(2004) 09 AP CK 0006

Andhra Pradesh High Court

Case No: CMSA No''s. 1 and 11 of 2001

P. Damodar Rao		APPELLANT
	Vs	
Municipal Corporation of Hyderabad		RESPONDENT

Date of Decision: Sept. 30, 2004

Acts Referred:

- Hyderabad Municipal Corporation Act, 1955 - Section 214, 215, 216, 217, 218

Citation: (2005) 1 ALD 799 : (2005) 1 ALT 192 : (2004) 3 APLJ 481

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: K. Mahipathy Rao, for the Appellant; Ganta Rama Rao, SC, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.
These two miscellaneous second appeals arise under similar circumstances and in respect of parts of same premises. Hence, they are disposed of through common judgment.

2. The appellant in C.M.S.A. No. 11 of 2001 is the wife of the appellant in C.M.S.A. No. 1 of 2001. Properties Nos.5-4-467 and 5-4-468, respectively, are held by them, and a hotel is established therein. The premises are assessed to Municipal Tax. Through notices dated 4-9-1996, the respondent proposed to revise the annual rateable value (ARV) and property tax for the said premises. In respect of 5-4-468, the ARV was sought to be revised from Rs. 38,400/- to Rs. 1,77,600/- and the annual property tax, from Rs. 11,197/- to Rs. 51,788/-. In respect of the other premises, the ARV was sought to be revised from Rs. 38,400/- to Rs. 1,33,200/-; and the property tax, from Rs. 11,197/- to Rs. 38,841 /-.

3. On receiving the notices, the appellants filed representations stating that in the previous year itself, the ARV and tax were revised by 100% over the existing ARV and

tax; the allegation that the area of property is found to be more, is not based on any record. The said explanation did not appeal to the respondent and the proposed assessment was confirmed. The appellants filed MA Nos.284 and 285 of 1997 in the Court of Chief Judge, City Small Causes Court, Hyderabad, u/s 282 of the Hyderabad Municipal Corporation Act (hereinafter referred to as ''the Act''). The appeals were dismissed by the lower appellate Court through separate orders dated 1-8-2000. Hence, the appellants have filed these civil miscellaneous second appeals, u/s 287 of the Act.

4. Sri K. Mahipathy Rao, learned Counsel for the appellant submits that the premises of the appellants were assessed to tax of Rs. 5,495/- and Rs. 3,495/-, respectively, up to the year 1994 and the same was revised during 1994-95, to Rs. 11,198/-, for each of the premises. He submits that there was absolutely no justification for revising the assessment within one year thereafter, to such exorbitant levels. He contends that the area of the premises remained the same, as it existed in the year 1994 and that there was no basis for the enhancement. He further submits that though a detailed explanation was submitted, on receipt of the notices, the respondent did not discuss it and simply confirmed the proposal. Learned Counsel submits that the lower appellate Court proceeded on the footing that there was increase in the area, without, there being any record or basis.

5. Learned Standing Counsel for the Municipal Corporation submits that the necessity to revise the ARV and the property tax arose, on account of the fact that vast difference in the area was noticed. He contends that the explanation submitted by the appellants was not found convincing, and that the Act does not require passing of reasoned orders in such matters.

6. The premises belonging to the appellants are assessed to property tax. The ARV constitutes the basis for this purpose. Sections 214 to 226 of the Act prescribe the procedure for initial assessment as well as subsequent revision of property tax. An assessment book is required to be maintained u/s 214, wherein several particulars, in respect of buildings assessed to tax, are to be entered. They include, the area, the ARV, determined for such building, etc. Even where any portion of the building or land is not assessed to tax, the reasons there for are required to be stated. Before the entries in the book assume finality, several steps such as issuance of public notice, hearing of complaints, etc., are to be undertaken. Sub-section (3) of Section226, is to the effect that a new assessment book shall be prepared, at least once in every five years. Of course, there is no prohibition for revising the tax within that period, if the circumstances warrant.

7. In this case, it is a matter of record that the property tax payable for the premises up to the year 1994, was Rs. 5,495/- and Rs. 3,495/-, respectively. Obviously, after following the required procedure, it was enhanced to Rs. 11,198/-, each, for both the premises. The appellants did not feel any grievance about it. The respondent issued notices dated 4-9-1996, calling upon the appellants to show-cause as to why the tax

should not be enhanced to Rs. 51,788/- and Rs. 38,841/-, respectively on the ground that the area is more. After receiving these notices, the appellants submitted their explanations. On a consideration of the same, the respondent passed orders, dated 11-6-1997, confirming the proposed revision. The orders reads as under:

"With reference to your application cited, this is to inform you that the Assessment/revised Assessment in respect of Pr. No. 5-4-468 fixed at Rs. 1,33,200/- is quite reasonable and is hereby confirmed with effect from 1-4-1996.

Therefore, you are requested to make payment of the property tax accordingly."

8. It needs to be noted that, on submission of explanation to notices, proposing revision, the competent authority is required to hear the aggrieved parties, u/s 223 of the Act. When the sole basis for revising the tax was that the area of the property is found to be more than what is referred to in the previous assessment orders, and when the appellants have clearly stated that they have not added any new structures, it was obligatory on the part of the respondent to have either got the area physically measured, in the presence of the appellants, or to have stated the basis on which such conclusion was arrived at. The respondent reduced the entire exercise into an empty formality and has undertaken the revision to such a vast extent, without assigning even a single reason. The same is opposed to the very nature of exercise of quasi-judicial powers.

9. The appellants specifically pleaded before the lower appellate Court that there was non-compliance with the provisions of the Act and that there is no material for enhancing the tax. Instead of verifying as to whether there existed any material for such enhancement, and whether the relevant procedure was followed, the lower appellate Court, unfortunately, recorded a finding that the appellants had suppressed the actual area. It did not refer to any material in arriving at the conclusion. Such an approach is opposed to the canons of very adjudication.

10. For the foregoing reasons, the C.M.S.As. are allowed, and the order impugned in the M.A. Nos.284 and 285 of 1997 on the file of the Chief Judge, City Small Causes Court. Hyderabad, are set aside. It is, however, observed that, it shall be open to the respondent to give a hearing to the appellants afresh, on the basis of the notices dated 11-9-1996 and pass fresh orders, duly furnishing reasons in support of its conclusions. The discrepancy as to area shall be clearly dealt with, either by undertaking fresh measurements, or by recording reasons, in support of such conclusion. There shall be no order as to costs.