NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 4 of 2012

Steel Authority of India Limited, Bhilai Steel Plant, Bhilai, through the Managing Director Bhilai Steel Plant, Ispat Bhawan, Bhilai, District Durg (CG) **---- Petitioner**

Versus

1. State of Chhattisgarh, through the Secretary, Department of Urban Administration & Development, Government of Chhattisgarh, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Nagar Palika Parisad Dalli Rajhara through the Chief Municipal Officer, Nagar Palika Parisad Dalli Rajhara, District Balod, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Shailendra Shukla, Advocate
For Respondent no.1	:	Shri Garry Mukhopadhyay, Dy. Govt. Advocate
For Respondent no.2	:	Shri Y. S. Thakur, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

22/01/2018

The challenge in the present writ petition filed by the petitioner is to Annexure P-12 dated 21.10.2011 whereby respondent no.2 has issued a demand notice for payment of property tax to the tune of Rs.3,90,54,559/-.

2. Counsel for the petitioner submits that the impugned demand notice is bad in law for the reason that the effect of the demand notice is that property tax is being levied from the petitioner with retrospective effect which is not permissible. Initially the petitioner was paying property tax as per self assessment done by the petitioner itself. Subsequently, vide Ex. P-1 to P-8, different agreements were entered into between the petitioner and respondent no.2 the Municipality and property tax was paid as per the said agreements. However, abruptly, without any show cause notice or without any justification, the respondents have now issued Annexure P-12 a demand notice seeking for payment of property tax to the tune of Rs. 3,90,54,559/-. Counsel for the petitioner submits that once when there was an agreement entered into between the parties and payment has also been made as per the agreement, the respondent no.2 could not have gone back from the agreement and demanded certain extra payment of property tax than what was agreed upon. He submits that at no point of time, the petitioner was intimated about the fact that the agreement was ever cancelled or for that matter, the agreement was not valid and that the petitioner was liable to pay much more than what was agreed upon between the parties. Counsel for the petitioner submits that even otherwise, Annexure P-12 is an order which does not specify as to on what basis the additional property tax of more than Rs. 3,90,54,559/- has been raised. The authority concerned should have at least issued a show cause notice before issuance of demand notice and then should have properly assessed the property tax before raising the impugned demand notice.

3. Counsel for the respondents, however, opposing the petition submits that it is a case where the agreement seems to have been illegally entered into as no exemption could have been granted to the petitioner's establishment by the Municipal Corporation unless there is an approval from the State Government in this regard under Section 132 of the Municipality Act. In the instant case, no such approval has ever been granted by the State Government and therefore, any agreement, if at all if entered into between petitioner and respondent no.2, the same cannot be termed as legally binding upon the respondents. It has further been brought to the notice of the Court that appropriate disciplinary and departmental action has been initiated against the erring officers of the Municipal Council as also the President of the Municipal Council for entering into such an illegal agreement, which further strengthens the claim of the respondents in demanding additional property tax. According to the counsel for the respondents, it is not a case where the Department has issued a notice on the new rate of property tax neither is it a case of demand being made on reassessment. Rather it is a case where the notice has been made for payment of the actual property tax which the petitioner was liable to pay from the first day itself and which they had not been demanding. As such, the impugned demand notice is nothing but a demand of compliance of property tax which was payable by the petitioner.

4. Given the facts and circumstances of the case, this Court is inclined to accept the stand taken by the respondents in holding that the agreement entered into between the parties was not tenable nor can it be said to be an legal agreement as the same does not seem to have got an approval of the State Government as is required under Section 132 of the Municipality Act. Once the agreement itself is held to be a bad agreement and not having proper approval and sanction of the State Government, it would not have any legal sanctity. In the said circumstance, the petitioner is bound to pay the property tax as per the prevailing rate for each assessment year.

5. However, this Court does find force in the argument of the counsel for the petitioner that before issuance of demand notice Annexure P-12, no show cause notice was given to the petitioner as to on what basis the respondents have come to the conclusion that the property tax payable would be more than rupees 3.9 crores.

6. At this juncture, it would be relevant to refer to the order of the Division Bench of this Court dated 14.08.2015 passed in a bunch of writ appeals, leading among them being Writ Appeal No.347/2014 wherein the Division Bench has dealt with the issue as to on what basis demand notice could have been made by the Municipal Authorities. For ready reference, paragraphs 6 to 8 are being reproduced hereinunder:

“6. Rule 9 provides for calculation of annual letting value. Rule 10 provides for filing of property tax return on self assessment. Section 136 (i) of the Act provides for grant of exemption in payment of property tax with regard to properties in residential occupation by the owner. Section 173 provides for raising of bills for taxes and other demands. Rule 11 provides for scrutiny of a property tax return filed and which will include a self assessed return under Rule 10. Rule 11 reads as follows :

> “Scrutiny of the return.- If on the scrutiny of return received under Rule 10, it is found by the Municipal Officer that any information mentioned therein is not correct or is doubtful or he deems it necessary to reassess the annual letting value due to any reasons, then the Municipal Officer may take action for the reassessment of the annual letting value under the provisions of the Act :
>
> Provided that in the reassessment, the variation up to ten percent on either side shall be ignored but where the variation is more than ten 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 reassessment made by the Municipality :
>
> 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 President-in-Council, as the case may be, after hearing the parties concerned, shall give its decision, which shall be final. Provided also that the scrutiny of the return deposited under Rule 10, shall be completed within one year from the receipt of return or before the expiry of the next financial year, whichever is earlier. After the expiry of the said period the return shall not be scrutinised.”

7. A bare reading of the statutory provisions makes it manifest that a self assessed property return under Rule 10 can be scrutinised and reassessed under Rule 11. But for such scrutiny and reassessment by the Municipal Officer the pre conditions mentioned in Rule 11 must be fulfilled. Before exercising the power, the Municipal Officer is required to be satisfied that some information furnished in the self assessed return was not correct or was doubtful or that it was necessary for any reasons to reassess the annual letting value. In all three conditions it postulates first an exercise carried out by the Municipal Officer leading to his satisfaction for reassessment on basis of materials in his possession. The statutory provision does not vest absolute discretionary power in the Municipal Officer to reassess a return. The words 'any reason' also cannot be interpreted to vest absolute uncanalised powers ignoring the preceding words with regard to incorrect or doubtful information. The consequences of reassessment can lead to imposition of penalty at high rates punitive in nature and there is a limitation for exercise of the power of reassessment by scrutiny also. There is also a provision of appeal.

> 8. Therefore unless the assessee is first told by the Municipal Officer of the grounds why he is satisfied to scrutinise and reassess, the assessee cannot satisfy the Municipal Officer that there was no ground to reassess. It is always possible that after the assessee is told the grounds, he may satisfy the Municipal Officer that no ground for scrutiny or reassessment was made out. The consequences of scrutiny and reassessment are serious with high penalty punitive in nature. The order for scrutiny and reassessment is therefore required to be reasoned and discussed. It must record the satisfaction of the Municipal Officer and consideration of the defence by the assessee to arrive at a reasoned conclusion. In absence of this procedure to be followed the remedy of appeal provided would be rendered nugatory and futile. The legislative intent of a show cause notice and passing of a reasoned order after considering the cause shown is therefore manifest and implicit in Rule 11 even if does not specifically use the words show-cause notice."

7. Rule-11 of the Chhattisgarh Municipality (Determination of annual letting value of building/lands) Rules, 1997 (hereinafter referred to as 'the Rules, 1997') clearly envisages the provisions as to in what manner the Authorities would proceed if they find the self assessment made by the Institution to be not satisfactory.

8. Now, in the instant case, counsel appearing for the respondents, on a query being put to them fairly accept that no show cause notice or for that matter compliance of Rule-11 having been undertaken by the respondents before issuance of impugned demand notice Annexure P-12.

9. Under the aforesaid factual matrix of the case, this Court is of the opinion that the impugned demand notice dated 21.10.2011 Annexure P-12 is not tenable and the same is accordingly set aside/quashed reserving liberty to respondent no.2 to initiate appropriate proceedings as per Rule-11 of the Rules 1997 and pass a fresh order thereafter.

10. The writ petition thus stands allowed. The impugned demand notice stands quashed with liberty to the respondents to the extent stated above.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola