HON'BLE SRI JUSTICE M.LAXMAN

C.M.S.A.No.22 of 2017

JUDGMENT:

This appeal has been directed against order dated 27.06.2017 in M.A.No.381 of 2015 on the file of the Chief Judge, City Civil Small Causes Court, Hyderabad, wherein and whereby the appeal was partly allowed setting aside the property tax due details, dated 30.10.2015, issued by the Greater Hyderabad Municipal Corporation (hereinafter referred to as 'GHMC') and remitted the case for fresh assessment after giving due notice to the assessee by imposing the condition that the appellant shall deposit 40% of the amount demanded in the property tax due details, dated 30.10.2015. The said condition is assailed in the present appeal.

2. The case of the appellant is that she is the owner of the subject premises, which is assessed by the GHMC. She claims that the respondent served a special notice on 22.12.2014 assessing the property tax for Rs.35,738/- for which she submitted an objection petition on 28.09.2015 and without considering her objections for assessment of property tax,

respondent prepared the property tax due details for the year 2015-16 claiming for a sum of Rs.1,50,092/-.

3. The main grievance of the appellant before the first appellate Court is that though the constructions were regularized, the respondent levied penalty for the unauthorized constructions and the enhancement of tax was done without following the procedure contemplated under Section 225(3) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act"). This contention was accepted by the first appellate Court and quashed the property tax due details, dated 30.10.2015, and remitted the matter to the Assessing Authority, as stated supra.

4. The contention of the learned counsel for the appellant is that the first appellate Court has erred in imposing condition of depositing 40% of the demanded amount shown in the property tax due details, dated 30.10.2015, when the appeal was allowed. According to him, such condition is an onerous and ought not to have been imposed.

5. There is no representation on behalf of the respondent-GHMC.

6. The following question of law arose for consideration:-

"Whether the First Appellate Court was justified in imposing condition of deposit of 40% amount covered under property tax due details, dated 30.10.2015 having set aside such property tax due details, dated 30.10.2015"?

7. Heard the learned counsel on the above substantial question of law.

8. In order to answer the contentions raised by the learned counsel for the appellant, it is apt to refer to Section 225 of the Act, which reads as follows:-

"Assessment book may be amended by the Commissioner during the financial year:-
(1) Subject to the provisions of sub-section(2) the Commissioner may upon the representation of any person concerned or upon any other information at any time during the financial year to which the assessment book relates amend the same –

(a) By inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted;
(b) By striking out the name of any person not liable to the property tax;

(c) By increasing or reducing the amount of rateable value and of the assessment based thereupon;

(d) By altering the assessment on any land or building which has been erroneously valued or assessed through fraud, accident or mistake;

(e) By inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed in whole or in part after the preparation of the assessment book;

(f) By making or cancelling any entry exempting with the approval of the Standing Committee any premises from liability to any property tax.

(2) Where any amendment is made under sub-section(1) which has the effect of imposing on any person any liability for the payment of property taxes which would not be incurred but for such amendment or which has the effect of increasing the rateable value of any premises as stated in the assessment book, a special written notice as provided in sub-section(2) of Section 220 shall be given by the Commissioner, and as far as may be, the procedure laid down in Sections 221, 222 and 23 shall be followed.

(3) Every such amendment shall be deemed to have been made, for the purpose of determining the liability of exemption of the person concerned in accordance with the altered entry, from the earliest day in the current financial year which the circumstances justifying the amendment existed.

(4) (a) If at any time it appears to the Commissioner that any person or property has been inadvertently omitted from the assessment records or inadequately or improperly assessed relating to any tax, or a clerical or arithmetical error is committed in the records maintained in relation to such assessment, he may assess or reassess or correct such errors, as the case may be:

Provided that no such action shall be taken where it involves an increase in the assessment, unless the person affected is afforded an opportunity to show cause against the proposed action.

(b) Such assessment or reassessment or correction of records shall not relate, to a period earlier than the five half years immediately preceding the current half year."

9. A reading of the above provision would indicate that the Commissioner, GHMC, has an independent power to make an amendment in the assessment book either increasing or

reducing the amount of rateable value. While exercising such a power, the Commissioner, GHMC, is obligated to follow the procedure under Section 220(2) of the Act. It is also apt to refer to Section 282 of the Act, which reads as follows:-

> ***Appeals when and to whom to lie:-*** *(1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.*
> *(2) But no such appeal shall be heard by the said Judge, unless:-*
> *(a) it is brought within fifteen days after the accrual of the cause of complaint;*
> *(b) a complaint has previously been made to the Commissioner under Sec.221 and such complaint has been disposed of;*
> *(c) a complaint has been made, by the person aggrieved within fifteen days after the first received notice of any amendment made in the assessment book under Section 225 and his complaint has been disposed of;*
> *(d) in the case of an appeal against tax, the amount claimed from the appellant has been deposited by him with the Commissioner.*

10. The assessee aggrieved by the order of assessment shown in property tax due details, dated 30.10.2015, has a remedy of

appeal before the Chief Judge, City Civil Court, Hyderabad, under Section 282 of the Act, and as per Clause(d) sub-section(2) of Section 282 of the Act, before the appeal is taken up for hearing, the appellant is required to deposit the amount of tax demanded in the property tax due details, dated 30.10.2015.

11. The main grievance of the appellant before the first appellate Court was that the enhancement of rateable value was done without following the procedure contained under Section 220 or Section 225 of the Act and this contention was accepted by the first appellate Court and quashed the property tax due details, dated 30.10.2015, and directed to make a fresh inquiry after giving reasonable opportunity to the assessee by following the procedure contemplated under the Act. While doing so, a condition of deposit of 40% of the amount covered under the property tax due details, dated 30.10.2015, was imposed.

12. A looking at the pre-condition under Section 282 of the Act, when an appeal is taken up for hearing, the statute mandates the deposit of tax amount demanded. Unfortunately, this power has not been invoked by the First Appellate Court

instead while disposing of the appeal, a condition to deposit 40% of the amount covered under the property tax due details, dated 30.10.2015, and such condition has to be taken as condition prior to the hearing of the appeal and that condition shall be assumed to be in exercise of power under Section 282(1)(d) of Act.

13. As seen from the property tax due details, dated 30.10.2015, the amount of tax was not paid from the year 2012-2013 and the said property tax due details, dated 30.10.2015, already included with penal interest and all put together Rs.1,64,372/- was demanded. The Court below imposed deposit of 40% amount demanded in the property tax due details, dated 30.10.2015 while disposing of the appeal. Learned counsel for the appellant stated that prior to this enhancement, the tax was only Rs.5,000/- and the enhancement was effected retrospectively without following the procedure for increasing of the rateable value. Considering the previous tax and quashing of the property tax due details, dated 30.10.2015, this Court feels that deposit of Rs.65,000/- (Rupees sixty five thousand only) is just and reasonable under the circumstances of the case instead of deposit of 40% amount

demanded in the property tax due details, dated 30.10.2015, as imposed by the first appellate Court. On deposit of such tax, the Commissioner, GHMC, is directed to give an opportunity to the assessee and make a fresh assessment order by following the procedure contemplated under Sections 220 or 225 of the Act. The said exercise shall be done within three (03) months from the date of receipt of a copy of this order. If the assessment is already done by the Commissioner by virtue of remand order, it is open to the appellant to challenge the same if she is aggrieved. The amount shall be deposited, as directed, within a period of one (01) month from the date of receipt of a copy of this order. If the assessee paid any amount while pending this appeal, the same shall be adjusted.

14. With the above observations, the Civil Miscellaneous Second Appeal is disposed of. There shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

JUSTICE M.LAXMAN

28.10.2022
Smr/Gms

THE HON'BLE SRI JUSTICE M.LAXMAN

<u>CMSA.No.22 of 2017</u>

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