THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.22722 of 2017

O R D E R:

Petitioner has filed this Writ Petition assailing a notice No.A1/453/2016-17 dt.04.04.2017 issued by the 2nd respondent demanding a sum of Rs.87,99,972/- from the petitioner towards property tax as well as penalty for three premises.

2. Counsel for petitioner contends that law of limitation bars the 2nd respondent from seeking property tax for a period more than three years from the date of impugned notice; and that since in the counter affidavit it is admitted that the property tax demand for the premises bearing No.4-5-24/6 is from 01.10.1996, for premises bearing No.4-5-24/8 is from 01.10.1995 and for premises bearing No.4-5-24/8/A, it is from 01.10.1988, *prima facie*, such demands are not maintainable in law. He also placed reliance on the Division Bench decision of this Court in ***V.K.Roy v. Commissioner, Municipal Corporation of Hyderabad***[1].

3. Counsel for petitioner also stated that he paid a sum of Rs.5,02,159/- to the 2nd respondent on 06.06.2017 through two cheques and that the impugned demand notice cannot therefore be sustained.

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[1] 2003(1) ALT 236(DB)

4. In the counter affidavit filed by the 2nd respondent at para 3, it is stated that the impugned notice has been issued demanding the said sum of Rs.87,99,972/- within 24 hours and that the details of the demand are as under:

S.No.	H.No.	Name of the owner	Period	Amount of property tax payable including penalgy
1)	4-5-24/6	Penganga Oil	01.10.1996 to 31.03.2017	44.76,772-00
2)	4-5-24/8	Balaji Ginning Factory	01.10.1995 to 31.03.2017	15,76,144-00
3)	4-5-24/8/A	Sri Laxmi Prasad	01.10.1988 to 31.03.2017	27,99,972-00
		Total		88,52,888-00

5. It is admitted that the petitioner paid a sum of Rs.5,02,159/-. It is further contended that the 2nd respondent is entitled to make demand of property tax and penalty for the periods mentioned above, since the petitioner had not paid property tax earlier in spite of demand notices issued to him.

6. The counsel for 2nd respondent did not dispute the legal position laid down in the judgment in ***V.K.Roy***'s case (1 supra).

7. In the said case, the Division Bench of this Court considering Sections 238, 268, 269 and 278 held as under:

> "Thus, the emerging scenario from the above discussion of the Division Bench of this Court, it is clear that though distress proceedings are provided in the Act, but recourse to such proceedings would not be initiated as a matter of routine but can only be resorted to for recovery of taxes for

> the preceding three years from the date when the tax becomes due and in cases where the period is more than three years, proceedings for recovery of such tax can be initiated in terms of Section 278 of the Act, by filing a suit in a competent Court of law"

8. The Division Bench also followed the judgment of the Supreme Court in ***State of Kerala and Others vs. V.R. Kalliyanikutty and Another***[2] and held as under:

> "Applying the above test, if we look at the provisions of the Hyderabad Municipal Corporation Act, the Corporation has to fall back on the procedure contemplated under Section 278 of the Act by filing a suit in a competent Court. When no time limit is prescribed by the Legislature for filing a suit, for recovery of amounts due which is a substantive remedy, Article 113 of the Limitation Act, 1963 governs the field providing three years limitation period for initiating proceedings to recover the amount due from the date when the right to sue accrues. If the contention of the Municipal Corporation, that by legal fiction, the Corporation, in the light of the amended provision to Section 238 is entitled to recover the property tax as arrears of land revenue under the Revenue Recovery Act, within 30 years in terms of Article 112 of the Limitation Act is accepted, it would be like placing the summary remedy on a higher pedestal than the substantive remedy, which is not the intention of the Legislature. Needless to mention, as held by a Division Bench of this Court in the decision cited (1) supra, taking recourse to distraint proceedings is only a summary remedy to recover the arrears of tax and it cannot take precedence over substantive remedy. As held by the Supreme Court in STATE OF KERALA'S CASE (3 supra), there is no enlargement of time for recovery of certain dues beyond the time stipulated under Article 113 of the Limitation Act, unless the Act expressly provide for enlargement of time to recover claims which are legally recoverable. Therefore, the theory of legal fiction propounded by the learned Additional Advocate

[2] 1999 (2) KLT 146 (SC)

> General appearing on behalf of the respondents cannot be accepted. The decisions cited by the learned Additional Advocate General have no bearing on the facts of the case in the light of the decision of the Supreme Court cited (3) supra.
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> 18. Having regard to our discussion in the foregoing paragraphs and in the light of the ratio laid down by the Supreme Court in the decision cited (3) supra, we hold that the respondents are not entitled to recover arrears of property tax by way of distraint after the expiry of three years from the date when the tax becomes due. If the respondents so choose to recover such tax, it is open to them to take recourse to the provisions contemplated under Section 278 of the Hyderabad Municipal Corporation Act."

9. In view of the said legal position, the demand of property tax by the 2nd respondent from the petitioner for the period beyond three years prior to 04.04.2017 is illegal, arbitrary and violative of Articles 14, 265 and 300-A of the Constitution of India; the impugned notice is accordingly set aside; the matter is remitted back to the 2nd respondent to compute the amount payable by the petitioner for the period of three years prior to 04.04.2017 in respect of the three premises mentioned above; and 2nd respondent is directed to issue a fresh demand notice to the petitioner after taking into account the sum of Rs.5,02,159/- already paid by the petitioner; and after considering the explanation thereto, he shall pass a reasoned order and communicate it to the petitioner. The 2nd respondent shall also pay costs of Rs.10,000/- to the petitioner.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

06th April, 2018.
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