THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS SECOND APPEAL No.11 OF 2019

JUDGMENT:

1. The present appeal assails the judgment dated 07.08.2019 in M.A.No.7 of 2019 on the file of the Court of the Chief Judge, City Small Causes Court at Hyderabad (for short, the trial Court), wherein and whereby the demand notice dated 01.02.2019 issued by the respondent demanding the appellant to pay property tax dues at Rs.10,51,347/- was confirmed.

2. The brief facts leading to the present appeal are that the appellants purchased the property i.e., portion No.2 of Khusru Jung, house bearing No.6-1-84/12 and 6-1-84/15, having built up area of 820.76 sft., (410.38 sft., in ground floor and 410.38 sft., in first floor), together with undivided share of land admeasuring 41.75 square yards, situated at Opp: Telephone Bhavan, Saifabad Road, Hyderabad, under a registered sale deed dated 14.02.2014 vide document No.366 of 2014. While so, the appellants came to know through impugned demand notice dated 01.02.2019 that there is total property due of Rs.10,51,347/- against first floor partition, admeasuring 410.38 sft., from the second

half of 2008-2009 till 2018-2019. Challenging the same, the appellants filed M.A.No.7 of 2019.

3. The main grievance of the appellant is that, the demand notice was issued pertaining to the arrears covered beyond three years and the said demand notice for payment of arrears prior to three years is barred by limitation. However, the trial Court while upholding the demand notice, has not considered the decisions of the Division Bench of this Court in **C.E. Cooper v. Municipal Corporation of Hyderabad**[1] and **V.K. Roy v. Commissioner, Municipal Corporation of Hyderabad**[2] and Article 113 of the Limitation Act.

4. The case of the respondent herein is that all the demands raised in the demand notice are within limitation and the outer limitation for recovery of arrears is nine years as per Section 278-A of GHMC Act. According to the respondent, in view of amendment to Section 278 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, the Act) by way of Act 15 of 2013 with effect from 05.08.2013, the respondent can sue the defaulter for arrears

[1] 1997 (3) ALD 771 (DB)
[2] 2002 (4) ALD 711 (DB)

in any Court of competent jurisdiction under Section 278 of the Act and that by virtue of insertion of Section 278-A, the respondent can recover the dues of the property tax by way of civil action within nine years. According to the respondent, the trial Court, considering the above legal position, rightly dismissed the appeal.

5. Now, the question of law involved in the present case is:

> '*Whether the claim under the demand notice dt.01.02.2019 is barred by limitation?*'

6. In this regard, it is apt to refer Section 278-A Greater Hyderabad Municipal Corporation Act which reads as under:

> "278-A. (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."

7. The reading of the above provision makes it clear that this amendment was made by Act 15 of 2013 which came into effect from 05.08.2013. It prescribes the various limitations for taking steps to recover the arrears of taxes.

There are three modes of recovery prescribed under the Act i.e. (1) by issuing distraint warrant, (2) by prosecution and (3) by filing a suit. In this regard, it is relevant to refer the respective provisions which are hereunder:

> "269. (1) If the person liable for the payment of the said tax does not within fifteen days from the service of the (bill) pay the sum due, or show sufficient cause for non-payment of the same to the satisfaction of the Commissioner, and no appeal is preferred against the said tax, as hereinafter provided, such sum with all costs of the recovery, may be levied under a warrant in the form of schedule L, or to the like effect, to be issued by the Commissioner, by distress and sale of the goods and chattels of the defaulter, or if the defaulter be the occupier of any premises in respect of which a property tax is due, by distress and sale of any goods and chattels found on the said premises or, if the tax due in respect of any vehicle or animal by distress and sale of such vehicle or animal in whomsoever's ownership, possession or control, the same may be.
>
> (2) …
>
> (3) If, for any reason the distraint or a sufficient distraint of the defaulter's property is impracticable, the Commissioner may prosecute the defaulter before the competent Court of jurisdiction.
> 278. Instead of proceeding against a defaulter by distress and sale as hereinbefore provided, or after a defaulter shall have been so proceeded against unsuccessfully or with only partial success any sum due or the balance of any sum due, as the case may be, by such defaulter, on account of a property-tax or of tax on vehicles and animals may be recovered from him by a suit in any court of competent jurisdiction."

8. In respect of the mode of recovery of taxes by issuing distraint warrant, the limitation prescribed is three years from the date of tax due, and for prosecution, the limitation

prescribed is six years and for filing the suit for recovery of arrears the limitation prescribed is nine years. Prior to this amendment, there was no limitation prescribed under the GHMC Act. The judgment in the case of **Municipal Corporation through Special Officer Vs. Champalal**, the Division Bench of this Court held as under:

> "Instead of proceeding against a defaulter by distress and sale as hereinbefore provided, or after a defaulter shall have been so proceeded against unsuccessfully or with only partial success any sum due or the balance of any sum due, as the case may be, by such defaulter, on account of a property-tax or of tax on vehicles and animals may be recovered from him by a suit in any court of competent jurisdiction."

9. In **V.K. Roy**'s case (supra), the Division Bench of this Court by relying upon the previous Division Bench Order in **Champalal** (supra), held as under:

> "18. Having regard to our discussion in the foregoing paragraphs and in the light of the ratio laid down by the Supreme Court in the decision cited (3) supra, we hold that the respondents are not entitled to recover arrears of property tax by way of distraint after the expiry of three years from the date when the tax becomes due. If the respondents so choose to recover such tax, it is open to them to take recourse to the provisions contemplated under Section 278 of the Hyderabad Municipal Corporation Act."

10. A reading of the judgment in **Champalal**'s case (supra), it is a case where no special limitation was prescribed under the Act for recovery of arrears of property tax. By relying upon Article 113 of Limitation Act, the Division Bench held

that three years is the limitation from the date of right to recover the arrears of tax. It is needless to say that when the special limitation is prescribed under the Act, the general law of Limitation does not apply. In the present case, the limitation of three years was only prescribed in respect of mode of recovery by way of distraint warrant, and for prosecution six years and to file a suit nine years is prescribed.

11. In the present case, the respondent has challenged the very demand notice on the ground that it was issued for recovery of property tax beyond three years. There is misconception on the part of the respondent that three years limitation is contemplated for recovery of the amounts and that three years is only in respect of law. The period of three years is only in respect of one mode of recovery i.e. by issuing distraint warrant and the larger limitation is nine years. This means for nine years' arrears, the Corporation is entitled to issue demand notice and they have right to recover the amounts up to nine years by way of filing the suit. If they want to invoke speedy recovery mode i.e. by issuing warrant of distraint and by way of prosecution, the

limitation prescribed is shorter than recovery of amount by filing the suit.

12. As seen from the impugned order of the trial Court, it found that the outer limitation for laying claim for recovery was nine years and found that the arrears which are demanded under the demand notice are relating to arrears falling within nine years. Such findings suffer from error. Section 278-A of the Act was introduced by amendment Act 15 of 2013 which came into effect from 05.08.2013. This provision is not given retrospective effect. Demand notice for arrears prior to 2013 was issued in 2019. Such arrears are barred by limitation. The demand notice for arrears from 2013-14 are within limitation. In this regard, trial Court has rightly held that they are not barred and such findings require no interference.

13. In the result, the Civil Miscellaneous Second Appeal is partly allowed, holding that the appellants are liable to pay the arrears of property tax from 2013-2014 after deducting the property tax paid by them, if any, by virtue of the order of the trail Court. The claim of the respondent for arrears before 2013-14 is barred by limitation and the impugned

demand notice to the extent of claim of arrears prior to 2013-14 is set aside. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 03.08.2022
TJMR