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(2012) 01 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition No. 847 of 2002

Hindustan Petroleum Corp. Ltd. APPELLANT

Vs

Municipal Corporation, Raipur and Another RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 141(2)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 173

Citation : (2012) 3 CGBCLJ 147

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Bhishma Kinger, for the Appellant; Kashif Shakeel, Advocate for the respondent No. 1 and Shri Shrijit C.S. Nair, Advocate for the respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks a relief to pay/ refund at once the entire amount of Rs. 4,91,468/- to the petitioner jointly or severally in case the money is extracted as a consequence of an understanding between both of them; to take up and co-operate in reprocessing the tax assessment and recovery proceedings a fresh in accordance with law against the person liable for the same; and quash the memo dated 27-11-2001 (Annexure-P/2), memo dated 14-2-2002 (Annexure-P/4), memo dated 18-3-2002 (Annexure-P/6), demand notice dated 27-3-2002 (Annexure-P/7) and the demand notice dated 27-3-2002 (Annexure-P/7-A). The facts, in brief, as projected by the petitioner, are that one Smt. Sunita Rani, widow of late Shri Narendra Nath Biswas was the owner of land bearing khasra No. 378/3, Patwari Circle No. 104 situated at ward No. 54, Ama Naka, Raipur on N.H. No. 6. Since 1964 the petitioner has been a lessee of said Smt. Sunita in respect of part of the aforesaid land at monthly rent of Rs. 475/-. On 21.11.1996 the said land lady died. Thereafter, by the decision order 17.06.1997, in revenue case No. 365-A/6 year 1996-97 the land was mutated in the name of respondent No. 2 Smt.

Uma Mitra, who is the daughter of deceased Sunita.

2. On 25.07.2000 (Annexure-P/1), a fresh lease deed came into existence between the petitioner and the respondent No. 2 and the monthly rent was fixed at Rs. 6000/-. As per clause 2(a) of the agreement, the municipal taxes are to be paid by the lessor i.e. the respondent No. 2. In spite of the said fact, on 27.11.2001 (Annexure P/2) a memo was issued by the respondent No. 1 against the petitioner and demanded certain taxed to which by letter dated 12.12.2001 (Annexure-P/3) the petitioner informed that the same could be realized from the respondent No. 2, who is the owner of the property in dispute, not from the petitioner. Thereafter, on 14.02.2002 (Annexure-P/4) the petitioner received a warning letter from the respondent No. 1 to which also the petitioner responded vide letter dated 26.02.2002 (Annexure-P/5). Again on 18.03.2002 (Annexure-P/6) the respondent No. 1 issued a letter stating that the respondent No. 2 had told them to recover the arrears of taxes from the petitioner, which would be adjusted against her account. Subsequently, on 27.03.2002 the respondent No. 1 sealed the petrol pump of the petitioner and on the same day, issued two demand bills u/s 173 of the Municipal Corporation Act, 1956 specifying the amount of taxes at Rs. 4,91,468/- for the period from 01.04.1997 to 31.03.2002. The demand bills are Annexure P/7 and P/7 A. On the basis of said notices, the petitioner deposited the entire amount in the form of three cheques vide Annexure P/8. After receipt of the said amount, the respondent No. 1 passed an order dated 27-3-2002 (Annexure-P/10) for removing the seal of the petrol pump.

3. Shri Kinger, learned counsel appearing for the petitioner, would submit that the rights and duties of the lessee and lessor are governed and controlled by the terms and conditions of the agreement Annexure-P/1. According to the said agreement, the respondent No. 2 is liable and duty bound to pay all the taxes. The respondent No. 1 ought to have realized the taxes from the respondent No. 2 i.e. the owner of the land, not from the petitioner.

4. Shri Kashif Shakeel, learned counsel appearing for the respondent No. 1, would submit that necessary notice and demand would be raised in accordance with law to the petitioner i.e. the tenant/occupier of the property in dispute.

5. Shri Nair, learned counsel appearing for the respondent No. 2/owner of the property in dispute, would submit that it is not necessary to give a notice before assessment of property tax to the owner or any other tenant except the occupier, as sub-section (2) Section 141 of the Chhattisgarh Municipal Corporation Act, 1956 (for short "the Act, 1956") provides for notice to occupier alone.

6. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

7. It appears that the land in dispute wherein the petrol pump of the petitioner is located belongs to the respondent No. 2. Clause 2 (a) of agreement executed between the petitioner and the respondent No. 2 provides that the landlord

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agrees to pay and discharge all existing and future Government, Municipal or other rents, cesses, rates, taxes and assessments payable in respect of the demised premises. Clause 2 (a) of the agreement reads as under:

2 (a) To pay and discharge all existing and future Government, Municipal or other rents, cesses, rates, taxes and assessments payable in respect of the demised premises and the same shall not be recoverable from the lessee.

8. It is evident that the respondent No. 2 landlord wants to avoid payment of property tax and, as such, the contention of the learned counsel appearing for the respondent No. 2 that the demand has to be raised to the occupier of the land in dispute i.e. the petitioner is contrary to the provisions of law. The contention of the learned counsel for the respondent No. 2 is noticed to be rejected, as it appears that the learned counsel has completely ignored the provisions of sub-section (1) of Section 141 of the Act, 1956.

9. On bare perusal of the documents filed herein, it appears that a memo was sent to the respondent No. 2/land lady on 6-2-2001 (Annexure-R/1-1) by the Revenue Officer of the respondent No. 1 for payment of property tax of the land wherein the petrol pump is located. Thereafter, what step has been taken is not clear except it was stated in the letter dated 18-3-2002 (Annexure-P/6) addressed to the Senior Regional Manager of the petitioner that the land owner had informed to the Revenue Officer of the respondent No. 1 that she is the lessor of the land only and the petitioner company is responsible for payment of property tax of movable/immovable properties and the amount would be adjusted between the lessor and the petitioner company.

10. On perusal of cheque receipts, it appears that the payments have been made towards property tax of Jain Auto Service. Thus, it is not clear as to whether demand notice was issued for payment of property tax of the land or of the entire building including the building constructed thereon and the petrol pump situated over there.

11. Section 132 of the Act, 1956 deals with taxes to be imposed under the Act, 1956. Sub-section (1) (a) of Section 132 provides that a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138.

12. Sub-section (1) (a) of Section 132 of the Act, 1956 reads as under:

132(1) (a) a tax payable by the owners of buildings or lands surfeited within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138;

13. Section 135 of the Act, 1956 provides for the rate of property tax.

14. Section 141 of the Act, 1956 reads as under:

141. Responsibility for payment of property tax.-(1) The property tax charged

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levied upon any land or building u/s 135, shall be paid primarily by the owner thereof.

(2) The property tax charged and levied on the owner may also be recovered from any occupier of the land or building under the circumstances, in the manner and to the extent as is provided in this Act or may be provided under the bye-laws or rules made thereunder.

15. Bare perusal of entire provisions of Section 141 of the Act, 1956, it is clear that the property tax is charged and levied upon any land or building primarily by the owner. If there is any difficulty in collecting the tax from the owner, the same may be recovered from the occupier of the land also.

16. In the case on hand, admittedly the land was let out to the petitioner by the respondent No. 2''s predecessor-in-title. In this regard an agreement was executed between the land uwn(sic) and the petitioner. Clause 2 (a) of the agreement provides for payment of all existing and future Government, Municipal or other rents, cesses, rates, taxes, etc.

17. From the memos and demand notices annexed herewith, it is not clear as to whether the property tax was imposed on the land or on the building or it was imposed on both land and building. Thus, the respondent No. 1 authorities are required to issue a proper notice specifying and apportioning the liability of payment of property tax. It appears that no effort has been made on the part of the respondent No. 1 to recover the property tax in respect of the land in dispute from the respondent No. 2. Under the agreement, it was the responsibility of the respondent No. 2. In the event the respondent No. 1 fails to collect the property tax of the land and building, proper steps should be taken under the provisions of law, which, it appears, have not been done in the case on hand. The primary liability of the owner of the land has completely been ignored.

18. The respondent No. 1/Municipal Corporation without issuing a demand notice under the provisions of Section 141 of the Act, 1956 to the owner, issued notices to the petitioner and directed the petitioner to deposit the taxes.

19. In view of foregoing, the memo dated 27-11-2001 (Annexure-P/2), memo dated 14-2-2002 (Annexure-P/4), memo dated 18-3-2002 (Annexure-P/6), demand notice dated 27-3-2002 (Annexure-P/7) and the demand notice dated 27-3-2002 (Annexure-P/7-A) are quashed. However, the respondent No. 1/ Corporation is directed to issue fresh notice to the land owner, tenant and occupier of the property in dispute for proper assessment of property tax, in accordance with law and after receipt of the reply from the aforesaid persons, the assessment can be done with effect from the date it became due. It is also made clear that the tax amount collected so far, may not be returned back to the petitioner; however, the same can be adjusted after collecting the tax, in accordance with law, as aforestated, from the respondent No. 2 as well the petitioner, as the case may be. In the result, the writ petition is allowed to the extent indicated above, but leaving the parties to bear their own costs.

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