**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

**WRIT PETITION Nos.37721 of 2017 & 1676 of 2018**

**COMMON ORDER:**

Heard learned counsel for the selfsame writ petitioner in both the writ petitions and learned Government Pleader for Municipal Administration for respondent No.1 and also Sri P.Krishna Reddy, learned Standing Counsel for respondent Nos.2 & 3 and perused the prayers in both the writ petitions with the supporting affidavits.

The supporting averments common in both the writ petitions from the writ petition affidavits vis-à-vis oral submissions of the learned counsel for the petitioner are that he applied for property tax assessment in 2012-13 (in November 2012) against the permitted area of 1260 sq. feet for each ground and first floors and there was a deviation in set backs to the extent of 400 sq. feet per floor for which the writ petitioners suffered penalty of 25% against normal property tax as per amendment to Section 220-A of GHMC Act 1955 and consequential amendment in A.P. Municipalities Act, 1965, Visakhapatnam Municipal Corporation Act, 1979 and Vijayawada Municipal Corporation Act 1981 and A.P. Municipal Corporation Act, 1994. The above amended provision of Section 220-A of GHMC Act deals with levy of penalty of unauthorized construction up to 10% deviation is 25% and above that is 50% and unauthorized floors over permitted floors 100% of property tax as penalty and for total unauthorized construction also 100% of property tax as penalty and such penalty shall not be construed as regularization of unauthorized construction or re-construction and said penalty to be determined and collected by the authority and the same is deemed to be the property tax due for recovery. The amendment to Section 225 speaks if at any time it appears to the Commissioner that any person or property has been inadvertently omitted from the assessment records or inadequately or improperly assessed relating to any tax, or any clearly or arithmetical error is committed in the records maintained in relation to such assessment, he may assess or re-assess or correct such errors as the case may be, provided that no such action shall be taken where it involves an increase in the assessment, unless the person affected is afforded an opportunity to show cause against the proposed action. However such assessment or re-assessment or correction of records shall not relate, to a period earlier than the five half years immediately preceding the current half year. It is his submission that on 22.02.2016 the Deputy Commissioner, LB Nagar, Circle passed orders re-fixing the property tax at Rs.55,928/- and Rs.67,114/- per amendment and post amendment periods respectively. The contentions therefrom is such assessment is contrary to law and he made a representation dated 18.03.2016, but in vain and against their inaction he approached by filing W.P.No.5767 of 2017 and there was a direction to dispose of the representation dated 18.03.2016 with the payment of admitted tax of Rs.55,928/- and he cleared all the amounts of tax till 31.03.2017 viz., Rs.1,78,950/-, Rs.78,306/- and Rs.22,415/- for 5 assessment periods of 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17 at Rs.55,927/- which is according to pre-amendment amount of penalty and while so, the impugned order passed by respondent Nos.2 & 3 on 26.08.2017 ignoring the factum of penal provision cannot be applied as ex post facto law from the mandate of Article 20(1) of the Constitution of India and thereby declare the said proceedings of the respondents as illegal by directing them to collect only Rs.55,928/- as property tax as per pre amended law to GHMC Act supra.

The further averment is that there was interim order in W.P.No.37721 of 2017 saying the contention of the petitioner in the writ petition requires examination thereby interim stay of only collection of Rs.55,928/- at the post amended amount of penalty and in saying but for approaching this Court, there is no other and equally efficacious remedy in maintaining the two writ petitions.

Whereas it is the submission of the learned Standing Counsel that the impugned orders no way requires interference and the writ petitions are not maintainable but for to workout any departmental enquiry against the impugnment and the writ petitions are liable to be dismissed.

Article 20 of the constitution of India reads as follows:

> "**20. Protection in respect of conviction for offences:**
> (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
> (2) No person shall be prosecuted and punished for the same offence more than once.
> (3) No person accused of any offence shall be compelled to be a witness against himself."

From the case on hand, there is no any application much less any violation of Article 20(1) of the Constitution of India for the unauthorized construction in imposing penalty for the same till removal or regularization as the case may be as a penalty in addition to tax. Here so far as the recovery of the penalty concerned, the amendment of the penalty by amended Act No.15/13 came into force from 16.07.2013, the said legislation not in dispute much less as ultra virus. The very amended provision covered by Section 220-A speaks the percentage of penalty to be imposed from the percentage of deviation that is referred supra and it further speaks the penalty was payable deemed to be part of property tax and said penalty till such unauthorized construction is demolished or regularized.

It is not the case of the petitioner that such unauthorized construction is demolished or regularized. Once such is the case, he has to pay the penalty so far as the deviations concerned more than 10% and below 50% not in dispute. Once such is the case, after the amendment by Act No.15/13 with effect from 16.07.2013, it cannot be contended of what was the penalty prior to the amendment alone even subsequent to the amendment for continuation of unauthorized construction neither regularized nor demolished. The authorities as per the provision are entitled to levy and practically they are applying prospectively as the application of the penalty is for continuation of unauthorized construction and the payment of penalty continue so long as unauthorized construction was not demolished or regularized. Thereby there is nothing to interfere with the impugned orders of the respondents, but for giving liberty to the petitioners to approach the authorities for payment of the balance if any for granting of a reasonable time to pay balance if any.

Accordingly and in the result, both the Writ Petitions are disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 09.03.2018
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