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(2001) 07 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14982 of 2001

A.P. State Road Transport Corporation APPELLANT

Vs

Executive Officer and Others RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2001) 07 AP CK 0057

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : K. Harinath, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This writ petition is filed by the Andhra Pradesh State Road Transport Corporation represented by its Managing Director and the Depot Manager, APSRTC, Narkatpally, the petitioner 1 and 2 herein respectively for assailing the legality and the validity of the demand notice of house tax bearing No.1701, dated 28.6.2000 directing the 2nd petitioner to pay a total sum of Rs.80,244/- towards the house tax for the assessment years 1998-99, 1999-2000, 2000-2001. Few facts relevant to the decision-making be noted briefly as under : The premises of the Corporation bearing House Nos.7-109 to 7-142 situate within the limits of Gram Panchayat, Narkatpally, Nalgonda district, the 3rd respondent herein was assessed to house tax of Rs.6,035/- and the same was being regularly paid without committing any default. According to the petitioners, the 2nd petitioner addressed several letters to the Executive Officer of the Gram Panchayat complaining of not providing the facilities like supply of protected water to the premises of the Corporation, connecting the water outlet septic tank into the drainage of the Gram Panchayat and maintenance of it, providing of internal roads in the staff quarters and their maintenance and providing of electricity for staff quarters and in the area of Narkatpally Bus depot. The petitioners complain that the Gram Panchayat without providing the

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amenities sought for, issued the impugned demand notice of house tax No.1701, dated 28.6.2000 to the 2nd petitioner demanding payment of house tax and library cess of Rs.80,244/- for the years 1998-99, 1999-2000 and 2000-2001 within 15 days from the date of receipt of the notice. After receipt of the above impugned demand notice, the 2nd petitioner addressed a letter dated 17.7.2000 to the Executive Authority bringing to his notice that they had paid the house tax of Rs.6035/- for the assessment year 1997-98 and the present impugned demand without providing amenities to the premises of the Corporation was unjustified. In response to that letter, the Executive Officer addressed a letter No.14/GPN/2000, dated 11.8.2000 to the 2nd petitioner. In that letter, meeting the allegation of the petitioners, that the amenities are not provided to the premises of the Corporation, the Executive Officer of the Gram Panchayat has stated :

"You have not informed the required facilities to the Corporation in your office letter under 3rd cited, if informed the facilities will be provided certainly as per the Gram Panchayat Act. By and by it is to inform that, the income of the Gram Panchayat will be utilised for the development of the town".

2. In the same letter, the Executive Officer again requested the 2nd petitioner to pay the demanded amount of Rs.80,244/- within seven days from the date of receipt of the letter and to cooperate with the Gram Panchayat for the development of the village. The 2nd petitioner did not pay the demanded tax.

3. It further appears that the 2nd petitioner without making pre-deposit of the tax demanded as required under Rule 20 of the Rules in G.O.Ms.No.30, PRRD & R, dated 20.1.1995 filed an appeal under Rule 19 of the same rules to the District Panchayat Officer, Nalgonda, the 2nd respondent herein. The 2nd respondent refused to decide the appeal on merit on the ground that since the 2nd petitioner did not deposit the disputed house tax amount in terms of Rule 20, the question of considering the plea of the 2nd petitioner to reduce the house tax would not arise. So holding, the 2nd respondent passed the proceedings Lr.No.878/ 2000-A1 (Pts.), dated 3.1.2001 again directing the 2nd petitioner to make necessary arrangements to pay the demanded house tax forthwith in order to facilitate the Gram Panchayat to provide basic amenities. Despite this order, the 2nd petitioner did not pay the demanded tax. When the matter stood thus, the present writ petition was presented on 23.4.2001 for the following relief :

"For the reasons stated in the accompanying affidavit this Hon''ble Court may be pleased to issue an appropriate writ or direction, especially in the nature of a writ of certiorari, calling for the records relating to the impugned Demand Notice of House Tax dated 28.6.2000 issued by the Executive Officer of the Gram Panchayat, Narkatpally, Nalgonda District demanding payment of house tax and library cess of Rs.80,244.00 for the years 1998-99, 1999-2000 and 2000-2001, as confirmed in appeal the order dated 11.8.2000 by the Executive Officer, and in appeal by an order dated 3.1.2001 by the District Panchayat Officer, Nalgonda, and quash the same as being illegal, without jurisdiction and invalid and pass

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such other and further orders to meet the ends of justice."

4. We heard Sri K. Harinath, learned Standing Counsel for the APSRTC. We are of the considered opinion that this writ petition is liable to be dismissed for more than one reason. Firstly, the question as to whether the necessary amenities to which the petitioners are entitled to under the law are provided by the Gram Panchayat to the premises of the petitioner Corporation or not is a pure question of fact. No resolution of disputed fact would normally be taken up for adjudication by this High Court in a summary proceeding under Article 226 of the Constitution, primarily because such a factual question cannot be decided satisfactorily solely on the basis of affidavits and counter affidavits without subjecting the parties to cross-examination and other trappings of procedure. In the instant case, as could be seen from the letter of the Executive Officer dated 11.8.2000, he has quite fairly informed the 2nd petitioner that the 2nd petitioner did not state clearly the required facilities to the premises of the Corporation in his letter dated 17.7.2000 and if the 2nd petitioner informs Executive Officer about the required facilities, such facilities would be certainly provided in accordance with the statute. Assuming that the allegation of the petitioners that the Gram Panchayat has not provided the required amenities and facilities to the premises of the petitioner Corporation is correct, even then, the appropriate course for the petitioner is to enforce the legal obligation imposed on Gram Panchayat under the statute by any mode known to law, but that circumstance itself would not divest the competence and jurisdiction of the Gram Panchayat to demand the house tax under the Gram Panchayat Act. The Gram Panchayat Act undoubtedly empowers the Gram Panchayat to levy house tax and it obliges the owners of the house property to pay the tax.

5. There is one more formidable reason for us not to entertain this writ petition. As pointed out supra, the petitioner chose to assail the validity of the impugned demand notice dated 28.6.2000 issued by the Executive Officer of the Gram Panchayat in an appeal before the District Panchayat Officer, Nalgonda, without depositing the disputed house tax amount of Rs.80,244/- in terms of Rule 20 of the rules notified in G.O.Ms.No.30, P.R.R.D.& R., dt.20.1.1995. The 2nd petitioner did not seek even the waiver of the deposit. He did not seek appropriate legal remedies at that stage of filing of the appeal before the District Panchayat Officer for waiver of the pre-deposit of the disputed house tax by approaching this Court. The resultant position is that the petitioner had abandoned the appeal filed by him before the District Panchayat Officer and he acquiesced in the order of the 2nd respondent dated 3.1.2001. If that is so, we are at a loss to understand how this writ petition is maintainable. It is very pertinent to note that even in this writ petition, not a word is said in the affidavit filed in support of the writ petition that the petitioners could not make pre-deposit as required under Rule 20 of the Rules for want of funds or due to any other form of hardship. Obviously, the petitioners could not have taken such plea. Therefore, no exception can be taken to the order made by the 2nd respondent dated 3.1.2001 refusing to decide the appeal of the 2nd petitioner on merit for failure of the 2nd

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petitioner to make pre-deposit of the disputed house tax of Rs.80,244/-.

6. Alternatively and thirdly, the writ petition is also liable to be dismissed yet on another ground. Although the petitioners have chosen to assail the demand notice of house tax dated 28.6.2000 issued by the Executive Officer of the Gram Panchayat, the order of the Executive Officer of the Gram Panchayat dated 11.8.2000 and the order of the District Panchayat Officer dated 3.1.2001, the petitioners have not chosen to produce either the original orders or certified copies of those orders. Rule 6(a)(1) of the Writ Proceeding Rules, 1977, framed by the High Court of Andhra Pradesh by virtue of the power conferred upon it under Article 225 of the Constitution of India reads :

"Every petition shall be accompanied by an affidavit and all the documents serially numbered as Ex.P-1, P-2 etc., including rules, bye-laws, notifications etc., relied upon by the petitioner and the order challenged or a certified copy thereof and copies of all documents which shall be certified by the party filing it to be a true and correct copy of the original of such documents of it is not a certified copy".

7. Even otherwise, it is trite to state that wherever a Writ of Certiorari is sought to quash a particular order, the mover for the writ should necessarily produce the original order or a certified copy thereof. In the instant case, the petitioners have not produced either the original orders or the certified copies thereof.

8. In the result and for the foregoing reasons, we dismiss the writ petition with no order as to costs.

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