(1997) 03 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4959 of 1997

C.E. Cooper — APPELLANT

Vs

Municipal Commissioner of Hyderabad — RESPONDENT

Date of Decision : 25-03-1997

Acts Referred:
Hyderabad Municipal Corporation Act, 1956 — Section 238

Citation : (1997) 3 ALD 771 : (1997) 5 ALT 466 : (1997) 2 APLJ 80

Hon'ble Judges : T.N.C. Rangarajan, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : R.V. Kameshwaran, for the Appellant; Jyothi Kiran, for the Respondent

Judgement

Lingaraja Rath, J.—Mr. R.V. Kameshwaran, learned Counsel appearing for the petitioner had raised the simple question that a demand raised on 16-1-1997 for property tax for the period from 1-4-1981 to 31-3-1997 is bad in law as demand for tax for more than three years from the date of the demand cannot be raised. It is also argued that in the notice given to the petitioner mentioned Rs.4,031-50 as having been already paid by him whereas actually the petitioner has paid Rs. 5,131/-. The learned Counsel for the petitioner had placed reliance on a decision of this Court in W.P.No. 13700/1995 dated 10-7-1995 by a Division Bench of this Court wherein the Court held that arrears of tax has to be recovered within the time permissible under the Limitation Act.

2. Submission is advanced by Smt. Jyothi Kiran, learned Counsel appearing for the respondent that the amendment to Section 238 of the Hyderabad Municipal Corporations Act, 1955 (hereinafter referred to as ''Act'') by addition of proviso by Andhra Pradesh Act 3 of 1994 vests the Corporation with the power to recover the arrears under the A.P. Revenue Recovery Act and because of such provision, the law of Limitation would have no bearing on the question of recoverability of the tax. It is her submission that the recovery of arrears of tax can be made by reason of the proviso under the Revenue Recovery Act.

3. The submission is totally misconceived. The question was directly gone into in the cited case in W.P.No. 13700/1995 and was negatived holding that there is nothing in the proviso which dispenses with the application of the Limitation Act.

4. The proviso only vests power in the Corporation to reject the application of the Revenue Recovery Act for the purpose of collection of tax, which proviso was not available to the Corporation prior to the amendment. While the amendment gives a speedy method of recovery to the Corporation, yet the law of Limitation for determination of the amount recoverable is not done away with. Under the Revenue Recovery Act it is only that amount is collectable which is due. The amount due must not be barred by Limitation. In that view of the matter, we do not find any merit in the submissions raised on behalf of the respondent.

5. Admittedly, in the impugned notice, tax has been raised on 16-1-1997 for the period from 1-4-1981 till 31-3-1997. The limitation applicable is three years. The tax collectable would hence be for three years prior to 16-1-1997. Besides, if the petitioner has actually made payment of Rs. 5,131/-, rebate has to be given to her of that amount. The petitioner has attached to the Writ Petition a calculation sheet showing the payment of tax Rs. 5,131 /- by different cheques drawn on different dates on the Andhra Bank.

6. In the result, the impugned notice is quashed and the respondent is directed to calculate the tax due from the petitioner and issue demand notice accordingly after giving rebate of Rs. 5,131 /- if the petitioner has actually paid such amount. It is made clear that the amount of Rs. 5,131/- is shown to have been paid from 3-8-1990 till 8-1-1996 and the petitioner has also claimed the relief of quashing of the demand notice for the period from 1981 -1990 only. The petitioner would be eligible for relief accordingly. No costs.