**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS SECOND APPEAL NO: 45 OF 2018

Appeal under section 287 of GHMC Corporation Act 1955 against the Judgment dated 05.06.2017, passed in M.A.No. 149 of 2015 on the file of the Court of the Chief Judge, City Small Causes Court at Hyderabad.

Between:

Smt. S. Geetha, W/o A. Revanth Reddy, Aged about 43 years, Occ: Housewife, R/o Plot No.346, MLA Colony, Road No.1.2, Banjara Hills, Hyderabad - 50 0034. Hyderabad

...APPELLANT/APPELLANT

AND

Greater Hyderabad Municipal Corporation, Rep. by its Deputy Commissioner, Circle No.10, Khairtabad, Hyderabad, Hyderabad.

...RESPONDENT/RESPONDENT

IA NO: 3 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings against the judgment and decree passed in MA NO.149 of 2015 dated 05-06-2017 on the file of learned Chief Judge city small causes court, Hyderabad.

Counsel for the Appellant : **Sri D. Bhaskar Reddy**

Counsel for the Respondent : **Sri K. Siddharth Rao**

The Court delivered the following:

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CMSA.NO.45 OF 2018

JUDGMENT:

Being aggrieved by the judgment dated 05-06-2017 in MA.No.149 of 2015 on the file of Chief Judge, City Small Causes Court, Hyderabad, where under, the first appellate Court having accepted the contentions of the appellant herein that the respondent/Municipal Corporation could not have imposed the property tax without following the procedure laid down in Greater Hyderabad Municipal Corporation Act (for short 'GHMC Act'), still directed the appellant to pay 40% of the tax demanded by the respondent, the appellant in MA.No.149 of 2015 has filed this Civil Miscellaneous Civil Appeal under Section 287 of GHMC Act and sought for setting aside the impugned order on the following grounds.

2. The first appellate Court having come to a conclusion that the demand notice dated 09-03-2015 in respect of premises bearing No.8-2-293/82/A/854-PTIN of Jubilee Hills claiming a sum of Rs.15,86,537/- is not in accordance with law and set aside the said notice ought not to

have imposed a condition that the appellant herein to deposit 40% of the demanded tax. The first appellate Court rightly held that the demand notice of the vacant land tax issued by the respondent is illegal and against the provisions of Sections 220 to 223 of GHMC Act and remitted back the matter to the respondent but still directed the appellant to deposit 40% of the demanded tax which according to the appellant is incorrect and liable to be set aside. The appellant while filing the present appeal formulated the following two substantial questions of law for consideration of the present appeal.

1. Whether the Court below is justified in putting a condition that the appellant to pay the tax @ 40% of the amount demanded in the demand notice dated 09-03-2015, when it has come to conclusion that the said notice is not in accordance with law and set aside the same and thereby justified the said condition?

2. Whether the Court below is right in having coming to a conclusion the provisions of GHMC Act under Sections 220 to 223 are not complied and remitted back the matter for reassessment of tax in respect of the schedule of property and again putting a condition to deposit 40% of the demand notice is not beyond the powers of the Court?

3. Heard both parties.

4. As could be seen from the impugned order, it is quite clear that the respondent/Municipal Corporation issued a demand notice to the appellant herein on 09-03-2015 and demanded her to pay Rs.15,86,537/- which includes arrears of tax, current tax, interest on arrears etc. The appellant herein while filing MA.No.149 of 2015 has contended that the respondent is not empowered to collect tax on vacant land and while placing reliance on the judgment of this Court W.P.No.7435 of 2014 has contended that the respondent failed to follow the mandatory procedure laid down under GHMC Act, thereby, sought for setting the order.

5. As per the material averments made in the said appeal, it appears that the respondents without issuing any appropriate notice assessed the tax on vacant land dated 01-04-2008 and demanded the appellant to pay Rs.1,29,500/- per annum. The appellant has claimed that such a demand is against the principles of natural justice and against the provisions of GHMC Act. The appellant has claimed that the respondents failed to follow the mandatory procedure laid down under GHMC Act and issued the demand notice, thereby, sought for setting aside the notice.

6. The first appellant Court having accepted the contentions recorded a clear finding that such a demand is against the provisions of Sections 220 to 223 of GHMC Act. The Court came to a conclusion that there was no proper notice or opportunity to the appellant as required under GHMC Act. Huge amount was demanded towards the tax but there was no material to show that the respondent has followed the provisions under the above Sections of GHMC Act, thereby, such demand cannot be entertained and allowed the petition with a specific order to remand the matter to GHMC to assess the tax in respect of the schedule property in accordance with the procedure laid down under GHMC Act. However, the Court without expressing any reason directed the appellant herein to pay 40% of the tax demanded by the GHMC.

7. As per the clear finding recorded by the Court below vide Para No.7 of the order, it was observed that no opportunity was given to the appellant while assessing the above said tax. There was no date fixed for hearing the objections if any, by the appellant. The respondent/Corporation failed to follow the procedure under Sections 220, 221, 222 and 223 of GHMC Act. Therefore, the

order is very clear that the tax imposed or demanded by the respondent was without following the procedure and without giving an opportunity to hear the appellant herein. In such a case, the question of again asking the appellant to deposit 40% of the tax which according to the impugned order was imposed without following the procedure and without giving an opportunity does not arise and such condition could not have been imposed.

8. In the light of the clear finding that the order through which a huge sum of tax was demanded was passed without following the procedure and without hearing the appellant herein, therefore, order to the extent of directing the appellant herein to deposit 40% of the amount is liable to be set aside. The Court below has allowed the appeal and the order dated 09-03-2015 was already set aside and the matter was remitted to the respondent/Corporation for reassessing the tax. Therefore, the direction under the impugned order for payment of 40% of the demanded tax is set aside while maintaining the remaining portion of the impugned order.

9. In the result, CMSA is allowed. The matter is remitted to the respondent to re-assess the tax in respect of

the petition schedule property by following the procedure laid down in GHMC Act after providing an opportunity to the appellant and on hearing the objections, if any.

Consequently, Miscellaneous applications if any, are closed. No costs.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Chief Judge, City Small Causes Court at Hyderabad. (With Records if any)
2. One CC to Sri D. Bhaskar Reddy, Advocate [OPUC]
3. One CC to Sri K. Siddharth Rao, Advocate [OPUC]
4. Two CD Copies

DL/PR

HIGH COURT

DATED:19/02/2024

JUDGMENT

CMSA.No.45 of 2018

ALLOWING THE CMSA

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8/4/24