THE HON'BLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS SECOND APPEAL Nos.1, 3, 4 AND 5 OF 2021

COMMON JUDGMENT:

1. Since all these appeals involve common question of law, they are taken up together for common disposal, by way of this common judgment.

2. All these appeals arise out of separate judgments dated 12.10.2020 in M.A.Nos.187, 188, 186 and 189 of 2019 respectively on the file of Chief Judge, City Small Causes Court at Hyderabad.

3. The appellant in C.M.S.A.No.1 of 2021 has filed M.A.No.187 of 2019 challenging the tax demand notice dated 21.11.2019 issued by the respondent for a sum of Rs.1,88,396/-, for the assessment years from 2011-2012 to 2019-2020. The appellant in C.M.S.A.No.4 of 2021 has filed M.A.No.186 of 2019 challenging the tax demand notice dated 21.11.2019 issued by the respondent for a sum of Rs.25,956/-, for the assessment years from 2015-2016 to 2019-2020. The appellant in C.M.S.A.Nos.3 and 5 of 2021 is one and the same and he filed M.A.Nos.188 & 189 of 2019 respectively, challenging the tax demand notices dated 21.11.2019 issued by the respondent, for a sum of Rs.1,08,601/-

each, in respect of two different properties, for the assessment years 2008-2009 to 2019-2020.

4. The grievance of the appellants before the appellate Court was that the demands made by the respondent in respect of assessment years are barred by limitation. According to them, three (3) years is the limitation for recovery of arrears of tax and the demands were made beyond three years.

5. The contention of the learned standing counsel for the respondent before the appellate Court was that the demands raised in the impugned notices were not barred by limitation and they were within limitation. The appellate Court has rejected the contention of the appellants and accepted the case set up by the respondent. Consequently, all the appeals were dismissed. Aggrieved by the same, the present second appeals are filed at the instance of appellants.

6. Heard, the learned counsel on either side.

7. In the light of the submissions made by both parties the following point emerged for consideration before this Court:

> "Whether the respondent is entitled to recover the arrears which are barred by limitation by invoking Section 278-A of GHMC Act, 1955?"

Point:

8. The learned counsel for the appellants contended that the demand notices were issued on 21.11.2019 for the assessment years 2008-2009 to 2019-2020 (in C.M.S.A.Nos.3 and 5 of 2021), 2011-2012 to 2019-2020 (in C.M.S.A.No.1 of 2021) and 2015-2016 to 2019-2020 (in C.M.S.A.No.4 of 2021). According to him, limitation for such a recovery is only three years. Therefore, the respondent cannot raise claim beyond three years and without noticing the same, the impugned judgments have been passed by the appellate Court.

9. The contention of the learned Standing Counsel for the respondent is that there is no limitation that the claim shall be raised within three years. However, as per Section 278 (A) of GHMC Act, the limitation is contemplated for issuing distraint order, prosecution and filing of the suit for recovery of such amounts. According to them, outer limit is nine years for filing of the suit and in all the cases, except two cases (C.M.S.A.Nos.3 and 5 of 2021) demands are raised from the year 2008-2009, other cases are within limitation.

10. In the light of the above contention, it is relevant to refer to Section 278(A) of GHMC Act, which reads as follows:

> ‘Section 278A. Limitation for recovery of dues. –
>
> (1) No distraint shall be made, no prosecution shall be commenced and no suit shall be instituted in respect of any sum due to the Corporation on account of a property tax or tax on vehicles and animals or any other sum due under this Act after the expiration of the period of three years from the date on which distraint might have been made or after the expiration of a period of six years from the date on which prosecution might first have been commenced or after the expiration of nine years from the date on which a suit might have been first instituted, as the case may be, in respect of such sum.
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> (2) It shall be the duty and responsibility of the Commissioner to place before the Standing Committee, a list of arrears due to the Corporation under this Act which, if no action is taken within the period specified in sub-section (1), are likely to be time-barred, at least one year before the expiry of the said period stating the reasons for the delay in the recovery of such amount and requesting for the instructions or directions of the Standing Committee in regard to the recovery of such arrears:
> Provided that the Standing Committee shall not take any action to cause financial loss to the Corporation in this matter.’

11. From a close reading of the above provision, it is clear that the limitation was contemplated for the purpose of execution. Three (3) years time is given for issuing distraint order for recovery of tax due and limitation commences from the date on which the distraint order could have been issued; for prosecution six (6) years is limitation and limitation commences from the date on which a right to initiate prosecution is accrued; and for filing the suit for recovery of tax demand amount nine (9) years is limitation and limitation commences from the date on which suit could have been first instituted.

12. In the present case, stage of selection of modes for recovery was not resorted to and only demands were raised.

13. In the present cases, demand notices were issued on 21.11.2019 for the years 2008-2009 to 2019-2020 (C.M.S.A. Nos.3 and 5 of 2021), 2011-2012 to 2019-2020 (C.M.S.A.No.1 of 2021) and 2015-2016 to 2019-2020 (C.M.S.A.No.4 of 2021). As per Section 278 (A) of GHMC Act, for recovery of arrears by way of filing of suit the limitation is nine (9) years.

14. In C.M.S.A.Nos.3 and 5 of 2021, demands were made in respect of assessment years from 2008-2009 to 2019-2020, wherein the assessment years from 2008-2009 to 2010-2011 are barred by limitation of nine (9) years since such demands were made in the year 2019-2020. Therefore, the impugned judgments require interference to this extent.

15. The demands in C.M.S.A.No.1 of 2021 were made in respect of assessment years from 2011-2012 to 2019-2020, which are within limitation of nine (9) years. Similarly, the demands in C.M.S.A.No.4 of 2021 pertains to the assessment years from 2015-2016 to 2019-2020, these demands are also made within stipulated period of nine (9) years. Therefore, the contention of

learned counsel for appellants herein that limitation is only three (3) years has no merit and such contention requires to be rejected.

16. In the result, C.M.S.A.Nos.1 and 4 of 2021 are dismissed, confirming the judgments of the appellate Court in M.A.No.187 of 2019 and 186 0f 2019. C.M.S.A.Nos.3 and 5 of 2021 are partly allowed and demand of arrears for the assessment years 2008-2009 to 2010-2011 in both the cases are set aside, since they are beyond nine (9) years from the date of due, which is outer limit as per Section 278-A and rest of the demands are within time. Notice of demand to the above extent is quashed. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE M.LAXMAN

Date: 25.11.2022
DUA/GVR