(1991) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 9276 of 1983 and 7827 of 1987

Casken Tea Industries Ltd. APPELLANT

Vs

Hyderabad Urban Development Authority and Others RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 13, 14, 2, 27, 28
Constitution of India, 1950 — Article 226

Citation : (1992) 1 ALT 64 : (1992) 1 APLJ 47

Hon'ble Judges : V. Sivaraman Nair, J;Eswara Prasad, J

Bench : Division Bench

Advocate : Koka Raghava Rao, for the Appellant; P.M. Gopala Rao and N.V. Ramakrishna, S.C., for the Respondent

Judgement

V. Sivaraman Nair, J.—Petitioner claims to be a Small Scale Industry It purchased Plot Nos. 138 to 141 in Medchal Industrial Estate. Those plots have been developed by the Industrial Infrastructure Corporation of the State. Petitioner had paid the value fixed by the Corporation. Accordinig to it, the amount spent by the Corporation on development of the land was also included in the price. After the purchase, it applied to Medchal Gram Panchayat within whose area the Industrial Estate lies for permission to construct an industrial building. That application was submitted on 1st September, 1981. It commenced construction thereafter and completed the same in April, 1982. On 24th November, 1982, 1st respondent-Hyderabad Urban Development Authority-issued a notice u/s 42 of the Andhra Pradesh Urban Areas (Development) Act, 1975 requiring it to demolish the unauthorised construction on the ground that it had not obtained permission as provided for in Sections 13 and 14 of the Act. Petitioner filed an appeal to the second respondent - Vice-Chairman of the Hyderabad Urban Development Authority - u/s 42(2) of the Act. That appeal was filed on 11th December, 1982. The reliefs which the petitioner sought in the appeal were to withdraw the demolition notice issued by the Competent Authority u/s 42(1) of the Act and to grant it ten days'' time for submission of necessary plans for approval. Thereafter, the third respondent-Competent Authority-directed the petitioner to submit plans and remit an amount of Rs. 8,667-50 ps towards application fee. By a letter dated 29th April, 1983, petitioner sought details of the charges from the respondents. In a reply dated 3rd June, 1983, petitioner was required to may the application fee of Rs. 8,667-50 ps. It complied with those demands by filling an application and remitting the application fee as abovementioned. By a subsequent letter dated 27th July, 1983, it was required to pay an amount of Rs. 38, 115-15 ps towards development charges and Rs. 10,000/- towards compounding fee under the proviso to Section 41 of the Act. That was followed by a Demand Notice dated 24th September, 1983. It was at that stage that the petitioner filed writ petition No. 9276 of 1983 seeking a declaration that the above demand letter dated 24th September, 1983 was arbitrary, illegal and unenforceable. That writ petition was admitted on 28th October, 1983. The amount covered by the demand was not recovered during the pendency of the writ petition. Subsequently, by another notice dated 5th May, 1987, development charges at the enhanced rate amounting to Rs. 1,19,702/- and the compounding fee of Rs. 10,000/- were again demanded. Petitioner then filed Writ Petition No. 7827 of 1987 seeking a declaration that the letter dated 5th May, 1987 was arbitrary, illegal and unenforceable. We have Heard these two writ petitions together.

2. Counsel for the petitioner submitted that the demand of development charges to the extent of Rs. 39, 115-15 ps was not supported by authority of law. He submitted further that there was no occasion for levy of compounding fee of Rs. 10,000/- under the proviso to Section 11 of the Act, since the petitioner had not committed any violation of the statute. Counsel submitted that as soon as the petitioner was required to apply for permission under Sections 13 and 14 of the Act it had complied with the requisition and had also remitted the application fee. Counsel submitted that the very fact that the petitioner commenced construction only after intimating the Medchal Gram Panchayat on 1st September, 1981 of its intention to construct is proof of its bona fides. Counsel also submitted that the petitioner was under an impression that engaging in construction in any area developed by the Corporation owned by the Government, which had collected expenses for developing the area into an Industrial Estate, did not require any further permission from the Hyderabad Urban Development Authority. On these submissions the petitioner urged that there was no conscious contravention of any provision of the Act and, therefore, there was no occasion for imposition or collection of the compounding fee u/s 41 of the Act.

3. As far as development charges are concerned, petitioner''s submissions are three-fold: (a) that there was no development undertaken by the Authority in the area concerned because the petitioner had purchased 8 plots in a developed Industrial Estate and that the development expenses had been met by the Corporation and that the same had been paid by the petitioner as a part of purchase consideration; (b) levy of development charges can be justified if the State Government had issued notifications u/s 59(f), (h) and (k) of the Act and

no such regulations having been issued, the levy of development charges was unsustainable; and (c) that such regulations as are contemplated by proviso to Section 13 of the Act as a precondition for imposition or levy of development charges under Sections 27 and 28 of the Act not having been promulgated there was no authority to levy the charges. Another submission was that ''development charges'' cannot be justified as ''tax'' under any of the entries in List II of 7th Schedule and, therefore, it has to be related to Entry 66 dealing with fee in respect of improvement of land, which is covered by Entry 18. Counsel submits that such a fee can be justified only if the Act contained some provision for rendering services in return for the fee, and in its absence the fee cannot be demanded or collected.

4. It is evident from the pleading that the area of the Industrial Estate in which the petitioner has put up factory building has been notified by the Government as part of the development area in exercise of its power u/s 13 of the Act. It is also clear from the provisions of Section 13(4) of the Act that permission in writing of the competent authority has to be obtained for any development in the development area. Section 14(2) of the Act deals with the obligation of every applicant to pay the prescribed fee. Petitioner has no case that the application fee which he paid on 9-6-1983 was in excess of the specified amount. ''Development'' is defined in Section 2(3) of the Act as meaning ''carrying out of building, engineering, mining or other operations in, on, over or under the land, or making of any material change in any building or land and includes re-development''. ''Building operations'' is defined in Section 2(d) as including ''re-building operations, structural operations of, or additions to buildings and other operations normally undertaken in connection with the construction of buildings''. Construction of a factory in the Industrial Estate, which is within the urban development area, is indisputably a "building operation" as defined in Section 2(d) of the Act and as comprehended by "development" u/s 2(e) of the Act. It is obvious that the petitioner had to seek and obtain permission for such developmental activities from the competent authority by reason of the provisions contained in Sections 13 and 14 of the Act. Section 27 of the Act deals with levy of the development charges and provides that "the Authority shall levy charges, hereinafter called the development charges, on the institution of use or change of use of land or building or development of any land or building for which permission is required under this Act, in the whole area or any part of the development area" within the maximum rates specified in Section 28. Section 28 deals with the rates of development charges. The first proviso imposes restriction to the effect that such rates shall not exceed Rs. 40,000/- per hectare in the case of development of land and Rs. 10/- in the case of development of building. The rates of development charges were prescribed by Rule 16 of the Rules framed under the Act. That rule is relatable to the rule making power of the Government u/s 58(2)(k) and (1) of the Act. Since levy of development charges and the rates have been prescribed by Rules made u/s 58 of the Act, absence of Regulations u/s 59(1)(k) of the Act may not be material at all. Petitioner has no case that the

maximum provided u/s 28 has been exceeded in its case.

5. It is clear from a reading of Section 27 that it is for the competent authority to levy development charges in respect of any building or other development activities in the notified area. That the petitioner did build or develop or undertake development operations within the notified area after the Act came into force by virtue of a notification issued u/s 13, is beyond dispute. It was obligatory on its part to seek permission u/s 14 of the Act. If it was obliged to seek permission to construct any building or undertake development operations, naturally and automatically levy u/s 27 would be attracted. We are, therefore, of the opinion that the petitioner having been obliged to obtain permission to construct any building or undertake development operations within the development area, was also obliged to pay development charges in accordance with the provisions contained in Section 27 and within the maximum limits prescribed in Section 28 of the Act.

6. The next question which we have to consider is the legislative competence in imposing the levy of development charges. Counsel submitted that the levy is not a tax on land as is comprehended under Entry 49 in List II of 7th Schedule. The said question came up for consideration on a number of occasions before this Court. We need only refer to the decisions relating to the Andhra Pradesh Urban Areas (Surcharge on Property) Act, 1958 (Act 13 of 1958), in Anantha Kondayya Setty and Another Vs. Commissioner, Kurnool Municipality and Another, and in Govinda Reddy v. Government of A.P., 1969 (1) An.W.R. 505 relating to Andhra Irrigation (Levy of Betterment Contribution) Act, 1955, which justified imposition of additional imposts as measures of tax on land covered by Entry 49 in List II of 7th Schedule. We may also refer to the decisions of the Supreme Court in H.R.S. Murthy Vs. Collector of Chittoor and Another, and in Ajoy Kumar Mukherjee Vs. Local Board of Barpeta, the Supreme Court upheld tax on land used as a market as a tax on user of the land and therefore ''tax on land'' falling within and relatable to Entry 49 List II. Additional tax or surcharge on land tax has ben justified as measures of taxation on land referable to Entry 49 List II. In Nizam Sugar Factory Ltd. Vs. City Municipality, Bodhan and Another, a Division Bench of this Court held that water tax levied on lands in Municipalities was a ''tax on land'' as provided in entry 49 List II. We should also advert to the well-known principle dealing with a Legislative Entry, viz., it shall be given widest amplitude in the process of interpretation and that a narrow and padantic approach will not be justified. Bearing this well-known and indisputable principle, we have to hold that the levy of the development charges under Sections 27 and 28 of the Act is a measure of tax on land referable to Entry 49 List II of 7th Schedule. We repel the contention of the petitioner that it is referable only to Entry 18 dealing with improvement of land and that that entry not being taxation entry, the levy can be justified only as ''fee'' under Entry 66 List II of 7th Schedule.

7. The next submission of the petitioner is that the compounding fee was

improperly levied because it had not contravened any of the provisions of the Act. Section 46 deals with composition of offences and enables compounding of offences made punishable by or under the Act. The facts which emerge from the pleadings do make out that the petitioner, though obliged to seek permission from the competent authority by filing an application and remitting the application fee u/s 14 of the Act, commenced and completed the construction without seeking any such permission. It did not pay the application fee; nor did it pay the development charges provided in Sections 27 and 28 of the Act as was required by the statute. Section 41 of the Act makes it clear that these are contraventions for which the offender can be penalised. In that event, it was perfectly competent for the respondent to enable the petitioner to choose the lesser of the evils in exercise of its power u/s 46 of the Act. Compounding fee has to be paid to avoid the more drastic consequence under the penal provisions of the Act and demolition of the building which was constructed without permission as authorised by Section 42 of the Act. From the pleadings of the petitioner it is clear that since it applied for permission and remitted the application fee, the authority relented and agreed to substitute a cash penalty instead of demolition which would have been the ordinary consequence of unauthorised construction. We are of the opinion that the imposition of compounding fee in the facts and circumstances of the case was wholly justified.

8. In this view of the matter, the only course open for us is to dismiss writ petition No. 9276 of 1983.

9. As far as Writ Petition No. 7827 of 1987 is concerned the only justification for imposition of enhanced levy of development charges is stated to be that during the pendency of the writ petition, development charges were increased statutorily by the issue of a notification under Rule 15 of the Rules read with Section 27 of the Act. Had the petitioner paid the amount as demanded on 24th September, 1983, its liability would have been to pay only at the old rate aggregating an amount of Rs. 38, 115-15 ps. The fact that the petitioner filed writ petition 9276/1983 shall not be a justification for demanding the enhanced rate of development charges aggregating an amount of Rs. 1, 19,702/-. It is an admitted fact that the development had already taken place by April, 1982. The obligation of the petitioner was to pay development charges in advance at the then prevailing rate. That was the demand which was made on it in the notice dated 29th April, 1983. The non-compliance with the demand and the commencement and completion of construction without permission were penalised by levying compounding fee of Rs. 10,000/-, which we have upheld. We do not find any justification in the demand of the respondent-authorities for the enhanced levy aggregating an amount of Rs. 1,19,702/- in respect of a development which was completed by April, 1982. Counsel for the respondents was not able to point out any provision which enabled the Corporation to demand the levy at the enhanced rates which came into force later than the date of construction or initial demand.

10. We, therefore, find that there is no justidication for the enhanced levy of Rs. 1,19,702/-. The amount which could be demanded was only Rs. 38, 115-15ps which was validly levied applying the rate which was prevailing at the time when the development was effected, and the demand was made. We therefore, quash the demand dated 5-5-1987 in excess of that amount.

11. The writ petition is allowed to that limited extent. Since the other points raised in this writ petition are the same which we have dealt with in W.P.No. 9276 of 1983, it is not necessary for us to reiterate them.

12. In the result, W.P.No. 9276/83 is dismissed and W.P.No. 7827/87 is allowed to the extent of limiting the demand of development charges to the amount of Rs. 38, 115-15ps and compounding fee of Rs. l0,000/-as was demanded on 24-9-1983. No order as to costs.

13. It is brought to our notice that even though Section 30 of the Act provides for constitution of a Tribunal to deal with appeals u/s 31 of the Act no such Tribunal has so far been constituted in spite of the passage of more than sixteen years after the Act was enacted. It is grossly improper and unjust that in spite of the fact that the statute provides an appellate remedy the citizens are denied effective opportunity of availing of that by reason of reluctance or refusal of the State Government to constitute the Tribunal. We, therefore, direct that the State Government shall constitute the Tribunal u/s 30 and appoint the personnel to man the same. This shall be done and the Tribunal shall be functional within a period not exceeding six months from the date of receipt of a copy of this order.