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

**Writ Appeal No.495 of 2018**

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

Heard Sri CH.V.Prasad Babu, learned counsel for the appellant-writ petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing on behalf of respondent No.1, and Sri P.Krishna Reddy, learned Standing Counsel appearing on behalf of respondent Nos.2 and 3 and, with their consent, the Writ Appeal is disposed of at the stage of admission. This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.37721 of 2017 dated 09.03.2018.

The appellant herein filed W.P.No.37721 of 2017 seeking a mandamus to declare the action of the GHMC, in passing the order dated 26.08.2017, as violative of Article 20(1) of the Constitution of India, as being illegal, arbitrary and unconstitutional, and to set aside the same. A consequential direction was sought to permit the appellant-writ petitioner to pay the property tax of Rs.55,928/- as per the pre-amended law of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the GHMC Act").

In the order under appeal the Learned Single Judge has held that, after 16.07.2013, it could not be contended that the penalty, prescribed prior to the amendment, alone could be levied even post-amendment of Section 220-A of the GHMC Act, for the construction which continues to remain unauthorised as it is neither regularised nor demolished; the authorities were entitled to levy and apply the amended Section 220-A of the GHMC Act prospectively, as penalty was levied for continuation of the offence of unauthorised construction; and the requirement of payment of penalty continued as long as the unauthorised construction was not demolished or regularised. Giving liberty to the appellant-writ petitioner to approach the authorities to seek a reasonable time to pay the balance amount, if any, the Learned Single Judge dismissed the writ petition.

The appellant-writ petitioner - owner of the subject property - was assessed to property tax by the GHMC, and was allotted P.TIN:1030511003. Though he was granted building permission, he, admittedly, deviated from the sanctioned plan and resorted to unauthorised construction. He later submitted an application seeking regularisation, which is said to be pending consideration before the GHMC. The unauthorised construction, in deviation of the sanctioned plan, is said to have been made by the appellant in the year 2012-13. The appellant-writ petitioner was assessed to property tax thereafter for the assessment year 2012-13, and he claims to have continued to pay the assessed property tax thereafter till the current assessment year 2017-18. The appellant-writ petitioner's complaint in this writ petition is confined to the imposition of enhanced penalty for unauthorised construction, after Section 220-A of the GHMC Act was amended with effect from 16.07.2013.

The pre-amended Section 220-A of the Act, made under Act 91 of 2008 which was applicable prior to 16.07.2013, prescribed 25% of the property tax as penalty on the property tax levied for unauthorised construction or for construction made in deviation of the sanctioned plan, along with the property tax payable on such buildings. While building permission was granted to the appellant-writ petitioner on 07.05.2010, the unauthorised construction/ deviation from the sanctioned plan, admittedly, exceeded 10% of the sanctioned plan. The 2nd respondent, therefore, levied property tax along with penalty of 25%, for the deviation in excess of 10%, till the amendment came into force on 16.07.2013.

The amended Section 220-A(1) of the GHMC Act, inserted by Act 15 of 2013, stipulates that, where a building is constructed or re-constructed or some structures are raised unauthorisedly, it shall be competent to the assessing authority to levy property tax on such building or structure with a penalty as specified thereunder till such unauthorised construction is either demolished or regularised. While the penalty prescribed, for deviation upto 10%, is 25% of the property tax, for deviation of more than 10%, the penalty prescribed is 50% of the property tax. What has been amended by Act 15 of 2013 is only the rate of penalty and, as against the earlier penalty of 25% of the property tax, a higher penalty of 50% is prescribed under the amended Section 220-A(i) of the GHMC Act.

As reliance is placed upon Article 20(1) of the Constitution of India by Sri C.H.V. Prasad Babu, learned counsel for the appellant-writ petitioner, in support of his submission that a penalty, higher than what could have levied when the offence was committed, cannot be imposed by a law made subsequent thereto, it is necessary to consider the scope of Article 20(1). The said Article stipulates that no person shall be convicted of any offence except for violation of a 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.

It is no doubt true that the unauthorised construction was made in the year 2012-13 and, during that period, the pre-amended Section 220-A of the GHMC Act conferred power on the Municipal Corporation only to levy a penalty of 25%, of the property tax, for deviation in construction in excess of 10%. It is also not in dispute that the appellant-writ petitioner was charged penalty at 25% till the amended Section 220-A of the GHMC Act came into force on 16.07.2013. It is only after 16.07.2013, i.e after the amended Section 220-A came into force, was a higher rate of penalty charged in terms of the amended provision. As noted hereinabove, Section 220-A of the GHMC Act requires property tax with penalty to be levied for unauthorised construction till such construction is either demolished or is regularised. It is not in dispute that neither of these events have occurred till date, and the appellant-writ petitioner's application for regularisation is still pending consideration before the GHMC. Consequently, the appellant-writ petitioner is liable to pay property tax with penalty in terms of Section 220-A of the GHMC Act.

While Sri Ch.V.Prasad Babu, learned counsel for the appellant-writ petitioner, does not dispute the power of the GHMC to collect property tax, along with 25% thereof as a penalty, even after 16.07.2013, the dispute is confined only to the levy of 50% penalty after 16.07.2013. The offence, for which the enhanced penalty of 50% was levied, continues till either the building is demolished or is regularised. The appellant-writ petitioner has been imposed penalty and has, in fact, paid 25% penalty, for such unauthorised construction, from the assessment year 2012-13 onwards in terms of the pre-amended Section 220-A of the GHMC Act. All that the GHMC has done is to enhance the rate of penalty to 50%, from the pre-existing 25%, for the continuing offence of unauthorised construction which construction, as noted hereinabove, would continue to remain unauthorised till it is either demolished or regularised. The offence, of unauthorised construction/construction in deviation of the sanctioned plan beyond 10%, is a continuing offence. Article 20(1) of the Constitution of India is not attracted as the commission of the offence of unauthorised construction, for which penalty was imposed, did not come to an end on the imposition of penalty during the assessment year 2012-13, but continues to remain an offence even as on date. The law in force, from 16.07.2013 onwards, is the amended Section 220-A of the GHMC Act. Consequently, for the period subsequent to 16.07.2013 and till the construction made, in deviation of the sanctioned plan beyond 10%, is either regularised or the deviated structure demolished, it is the penalty, as prescribed under the amended Section 220-A, which would apply post 16.07.2013.

Even otherwise, interference in an intra-Court appeal, filed under Clause 15 of the Letters Patent, would be justified only if the order of the Learned Single Judge suffers from a patent illegality. We find no such infirmity in the order under appeal. The Writ Appeal fails and is, accordingly, dismissed.

Sri Ch.V.Prasad Babu, learned counsel for the appellant-writ petitioner, requests that time be granted, till the end of the assessment year 2018-19, to make payment. Suffice it, in the facts and circumstances of the present case, to direct the GHMC not to take any coercive action against the appellant-writ petitioner, for recovery of the arrears of differential penalty, for a period of four months from today. The appellant-writ petitioner shall make payment of arrears within the said period, and continue to pay property tax along with penalty, at the enhanced rate of 50%, till his application for regularisation of the unauthorised construction is finally disposed of.

Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

**(KONGARA VIJAYA LAKSHMI, J)**

29th March, 2018
JSU

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**Date: 29.03.2018**

JSU