THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.470 of 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the ad-interim order passed by the Learned Single Judge in W.P.No.8003 of 2018 dated 12.03.2018.

The appellant herein filed the writ petition seeking a mandamus to declare the order passed by the GHMC dated 07.03.2018, calling upon them to pay the property tax due as on that date of Rs.38,94,914/- including arrears, and in threatening to lock and seal the premises for non-payment of the alleged property tax, as illegal, arbitrary, in violation of the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act'), and Article 14 of the Constitution of India.

By the interim order under appeal dated 12.03.2018, the Learned Single Judge directed the respondents not to take coercive steps, for recovery of the demanded amount, subject to payment of half of the said amount without prejudice to the contest of both sides.

Facts, to the limited extent necessary, are that a demand notice was issued earlier on 10.02.2015 calling upon the appellant-writ petitioner to pay arrears of property tax of Rs.17,56,103/-. Ms. A. Divya, learned counsel for the appellant-writ petitioner, would submit that the said notice of demand was pasted on the wall of the appellant-writ petitioner's property. Questioning the said demand notice, the appellant-writ petitioner filed W.P.No.8824 of 2016 and, by order dated 17.03.2016, a Division Bench of this Court granted permission to the appellant-writ petitioner to withdraw the writ petition with liberty to file a complaint to the GHMC under Section 220 of the Act. The Division Bench observed that, if any such complaint was made within a period of 10 days from the date of the order, the GHMC should consider and decide the same on merits, and in accordance with law, without entering into the issue of limitation, as expeditiously as possible and preferably within a period of four weeks from the date of the complaint. All contentions on merits were left open.

It is relevant to note that, while the appellant-writ petitioner was given liberty to file a complaint under Section 220 of the Act, no stay of recovery of the arrears of tax, pursuant to the demand notice, was granted; and consequently, notwithstanding their having filed a complaint under Section 220 of the Act, the appellant-writ petitioner was obligated to pay the demanded tax amount. The appellant-writ petitioner did not do so, and they filed an application dated 23.03.2016, under Section 220 of the Act, questioning the valuation of the property for the purpose of levy of property tax, and the same is said to be pending consideration.

While matters stood thus, the appellant-writ petitioner submitted a representation on 23.02.2018 seeking exemption of their institution, from levy of property tax, under Section 202 of the Act contending that they were carrying on charitable activities. In the order impugned in the Writ Petition dated 07.03.2018, the Deputy Commissioner noted that, on physical verification, it was found that commercial activity i.e., running hotels, lodges, guest-houses were being carried on in the subject property, and the appellants-writ petitioner could not be considered to be a charitable endowment institution entitled for exemption, from property tax, under Section 202 of the Act. The appellant-writ petitioner was directed to pay arrears of property tax at an early date.

As noted hereinabove, the Division Bench of this Court did not interfere with the earlier demand notice. It only observed that the application filed by the appellant-writ petitioner, under Section 220 of the Act, should be considered by the respondents preferably within four weeks. Sri N.Ashok Kumar, learned Standing Counsel for the GHMC, would submit that an enquiry, into the appellant-writ petitioner's complaint, is still pending consideration before the GHMC.

Prima facie the impugned order dated 07.03.2018, rejecting the appellant-writ petitioner's request for exemption under Section 202 of the GHMC Act on the ground that they are carrying on commercial activities, appears to be valid. Ms.A.Divya, learned counsel for the appellant-writ petitioner, would contend that arrears of tax from 2012-13 are now sought to be recovered; and any claim, for recovery of areas of property tax beyond the period of three years, is barred by limitation. The fact, however, remains that the earlier demand notice, issued on 10.02.2015, was for recovery of arrears of property tax due within the period of three years prior thereto.

In any event, the Learned Single Judge has exercised his discretion to grant stay of recovery, of the balance property tax due, on condition that the appellant-writ petitioner pays 50% thereof. As the discretionary order, passed by the Learned Single Judge, does not suffer from a patent illegality, interference in an intra-Court appeal, under Clause 15 of the Letters Patent, would not be justified. Since the Learned Single Judge has not specified any time frame within which this 50% of the demanded arrears of property tax should be paid, we consider it appropriate to direct that the appellant-writ petitioner shall pay 50% of the amount, directed to be paid by the Learned Single Judge, within two weeks from today, and the remaining 50% of the amount directed to be paid by the Learned Single Judge within two weeks thereafter. Such payment shall be subject to the result of the Writ Petition.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

21st March, 2018
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.470 of 2018

Date: 21.03.2018

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