
(2012) 01 AP CK 0034

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Second Appeal No. 20 of 2010

D.V.P. Prabhavathi

APPELLANT

Vs

Vijayawada Municipal Corporation

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Citation : (2013) 1 ALT 689

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : Laxmi Chaya, for the Appellant; G. Jhansi, S.C. for V.M.C., for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar

1. The property tax of the premises of the appellant situate within the limits of the Vijayawada Municipal Corporation (VMC, for short) at Rs. 2,809/- per half year was enhanced to Rs. 7,442/- per half year. Assailing the same, the appellant filed a petition before VMC to reconsider the enhancement of tax. VMC issued orders vide endorsement dated 24.03.2008 rejecting the request of the appellant. Aggrieved by the same, the appellant preferred CMA No. 139 of 2008 before the learned I Additional Senior Civil Judge, Vijayawada. The learned I Additional Senior Civil Judge dismissed the appeal. Consequently, this second appeal is preferred. Smt. G. Jhansi, learned Standing Counsel for the respondent-VMC primarily contends that the assessment enhancing half yearly tax from Rs. 2,809/- to Rs. 7,442/- is just and proper and that the same was determined by following rules. She contends that the assessment at Rs. 7,442/- per half year does not deserve to be revised. On the other hand, Sri A. Satyanarayana, learned counsel on behalf of the appellant contended that VMC did not abide by the orders of the II Additional Senior Civil Judge, Vijayawada in CMA No. 18 of 2007 and that the assessment at Rs. 7,442/- basing upon the previous assessment, therefore, is liable to be set aside.

2. The point for consideration is whether the assessment in question deserves to be set aside or not.

3. The former litigation in this case plays an important role in the determination of the case. On an earlier occasion, it would appear that CMA No. 18 of 2007 on the file of the II Additional Senior Civil Judge, Vijayawada was preferred by the appellant when tax was enhanced in respect of the property of the appellant. CMA No. 18 of 2007 was allowed on 30.10.2007. The demand notice, which was the subject matter of that case, was set aside. The case was remitted to the Municipal Commissioner for fresh consideration. While things stood thus, the special notice was issued by VMC on 27.12.2007 to the appellant herein. It is the contention of Sri A. Satyanarayana, learned counsel for the appellant that when the Municipal Commissioner did not reconsider and pass fresh orders with reference to the earlier occasion, in view of the orders in CMA No. 18 of 2007, assessment through special notice is impermissible and cannot be accepted.

4. The learned Standing Counsel for VMC submitted that the basis of the fresh assessment is on the plinth area of the constructed premises and not on the rental value of the premises and that the former assessment, therefore, has no bearing on the present case. Her contention is that when the enhancement was from Rs. 2,809/- to about Rs. 4,200/- at an increase of 50% on the earlier assessment, there is no justification on the part of the appellant to question the same. She further pointed out that there is no possibility for the Municipal Commissioner to reconsider the case of the appellant in accordance with the earlier judgment in CMA No. 18 of 2007, since the assessment in question was with effect from 01.04.2007, whereas the orders in CMA No. 18 of 2007 were pronounced on 30.10.2007, albeit the special notice was issued on 27.12.2007. The contention of the learned Standing Counsel for VMC is that the very CMA No. 18 of 2007 had become infructuous, when fresh assessment was made and that the orders in CMA No. 18 of 2007 have become non est, where the very appeal had become infructuous.

5. The learned Standing Counsel for VMC referred to earlier litigation with reference to G.O. Ms. No. 635, dated 27.08.2007 and G.O. Ms. No. 864 (MA & UD), dated 26.11.2007 and contended that the courts have upheld G.O. Ms. No. 864, which would permit the respondent-VMC to enhance tax at not more than 50%.

6. This Court disposed of C.M.S.A. No. 32 of 2009 on 24.08.2011. It was a connected case or a case of similar nature. The learned Standing Counsel for VMC placed reliance upon this decision to contend that the present appeal is covered by the judgment in C.M.S.A. No. 32 of 2009. The learned counsel for the appellant pointed out that the very basis for the assessment in the present case has become shaky, once the respondent failed to implement the judgment in CMA No. 18 of 2007. Admittedly, CMA No. 18 of 2007 relates to earlier assessment based on the rental value of the premises. It is the case of the Standing Counsel for VMC that the present assessment with effect from

01.04.2007 is on the plinth area basis and not on the rental value basis. At the same time, admittedly G.O.Ms. No. 864, dated 26.11.2007 permitted enhancement of tax at not more than 50% over and above the existing tax. While so, the admitted tax over the premises was Rs. 2,809/- per half year, which was enhanced to Rs. 7,442/- per half year, which is about 265% enhancement of the existing tax and not at 50%. The learned Standing Counsel for VMC argued as though the tax would be about Rs. 4,200/- at the rate of existing tax (at Rs. 2,809/-) and 50% thereon. The demanded tax did not tally with the formula, as provided by G.O. Ms. No. 864.

7. There is another aspect relating to the determination of the tax on the basis of the formula, as provided in G.O. Ms. No. 864. The upper ceiling was fixed at 50% added to the existing tax. Unless the existed tax is determined, the upper ceiling cannot be determined. While so, the earlier assessment was questioned by the appellant. CMA No. 18 of 2007 set aside the earlier assessment and directed the Municipal Commissioner to reassess the assessment. The reassessment has not been done in accordance with the directions in CMA No. 18 of 2007. G.O. Ms. No. 864 invariably reference to the earlier assessment. In that view of the matter, the orders in CMA No. 18 of 2007 cannot be considered to be infructuous, as the earlier assessment, by and large, forms the basis of the present assessment. I, therefore, agree with the learned counsel for the appellant that the assessment in the present case is invalid and is liable to be reassessed. Indeed, VMC is expected to follow G.O. Ms. No. 864 in reassessing the tax to be levied against the appellant, with the upper cap as 50% over and above the presently assessed tax (150% of the total tax in all).

8. As the very basis of the present assessment is bad, the assessment is liable to be set aside. The learned Standing Counsel for VMC inter alia has taken a technical stand that the appellant had not raised this issue as one of the grounds. The learned Standing Counsel is not correct. The grounds 1 to 3 overall raised the question of the earlier assessment and the orders in CMA No. 18 of 2007. I, therefore, agree with the contention of the learned counsel for the appellant. The second appeal accordingly is allowed. The impugned assessment is set aside. The VMC shall first comply with the directions passed in CMA No. 18 of 2007. VMC is at liberty to reassess the tax for the premises of the appellant with effect from 01.04.2007 as in the case of other assessees, after determining the tax for the premises in accordance with the judgment in CMA No. 18 of 2007 making the same the basis for the enhancement with effect from 01.04.2007. There shall, however, be no order as to costs. Advocate's fee is fixed at Rs. 4,000/-.