

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

± WRIT PETITION No.4290 of 2018

% 5th of June, 2018

M/s. Blue Nile Developers (P) Ltd.,
Madhapur, Hyderabad

... Petitioner

Vs.

\$ The State of Andhra Pradesh,
(Represented by its Principal Secretary),
Amaravathi, Velagapudi and another.

... Respondents

! Counsel for the petitioner : Sri Vedula Srinivas.

^ Counsel for the 1st respondent : The learned Special Government
Pleader attached to the learned
Advocate General;

^ Counsel for 2nd respondent : Sri S.Lakshmi Narayana Reddy,
learned standing counsel for
Vijayawada unicipal Corporation;

< Gist:

> Head Note:

? CITATIONS:

¹ (1999) 8 SCC 667

² (1940) 8 ITR 522 (PC)

³ 1936 AC 1 : 104 LJ KB 383 (HL)

⁴ (1869) 4 HL 100

⁵ (1948) 2 ALL ER 1, 5

⁶ (2010) 14 SCC 751

⁷ AIR 1977 SC 1802

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.4290 of 2018

M/s. Blue Nile Developers (P) Ltd.,
Madhapur, Hyderabad

... Petitioner

Vs.

\$ The State of Andhra Pradesh,
(Represented by its Principal Secretary),
Amaravathi, Velagapudi and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 05.06.2018

SUBMITTED FOR APPROVAL:

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

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**WRIT PETITION No.4290 of 2018****ORDER:**

Petitioner has challenged in this Writ Petition, proceedings B.A.No.11343/2013/DCP-I/G1 dt.08-01-2018 issued by the Greater Visakhapatnam Municipal Corporation (2nd respondent herein) asking the petitioner to pay up-to-date Vacant Land tax for releasing the mortgaged properties and for issuance of Occupancy Certificate for the Gated Community Villas constructed by it pursuant to building permission granted on 10-01-2014 to it by 2nd respondent, which was revised from time to time.

2. The petitioner is a Company incorporated under the Companies Act, 1956 and is engaged in the business of development of land by way of layouts, Gated Community Villas and construction of residential and commercial complexes.

3. The petitioner is the owner of land in Sy.Nos.331/6P, 7P, 8P, 9P and 336P of Madhuravada Village, Visakhapatnam.

4. It applied for building permission for construction of Gated Community Villas to the 2nd respondent on 12-03-2013. On 10-01-2014, building permission was granted for construction of 54 villas for residential use having G+2 floors along with amenities vide permission B.A.No.11343/2013/DCP-I/G1 dt.10-01-2014.

Petitioner was directed to pay Vacant Land tax @ Rs.17,83,469/- per year for three years vide assessment No.3245/250 dt.23-09-2013 i.e. Rs.53,50,407/-. According to the petitioner, it paid the said amount under protest on 23-12-2013 though it is not liable to pay the same in view of the Memo No.15114/M1/2013 dt.15-02-2014 issued by the Government of Andhra Pradesh instructing all Municipal Corporations throughout the State to collect Vacant Land tax only for one year at the time of issuance of building permission.

5. After making such payment under protest on 23-12-2013, the petitioner proceeded with construction and also applied for revision of plan on 13-08-2014 to the 2nd respondent. The 2nd respondent then gave an endorsement dt.19-09-2014 again demanding *inter alia* up-to-date payment of Vacant Land tax as a condition precedent for sanctioning revised plans submitted by petitioner.

6. Petitioner questioned the same in W.P.No.3445 of 2015. The said Writ Petition was disposed of on 18-02-2015 directing the petitioner to make a representation to the 2nd respondent and the 2nd respondent was directed to pass a speaking order after hearing the petitioner within eight (08) weeks.

7. Petitioner then gave a representation on 01-07-2015 to the 2nd respondent and requested for refund of the amount of Rs.53,50,407/-collected from it.

8. The 2nd respondent did not pass any order, but the revised plans were sanctioned in favour of the petitioner without insisting for any further payment of Vacant Land tax.

9. Petitioner then filed W.P.No.13092 of 2017 before this Court seeking a direction to the 2nd respondent for refund of the amount, which according to it, was illegally collected by 2nd respondent, along with interest. The said Writ Petition is pending.

10. Petitioner, having completed construction of the 54 gated community villas, applied by its letter dt.26-10-2017 to 2nd respondent for issuance of occupancy certificate and also for releasing the mortgaged properties.

11. To this, the 2nd respondent gave endorsement on 08-01-2018 asking the petitioner to pay up-to-date Vacant Land tax in order to consider its request. This is assailed by petitioner in this Writ petition.

12. While the issue in W.P.No.13092 of 2017 relates to payment of Vacant Land tax for the period *prior to* 10-01-2014, when permission was initially granted to the petitioner, the issue in the instant Writ Petition relates to the period *thereafter*.

CONTENTIONS OF PETITIONER

13. It is the contention of the petitioner that once the permission for construction of Gated Community Villas was granted and construction commenced, the 2nd respondent is not entitled to levy

Vacant Land tax since land ceased to be 'vacant' and was being utilized for making construction as per permission granted to it, and therefore the question of paying any Vacant Land tax *after* construction commenced, does not arise.

14. Learned counsel for petitioner contended that during the period of construction no Vacant Land tax is payable and only after construction is completed, the properties will be subjected to assessment and property tax becomes payable as per the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act"). Petitioner contends that the question of paying any property tax or Vacant Land tax *during the construction period* does not arise since properties cannot be let out during the said period. Reliance is also placed upon a decision dt.11-10-2013 in W.P.No.31515 of 2010 and batch by a Division Bench of this Court holding that levy of Vacant Land tax itself was illegal.

15. Petitioner thus contends that the action of the 2nd respondent in withholding of Occupancy Certificate and not releasing mortgaged properties to the extent of 10% given by the petitioner for the subject property for the period of construction, is illegal, arbitrary and violates Article 14 and 300-A of the Constitution of India as well as the provisions of the Act.

16. It therefore seeks a direction to declare the endorsement dt.08-01-2018 issued by the 2nd respondent withholding the grant of

Occupancy Certificate and release of mortgaged properties on the ground of payment of Vacant Land tax up-to-date as illegal, without jurisdiction and arbitrary and seeks a consequential direction to the 2nd respondent to issue Occupancy Certificate and release the mortgaged properties in respect of the Gated Community Villas constructed by petitioner as per the revised building permission dt.19-09-2014 in respect of the subject land without insisting for payment of Vacant Land tax as per its endorsement dt.08-01-2018.

CONTENTIONS OF RESPONDENTS

17. The State of Andhra Pradesh (1st respondent herein) filed a counter-affidavit opposing the contentions of the petitioner.

18. According to 1st respondent, on a reasonable interpretation of Section 199(3) of the Act merely because construction permission is issued, the person who intends to make construction is not exempted from making payment of the Vacant Land tax. It is contended that the word “occupied” used in Section 199(3) of the Act means occupation of owner or tenant/lessee by putting the property to some use, for which property tax is levied as owner or lessee; and that there is no exemption under the Act to pay Vacant Land tax or property tax merely because construction permission is issued to the petitioner. It is further contended that if partly constructed area is assessed for tax without completion of entire structure, the owner would be unduly burdened to pay property tax, despite deriving no benefit out of the

constructed area, since he cannot let it out or sell it; but the 2nd respondent would not suffer any loss since it is collecting Vacant Land tax until the whole construction is made. According to the 1st respondent, once construction is completed, then property tax is levied after assessing it and Occupancy Certificate is issued so that building can be sold or let out.

19. It is contended that the 2nd respondent would suffer if no Vacant Land tax or property tax is collected during the period of construction. It is contended that Section 199(3) of the Act ought to be strictly interpreted. According to 1st respondent, it does not provide for exemption from any levy of Vacant Land tax to a citizen *during period of construction* and it entitles the 2nd respondent to levy such Vacant Land tax.

20. A Circular Roc.No.6238/2015/K3 issued by Municipal Administration Department dt.28-04-2017 is also relied upon, in which it is clarified that under Section 199(3) as amended by Act 15 of 2013 w.e.f. 05-08-2013, property tax can be levied on Vacant Lands in Municipal Corporations and *property tax shall be levied on lands till the building is completed or occupied at the land.*

21. Though this Circular is not referred to in the counter-affidavit of the 1st respondent, reliance is placed on this circular in the counter-affidavit of 2nd respondent and it is contended that in view of the said circular, the 2nd respondent has no choice but to levy Vacant Land tax

even for the period during which the construction was carried out by the petitioner pursuant to the building permit granted on 10-01-2014.

22. Both the respondents admit that in the Memo No.15114/M1/2013 dt.15-02-2014, it is mentioned in para-4 that Government instructed Municipal Commissioners to collect Vacant Land tax for one year *at the time of issuing building permission*, but seek to contend that it does not mean that only for one year such tax will be collected; and that the Corporation can also collect Vacant Land tax even for the period during which construction was undertaken.

23. The 2nd respondent further pointed out that the said circular had no application to the present case and would only be relevant while considering W.P.No.13093 of 2017 filed by petitioner seeking refund of the Vacant Land tax of Rs.53,50,407/-, which was admittedly paid by the petitioner under protest.

24. It is also pointed out that the order dt.11-10-2013 in W.P.No.31515 of 2010 would not apply since the Division Bench was not made aware of the amendment to Section 199 of the Act by adding sub-Section (3) and the said judgment was rendered in ignorance of the said amendment. It is pointed out that a review petition W.P.M.P.No.8140 of 2014 was filed to review the said order and the same is pending consideration.

REJOINDER PLEAS OF PETITIONER

25. Reply affidavit is filed by petitioner refuting the above contentions of the 2nd respondent.

26. It is contended that building permission was initially granted to the petitioner on 12-03-2013 and revised building plans were approved on 10-01-2014 subject to payment of 3 years Vacant Land tax, which the petitioner paid under protest and had filed W.P.No.13092 of 2017 seeking its refund.

27. It is contended that the contention of respondents that even during the period of construction, Vacant Land tax can be levied, is untenable since the moment construction commences, the land ceases to be a Vacant Land. It is contended that the 2nd respondent is trying to arm-twist the petitioner and extract money under the impugned illegal demand of Vacant Land tax and withholding the Occupancy Certificate thus causing serious prejudice to the petitioner.

ADDITIONAL COUNTER AFFIDAVIT OF 2ND RESPONDENT

28. Additional counter-affidavit is filed by 2nd respondent stating that it had issued the endorsement on 09-03-2018 asking the petitioner to pay online demand of Rs.82,93,155/- towards Vacant Land tax and calculation for the same is provided in the said additional counter-affidavit.

29. In the said additional counter-affidavit it is explained that Vacant Land tax is being demanded for the period from 01-04-2014 to 31-03-2018 for Vacant Land of 38,736 sq. mts and that petitioner is also liable to pay 2% towards penal interest on late payment under the first proviso to Section 269 of the Act. There is also an annexure to this additional counter-affidavit containing a building permit order dt.02-06-2015 revising earlier building permit dt.10-01-2014.

30. The Sri Vedula Srinivas, Counsel for petitioner, the Special Government Pleader attached to the Office of the Advocate General for 1st respondent and Sri S.Laxminarayana Reddy, Standing Counsel for 2nd respondent reiterated the contention of their respective clients.

THE POINT FOR CONSIDERATION

31. Thus the question which arises for consideration are:

(i) Whether the petitioner is liable to pay Vacant Land tax under Section 199(3) of the Act for the period after the building permission was granted to the petitioner till the buildings/structures are completed by petitioner?

(ii) Whether the circular Roc.no.6238/2000/K3 dt.28-04-2017 issued by 1st respondent is valid ?

32. Sub-Section (3) of Section 199 of the Act was introduced by way of Amendment Act 15 of 2013 w.e.f. 16-07-2013.

33. Section 199 deals with taxes of various types and also mentions at what rate they are leviable. It states:

“199. Property taxes of what to consist and at what rate leviable:

(1) The following taxes shall subject to exceptions, limitations and conditions herein provided be levied on buildings and lands in the City and shall hereinafter be referred to as property taxes, namely:-

(a) a general tax;

(b) a water tax;

(c) a drainage tax;

(d) a lighting tax;

(e) a conservancy tax;

(2) Save as otherwise provided in this Act these taxes shall be levied at such percentages of their rateable value as may be fixed by the Corporation:

Provided that the aggregate of the percentages so fixed shall not in the case of any land or building be less than 15 per cent or greater than 30 per cent.

(3) The Corporation shall in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, building, levy the taxes specified in sub-section (1), at half percent (0.50) of the estimated capital value of the lands, which shall be determined in such manner as may be prescribed.”(emphasis supplied)

34. Vacant Land tax is thus levied by the 2nd respondent Corporation under sub-Section (3) of Section 199 of the Act.

Point (i):

35. While according to petitioner, it is leviable only on lands which are not ‘occupied’ by buildings (i.e., once the construction of a

building commences, the land ceases to be a Vacant Land), according to respondents, this is not so and such Vacant Land tax is leviable till the building in question is occupied by owner or a lessee.

36. The term “vacant” according to the Concise Oxford English Dictionary, South Asia edition (12th edition) means ‘*not occupied; empty*’. So land on which construction is being made by erection of structures cannot be treated as ‘Vacant’ land and subjected to levy of Vacant Land tax since it ceases to be unoccupied once construction commences.

37. Also the term “building” is defined in sub-Section (3) of Section 2 of the Act as under:

“(3) ‘building’ includes a house, out-house, stable, latrine, godown, shed, hut, wall, fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever.”

38. The definition of the said term is very wide and it is an inclusive definition. It includes any structure of any material whatsoever. So the moment construction commences with the use of construction material, the land ceases to be Vacant Land and is therefore cannot be subjected to levy Vacant Land tax.

39. The relevant words in sub-Section (3) of Section 199 of the Act for the purpose of present case are “*The Corporation shall in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, building, levy the taxes...*”

40. In my considered opinion, the word “occupied” used in sub-Section (3) of Section 199 of the Act refers to ‘occupation’ of land by a building (i.e., once land is occupied by a building or is adjacent to it, there cannot be any levy of vacant land tax) *and not* ‘occupation’ of a building by the owner or lessee (which is the interpretation being placed by respondents).

41. So the respondents are not correct in interpreting sub-Section (3) of Section 199 of the Act to mean that Vacant Land tax can be levied *till the building is occupied by owner or a lessee*.

42. The only reasonable interpretation is that such tax is leviable only as long as the land continues to be vacant i.e. without structures and not otherwise. The respondents are misinterpreting Section 199(3) of the Act and their interpretation is a clear distortion of the language of the statute and such interpretation cannot be accepted.

43. A Constitution Bench of the Supreme Court in **Mathuram Agrawal Vs. State of Madhya Pradesh**¹ dealing with interpretation of Municipal Taxation provisions in the Madhya Pradesh Municipalities Act, 1961 observed that the intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing

¹ (1999) 8 SCC 667

purpose of the statute more than what is stated in the plain language. It declared:

“12. ... The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provisions which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.”

13. In the case of **Bank of Chettinad Ltd. Vs. CIT**², the Privy Council quoted with the approval the following passage from the opinion of Lord Russell of Killowen in **IRC Vs. Duke of Westminster**³:

*“I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a court’s view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in **Partington Vs. Attorney General**⁴ at p.122:’ As I understand the principle of all fiscal legislation, it is this; if the person sought to be taxed comes within the letter of the law he must be taxed, however*

² (1940) 8 ITR 522 (PC)

³ 1936 AC 1 : 104 LJ KB 383 (HL)

⁴ (1869) 4 HL 100

great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be”.

14. In the case of **Russell (Inspector of Taxes) Vs. Scott**⁵ Lord Simonds in his opinion at p.5 observed:

“My Lords, there is a maxim of income tax law which, though it may sometimes be overstressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. It is necessary that this maxim should on occasion be reasserted and this is such an occasion”. (emphasis supplied)

44. This was reiterated in **Commissioner of Central Excise, Chandigarh Vs. Doaba Steel Rolling Mills**⁶. The Supreme Court reiterated that taxing statute should be strictly construed and the intention of the legislature is primarily to be gathered from the words used in the statute and one has to look merely at what is clearly said and there is no room for any intendment. It held that nothing is to be read in, and nothing is to be implied, one can only look fairly at the language used. It also held that taxing statutes cannot be interpreted on any presumptions or assumptions and Court cannot imply anything which is not expressed and cannot import provisions in the statutes so as to supply any assumed deficiency. It also stated that there is no equity about a tax.

⁵ (1948) 2 ALL ER 1, 5

⁶ (2010) 14 SCC 751

45. Though learned Special Government Pleader appearing for 1st respondent placed reliance on the judgment of the Supreme Court in **Smt.Tarulata Syam and others Vs. The Commissioner of Income Tax, West Bengal**⁷, wherein the said Court held that *there is no equity about tax*, the said principle has no application in the present case since in my considered opinion the plain words of sub-Section (3) of Section 199 of the Act clearly permit levy of Vacant land Tax only on 'Vacant Land' i.e land which is *not* occupied by 'building' or is adjacent and appurtenant to it. *It does not permit such tax to be levied during the construction period i.e after grant of permission to construct till the construction is completed.*

46. The respondents in the instant case cannot overlook the plain and unambiguous language in the statute and imply an intention not conveyed by the plain language of the statute. The respondents are seeking to add words to or substitute words so as to give a meaning to the statute which they want, which they are prohibited from doing.

47. So point (i) is answered in favor of the petitioner and against the respondents.

POINT (ii):

48. Consequently, to the extent the circular RocNo.6238/2015/K3 dt.28-04-2017 issued by 2nd respondent interprets sub-Section (3) of Section 199 of the Act to mean that *by implication* property tax i.e

⁷ AIR 1977 SC 1802

Vacant Land tax can be levied on land *till the building is completed or occupied*, cannot be held to be valid.

49. Also, any circular issued by the 1st respondent cannot modify the statute made by the legislature. Since this portion of the circular runs contrary to the statute, it is declared *ultra vires* of the powers of the 1st respondent to that extent. Point (ii) is answered accordingly.

CONCLUSION:

50. So it is declared that for the period from 10-01-2014 till date no Vacant Land tax could have been levied by 2nd respondent on the subject lands of the petitioner and the respondents cannot compel the petitioner to pay the sum of Rs.82,93,155/-for the period from 01-04-2014 to 31-03-2018 towards Vacant Land tax or penal interest thereon as a condition precedent for issuing occupancy certificate to the petitioner and for releasing 10% mortgage obtained from the petitioner.

51. Accordingly the Writ Petition is allowed; the endorsement dt.08-01-2018 issued by 2nd respondent is set aside; and 2nd respondent is directed to issue Occupancy Certificate and release the mortgaged properties in respect of the Gated Community Villas constructed by petitioner pursuant to the building permission dt.10-01-2014 as modified from time to time, subject to the petitioner

complying with other requirements such as payment of bulk water charges.

52. It is also made clear that this Court is not adjudicating about the liability of petitioner in regard to the sum of Rs.53,50,407/- which was paid by petitioner towards Vacant Land tax for 3 years under protest on 23-12-2013, which is subject matter of W.P.No.13092 of 2017. The respondent no.1 shall also pay costs of Rs.20,000/- to the petitioner.

53. As a sequel, miscellaneous petitions, if any pending, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-06-2018

Note:-

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