HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W. P.Nos.17896, 17897, 17904, 18149 and 18399 of 2008

COMMON ORDER:

In all these writ petitions, the petitioners seek to declare the demand notice dated 07.05.2008, which was served on the petitioners on 29.07.2008 issued under Section 266(1) of the Hyderabad Municipal Corporation Act (for short 'the Act') and the consequential notice dated 29.07.2008, which was published in daily news papers on 01.08.2008, as arbitrary, illegal and violative of mandatory provisions of the Act and consequently, to set aside the same by directing the respondent to follow the due process of law for recovery of vacant land tax on the land of the petitioners.

Since the issue involved in all these writ petitions is one and the same, they are being disposed of by this common order.

The case of the petitioners is that they are the absolute owners and possessors of the open land; the petitioners are paying the property tax for the subject land from time to time; since the subject land is situated adjoining to National Highway Road, the said land was let out to carry on the business of Marbles/parking purpose; while the matter stood thus, the respondent issued a demand notice dated 07.05.2008 under Section 266(1) of the Act, which was served on the petitioners on 29.07.20908 calling upon them to pay the vacant land tax for the years 2003, 2004, 2005, 2006, 2007 and 2008; immediately after receipt of the said notice, the petitioners have approached the respondent with a request to determine the nature of the use of the land, since the said land is being utilized for commercial purpose by letting it out to Marble business/parking etc.

after obtaining due permission and paying taxes to the respondent and hence, the land of the petitioners cannot be termed as vacant land to impose tax under the impugned demand notice dated 07.05.2008; the respondent got issued another notice dated 29.07.2008 which was published in daily news papers informing that the Corporation levied vacant land tax under Sections 197 and 212 of Vijayawada Municipal Corporation Act and requested the petitioners to pay the said tax.

When the matters came up for admission, this Court granted interim stay subject to the condition of depositing 1/3rd of the demand amount under the notice impugned, within a period of four weeks.

Counter-affidavits have been filed by the respondent-Corporation stating *inter-alia* that though the vacant space is used for the purpose of marble business/parking, since there is no structure to cover the area, it does not come under the definition of 'structure', and hence treating it as vacant land tax was imposed.

At the time of hearing of these writ petitions, though various contentions were raised on behalf of both the parties, in the facts and circumstances of the case, without going into the merits of the case, the respondent is directed to reconsider the whole issue after giving an opportunity of hearing to the petitioners and to pass appropriate orders.

Learned counsel for the petitioners submits that pursuant to the interim directions, the petitioners have paid 1/3rd of the demanded amount and the respondent may be directed to adjust the said amount after final orders are passed.

Having regard to the facts and circumstances, the petitioners are permitted to file detailed explanation to the said impugned demand notice issued under Section 266(1) of the Act, within a period of two (2) weeks, from the date of receipt of a copy of this order. After receipt of the explanation from the petitioners, the respondent is directed to reconsider the whole issue, after giving an opportunity of hearing to the petitioners, and pass appropriate orders thereon, within a period of eight (8) weeks thereafter.

All the writ petitions are, accordingly, disposed of. No order as to costs. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petitions shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 14.12.2018
BSS