(2014) 06 KAR CK 0122

In the Karnataka High Court

Case No : Writ Petition No. 2175 of 2014 (LB-Res)

Hotel Poonja International Private Limited — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 114

Citation : (2014) 4 KarLJ 463 : (2014) 4 KCCR 3553

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : K.M. Nataraj, Senior Counsel for Cyril Prasad Pais, Advocate for the Appellant; K.V. Narasimhan and Vishwajith Shetty, Advocate for the Respondent

Final Decision : Allowed

Judgement

L. Narayana Swamy, J.—Annexure-A letter dated 23-12-2013 issued to the petitioner by the 3rd respondent on an application made by the petitioner for change of khatha in respect of property bearing Sy. Nos. 597-1 A, 278/2A2 and T.S.R. Nos. 217/A, 216/A2 to an extent of 0-79.83 and 0-00.17 acre on the ground that the petitioner has not paid the tax to the tune of Rs. 45,18,272/-. The prayer made by the petitioner is to quash the said endorsement issued on the ground that such endorsement cannot be issued for want of payment of tax. To substantiate his submission he has referred to Section 112-A(4) of the Karnataka Municipal Corporations Act, 1976 which contemplates that the Assessing Authority based on such inspection and information collected, shall assess the property tax and send a copy of the order of assessment to the owner or occupier concerned for payment and this provision does not give any authority or power to the respondent to deny change of khatha. In this regard, learned Senior Counsel has referred to para 4 of the unreported judgment of this Court dated 21st July, 2008 in the case of Janapriya Engineers Syndicate (India) Private Limited, Bangalore v. Bruhat Bangalore Mahanagara Palike, Bangalore and Others 2010(1) Kar. L.J. 80, in W.P. No. 5035 of 2008. It reads thus: "4.

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Having heard the learned Counsel for the parties, perused pleadings and the orders impugned, the 1st question for decision making is, whether Section 114 of the Act permits a demand for improvement charges or betterment charges as a precondition to registration of khata of immovable properties? The answer to this question is no more res integra in the light of the decision in Asian Institute of Rural Development Vs. Bangalore City Corporation, , following the decision in the case of Kamal Chopra v. Commissioner, Corporation of the City of Bangalore, ILR 1988 Kar. 2416 laying down the law that once the party produces necessary documents to change the khata, duty is cast on the officials of the respondent to change the khata and comply with the provisions of Section 114 of the KMC Act. Therefore, the endorsement Annexure-B to the extent that it imposes a precondition for the payment "melpatu Vechcha", to consider the petitioners'' application Annexure-A for registration of khata, is without authority of law, arbitrary and is unsustainable".

Learned Counsel appearing for the respondent-Corporation prays for dismissal of the writ petitions since the petitioners were in arrears of tax to the tune of Rs. 45,18,272/- and the respondent has no other alternative way except denying change of khatha to recover the tax amount in due and he sought for time to make submission in this regard. 2. I have gone through Annexure-A denying change of khatha for nonpayment of tax. Learned Counsel for the petitioner submits that the petitioner has paid the tax under Self Assessment Scheme and if the respondent found that he is still due, for such due the respondent cannot deny change of khatha as per the judgment cited supra. In the light of the judgment cited supra, the impugned endorsement cannot be sustained. Accordingly writ petition is allowed. The impugned endorsement bearing No. MaNaPa/Kanda.V/R 11803/CR1778/2013-14/A1, dated 23-12-2013, Annexure is quashed. The Corporation is directed to effect change of Khatha as per Annexure-B application dated 5-12-2013. Further, it is directed in case the respondent found the petitioner has to pay arrears of tax or excess tax an endorsement shall be issued to that effect and the petitioner is directed to pay the tax within the time stipulated therein. If any demand is made for production of documents, the petitioner shall produce the same for the purpose of assessment of tax.

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