(2003) 06 AP CK 0020

Andhra Pradesh High Court

Case No: AAAO No''s. 25, 26, 27, 28, 29, 30, 31 and 32 of 1995

P.R. Nappini		APPELLANT
	Vs	
Deputy Commissioner, Municipal Corporation of Hyderabad		RESPONDENT

Date of Decision: June 12, 2003

Acts Referred:

- Hyderabad Municipal Corporation Act, 1955 - Section 220, 220(2)

Citation: (2003) 5 ALD 760 : (2003) 6 ALT 458

Hon'ble Judges: G. Yethirajulu, J

Bench: Single Bench

Advocate: Kotamraju Janardhana Rao, for the Appellant; G. Jyothi Kiran, for the Respondent

Judgement

G. Yethirajulu, J.

The houses (total eight in number) referred to in the respective appeals belong to one family. The appellant is the owner of all the houses. The Municipal Corporation of Hyderabad, Hyderabad Division, issued demand notices in 1991 dated nil to the appellant calling upon her to pay certain amounts towards property tax for those houses situated at Ameerpet, Hyderabad. The appellant being aggrieved by the said demand notices preferred appeals viz., M.A. Nos. 595, 597, 598, 601, 602 and 603 of 1991 before the Chief Judge, City Small Causes Court, Hyderabad. The Chief Judge, City Small Causes Court, Hyderabad disposed of those appeals on 30-8-1993 remanding the matters to the respondent-Corporation with a direction to assess the property tax after giving opportunity to the owner of the building, as required u/s 220(2) of the Hyderabad Municipal Corporation Act, 1955 (''the Act'' for brevity). The respondent-Corporation instead of complying with the directions of the Court issued notices dated 1-2-1995 calling upon the appellant to pay the arrears of property tax for the premises in question. The appellant preferred appeals before the Chief Judge, City Small Causes Court, Hyderabad questioning the validity of the demand

notices dated 1-2-1995 on the ground that the Corporation failed to issue the requisite statutory notice u/s 220 (2) of the Act before assessing the property tax. The appellant contended in those appeals that she was not given opportunity for filing her objections and hearing with regard to the quantum of tax for the premises in question. The Chief Judge, City Small Causes Court allowed the appeals through his judgment dated 14-2-1995 observing that the Standing Counsel appearing for the respondent-Corporation could not say that the directions given by the said Court on 30-8-1993 in M.A.No. 595, 597, 598, 601, 602 and 603 of 1991 were complied with. The Chief Judge accordingly remanded the matters to the Corporation with a direction to assess the property tax afresh after complying with the statutory provisions of the Act.

2. In pursuance of the directions of the Chief Judge, City Small Causes Court, the respondent-Corporation issued notices on 15-5-1995 requesting the appellant to attend the office on 20th May, 1995 at 11 a.m. for personal hearing along with copies of rent deeds and other documents. The appellant instead of appearing before the respondent-Corporation filed appeals covered by M.A. No. 230 to 237 of 1995 before the Chief Judge, City Small Causes Court, Hyderabad, questioning the notices dated 15-5-1995 for the proposed assessment. The Chief Judge, City Small Causes Court, dismissed the appeals through a common judgment dated 18-7-1995 observing that the appellant is not entitled to prefer the appeals u/s 282 of the Act against the provisional fixation of the rateable value and the law does not provide for giving second opportunity to the appellant for hearing. Being aggrieved by the common judgment of the first Appellate Court, the appellant preferred these appeals challenging its validity and legality.

3. The appellant mainly contended that the appeals cannot be dismissed on the ground of non-filing of objections before the respondent-Corporation, that the tax cannot be imposed with retrospective effect, and that the notices issued by the respondent-Corporation on 15-5-1995 directing her to appear for personal hearing on 20-5-1995 is not in accordance with the provisions of Section 220(1) and (2) of the Act.

4. The respondent-Corporation issued demand notices in the names of the occupiers of the houses. Against those demand notices, the owner of the houses Smt. P.R. Nappini filed the appeals and the Chief Judge, City Small Causes Court disposed of the appeals remitting them to the Corporation for fresh assessment after giving opportunity to the owner of the houses. Accordingly, the respondent-Corporation issued notices to the appellant directing her to appear in person on 20-5-1995 at 11 a.m.

5. Section 220 of the Hyderabad Municipal Corporation Act, 1955 reads thus:

220. Time for filing complaints against valuations to be publicly announced:--(1) The Commissioner shall, at the time and in the manner provided in Section 218, give

public notice of a day, not being less than twenty one days from the publication of such notice, on or before which complaints against the amount of rateable value entered in the ward assessment book will be received in his office.

(2) In every case in which any premises have for the first time been entered in the assessment book as liable to the payment of property taxes, or in which the rateable value of any premises liable to such payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under Sub-section (1), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice.

(3) Notwithstanding anything contained in this Act and the Rules made thereunder, where a building is constructed, or reconstructed, or some structures are raised unauthorisedly it shall be competent to the assessing authority to levy property tax on such building or structure with a penalty of ten per cent on the amount of tax levied till such unauthorized construction is demolished or regularised. A separate receipt for the penalty levied and collected shall be issued.

6. No doubt Section 220(1) of the Act specifies that for issuing public notice a period of 21 clear days is mandatory. But, in the cases on hand, the appellant did not question the earlier notices, which were served on her personally, except questioning the quantum of tax. There is no express provision under the Act that assessee shall also be given 21 days time. Section 220(2) provides the maximum period of 15 days for receiving complaints from the date of service of special notice. Having received the earlier notices, the appellant preferred appeals before the Small Causes Court on the ground that she was not given an opportunity of hearing. The Court accordingly remanded the matters to the respondent-Corporation directing to give an opportunity to the owner of the houses and to explain the circumstances under which she is not liable to pay the property tax as demanded by the Corporation. Since these matters were remanded twice, he question of complying the formalities at every time does not arise. The purport of Section 220 of the Act is to enable the public and the owner of the premises to place the material, if any, for reduction of the rateable value in that area of premises. Sections 221 to 223 contemplated the procedure after issuing of special notice. The appellant did not choose to place any material before the respondent and directly approached the Court without exhausting the statutory remedy with the Corporation. Section 282(b) mandates that the appeal shall not be heard unless a complaint was made and disposed of by the Commissioner. The appellant might have apprehended that she has to face lot of embarrassment by producing the rent deeds etc., therefore, she felt that absconding from the hearing would be the best remedy to avoid the tax as much period as possible.

7. In the notices dated 15-5-1995 there was a mention that the appellant has to pay the tax from the year 1978. The learned Counsel for the appellant submitted that the enhancement cannot be made with retrospective effect i.e., from the year 1978 and it shall be from the financial year during which the assessment was made and complaint, if any, was disposed of.

8. The original assessment was made in the year 1991 and notices were served on the appellant. The remittance of the matters to the Corporation for assessing the property after giving opportunity to the owner does not amount to fresh assessment. I therefore do not find any force in the contention of the learned Counsel for the appellant that the assessment shall be made only from the year during which the latest assessment was made and not with retrospective effect. The learned Counsel for the appellant cited the judgment of a Division Bench of this Court in Himayatnagar Ratepayers Association v. Commissioner M. C., Hyderabad (1971) 1 An.WR 78 (DB), wherein this Court held that the assessment has to be done before the end of the financial year in respect of which the tax was proposed to be imposed.

9. There is no dispute regarding this principle, but the said principle is not applicable to the case on hand as the assessment was made on a direction to make fresh assessment by giving opportunity to the owner. The demand notices dated 15-5-1995 issued by the Corporation cannot be treated as fresh assessment notices and the respondent-Corporation is entitled to assess the property from the year in which the initial demand notices were issued.

10. The appellant was successful in running the litigation for a period of 12 years. On the basis of the statement given by the appellant that the building was in occupation since 1978, the Corporation has mentioned in the notices that the tax has to be paid from the year 1978. The Corporation is not entitled to assess the tax for the period as it likes and it is entitled only to impose the tax and collect the same from the financial year during which the special notices were issued demanding the property tax. The respondent-Corporation therefore was wrong in directing, the appellant to pay the property tax from the year 1978 and it is entitled to collect the tax from the period during which the first demand notices were issued. I therefore do not find any force in the contention of the learned Counsel for the appellant that on remand of the matters fresh assessment has to be made only from the year during which fresh assessment was made on the direction of the Court, and not of the previous years. Since the Corporation made the fresh assessment on the direction of the first Appellate Court, the limitation does not continue to run when the Corporation takes up the matter for disposal as per the direction of the appellate Court.

11. The learned Counsel for the appellant farther submitted that from the year 1999 to 2000 the appellant was regularly paying taxes by utilizing the facility of self-assessment of the property. I do not wish to disturb the said demand and collection of the tax imposed on self-assessment. As rightly observed by the first

Appellate Court, since the appellant failed to avail the opportunity of personal hearing before the respondent-Corporation, I do not find any force in the contention of the appellant that the Corporation erred in making the assessment without giving opportunity to the appellant.

12. In the light of the above discussion, the appeals are allowed in part with a direction to the respondent-Corporation to collect the property tax from the financial year 1991 during which the first demand notices were issued. The respondent-Corporation is further directed that the self-assessment made by the appellant and accepted by the Corporation shall not be disturbed until the Corporation proposes to revise the tax by way of issuing a special notice for that purpose. Each party to bear its own costs.