrutiny of the return**.- If on the scrutiny of return received under Rule-10, is it found by the municipal officer that any information mentioned therein is not correct or is doubtful or he deems it necessary to re-assess the annual letting value due to any reason, then the municipal officer may take action for the re-assessment of the annual letting value under the provisions of the Act :
>
> Provided that in the re-assessment, the variation up to ten per cent on either side shall be ignored but where the variation is more than then per cent, the owner of land or building, as the case may be, shall be liable to pay such penalty which will be equal to five times of the amount of difference of self-assessment made by such owner and the re-assessment made by the municipality.
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> (6) Provided further that against the order passed by the municipal officer under the first proviso, an appeal may be filed

before the Mayor-in-Council in case of a Municipal Corporation and President-in-Council, in case of a Municipal Council or Nagar Panchayat within thirty days from the date of passing the orders, on which the Mayor-in-Council or the President -in-council, as the case may be, after hearing the parties concerned, shall give its decision, which shall be final:

(6) The aforesaid provision prescribes the provision for imposition of penalty equal to five times of the amount of difference of self-assessment made by such owner and the re-assessment made by the municipality.

(7) In the matter of **State of M.P. and others Vs. Bharat Heavy Electricals**[1], their Lordships of the Supreme Court while dealing with Section 7(5) of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 held that assessing authority is not bound to impose maximum penalty and observed as under:-

> "**13.** It is not necessary for us to decide whether the provision for levy of penalty equal to ten times the amount of entry tax would be confiscatory and, therefore, ultra vires since Mr Sanghi, in fairness, submitted that the State treats it as the maximum limit and not fixed amount of penalty leaving no discretion for imposition of lesser penalty. This stand of the State itself concedes that the assessing authorities are not bound to levy fixed penalty equal to ten times the amount of entry tax whenever the provisions of Section 7(5) are attracted. Depending upon the facts of each case the assessing authority has to decide as to what would be the reasonable amount of penalty to be imposed, the maximum being ten times the amount of the entry tax. So construed, sub-section (5) of Section 7 cannot be regarded as confiscatory. Consequently, this also cannot be a ground for holding Section 7(5) to be ultra

1 (1997) 7 SCC 1

vires.

> **14.** From the aforesaid if follows that Section 7(5) has to be construed to mean that the presumption contained therein in rebuttable and secondly the penalty of ten times the amount of entry tax stipulated therein is only the maximum amount which could be levied and the assessing authority has the discretion to levy lesser amount, depending upon the facts and circumstances of each case. Construing Section 7(5) in this manner the decision of the High Court that Section 7(5) is *ultra vires* cannot be sustained.

(8) The aforesaid decision of the Supreme Court has been followed by the full bench of the Madhya Pradesh High Court in the matter of **Sakhi Gopal Agrawal & others Vs. State of M.P. & others**[2], in which their Lordships have held that penalty can be reduced under Section 138(3) of the Corporation Act depending upon the facts and circumstances of the case and held in paragraph 54(ix) as under:-

> "54(ix)- With regard to imposition of penalty as provided under Section 138(3) of the Corporation Act and 126 (3) of the Municipalities Act, it is inappropriate to state that the authorities have no discretion to reduce it or there is an unrebuttable presumption in that regard. If the property owner can satisfactorily show that there was *bonafide* error or mistake on his part, the competent assessing authority can reduce the penalty."

(9) Reverting to the facts of the present case after noticing the principles of law with regard to imposition of penalty, it is quite vivid that the petitioner has not been noticed for reassessment and straightway re-assessment has been done and maximum penalty has

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been imposed, on a notice issued the petitioner could have demonstrated before the authority that there is apparent error in imposing penalty to the extent of 5 times on the property tax i.e. Rs. 87,015/-, it is maximum penalty which has been provided in first proviso to Rule 11 of the Rules, 1997. The Corporation has neither given an opportunity to show cause to the petitioner nor assigned any reason why imposition of maximm penalty is necessary.

(10) In view of the aforesaid discussion, order of imposition of penalty of Rs. 87,015 is hereby quashed. However, the respondents are at liberty to proceed in accordance with law.

(11) Accordingly, the writ petition is allowed to the extent sketched hereinabove.

Sd/-
(**Sanjay K. Agrawal)**
Judge

D/-