(1995) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 742, 747, 748 and 749 of 1995

Patel and Co. and Others — APPELLANT

Vs

R.D.O. and Another — RESPONDENT

Date of Decision : 28-02-1995

Acts Referred:

Citation : (1995) 2 ALT 255 : (1995) 1 APLJ 313

Hon'ble Judges : S.S. Ahmad, C.J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : P.V. Ravindra kumar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Venkatarama Reddi, J.—In these four Writ Petitions, the Demand Notices dated 1-6-1994 issued u/s 4 of the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 (for short the ''Act'') for the Faslis 1403 and 1404 (corresponding to the years 1993 and 1994) have been challenged.

2. The petitioners own non-agricultural lands in Khammam Town wherein they carry on business in timber. Identical notices were issued on 1-6-1994 under the caption ''Revised Demand Notice'' in Form No.II as prescribed by Rule 4 of the Andhra Pradesh Non-Agricultural Lands Assessment Rules (for short the ''Rules''). For the Fasli 1403, the amount representing the difference between the previous assessment and the revised/enhanced assessment has been demanded. For the Fasli 1404, demands have been raised for the first time. The amounts demanded are Rs. 1,655-00 in W.P. No. 742 of 1995, Rs. 2,693/- in W.P. No. 747 of 1995, Rs. 2,209-00 in W.P. No. 748 of 1995 and Rs. 2,386-00 in W.P. No. 749 of 1995. One of the contentions raised in the Writ Petitions is that the demand of ''Cess'' under the Act is not justified for the reason that ''Cess'' is being collected under the Municipalities Act in respect of the same land. No serious attempt has been made to substantiate this plea. What has been demanded under the impugned notices is not ''Cess'' but non-agricultural land tax, assessed under the Act.

Obviously, the factum of collection of ''cess'' by the local bodies does not come in the way of tax being levied on the non-agricultural lands situate within the municipal or Gram Panchayat Areas. The nature and basis of imposition of tax under the Act and Municipalities Act are basically different from one another.

3. The main contention advanced in the Writ Petitions is that the assessment has been done and demand notices were issued without giving an opportunity of filing objections to the proposed assessment and therefore the principles of natural justice are violated. We find force in this contention. The petitioners specifically averred in the affidavit fifed in support of the Writ Petition that no prior notice was given and the petitioners were denied the opportunity of filing their objections. The learned Government Pleader who took notice on 20-1-1995 and appeared in the case could not contradict this fact. That apart, a perusal of the impugned notices themselves indicate that no such opportunity was afforded to the petitioners before raising the demands, thereby giving a go-bye to the procedure laid down under the Act and the Rules and the principles of natural justice. The demand notice has been issued as if it was a product of a mere ministerial act. The authorities have obviously overlooked the fact that the statute confers on them quasi-judicial powers of assessment and revision and such function has to be discharged in conformity with the principles of natural justice which implies giving of opportunity to the petitioners to have their say and to hear them if the circumstances of the case warrant. Whether it be a new assessment or revised assessment, the Act read with the rules contemplates a decision to be reached in accordance with the principles of natural justice. If it is a fresh order made for the first time, the Mandal Revenue Inspector who is the primary assessing authority has to make an enquiry as contemplated by Section 4 read with Rule 3 of the Rules and for that purpose, he should issue a notice, a proforma of which, has been prescribed by die said Rule. If it is a revised assessment, proviso to Section 6 of the Act itself enjoins that an opportunity of making representation should be afforded to the assessee. Bearing in mind this legal position, we have no doubt that the impugned demand notices have been issued in violation of the principles of natural justice. The revised demand notices are therefore, liable to be quashed.

4. There is another infirmity we have observed in the revised notices that are assailed in these Writ Petitions. The notices bear the office seals of the two Officers, i.e., the Revenue Divisional Offices'', Khammam and the Mandal Revenue Inspector, Khammam (Urban). Some Officer has signed in between the two seals. It is not known whether the Revenue Divisional Officer issued the demand notices or the Mandal Revenue Inspector. The fact remains that the demand notices have been issued in a very casual fashion without bearing in mind the various provisions of law which have been interpreted, reiterated and applied by this Court in a catena of decisions. It has been laid down time and agair that the power to revise the assessment is vested with the Revenue Divisional Officer, but not with the very same authority who made the first assessment or who is empowered to make the assessment in the first instance.

For the Fasli 1403, the difference between the tax already assessed and the tax now determined is sought to be demanded; it therefore, amounts to revision of assessment which could only be done by the Revenue Divisional Officer u/s 6. Of course, if the Revenue Divisional Officer passes an order revising the assessment after observing the principles of natural justice, the Mandal Revenue Inspector can issue a consequential demand notice. But the substantive power of revision of assessment is not vested with the Mandal Revenue Inspector. Coming to Fasli 1404, demands having been made for the first time, it is only the Mandal Revenue Inspector who is competent to make an assessment and determine the tax and issue demand notice. In either case, i.e., whether it be a case of initial assessment or revised assessment it is the imperative duty of the Mandal Revenue Inspector or the Revenue Divisional Officer as the case may be to observe the procedure prescribed by the Act and the Rules and to act in conformity with the principles of natural justice. In the instant case, the elementary pre-requisites for making a valid assessment have been thrown tc winds for no apparent reason.

5. In the light of the above discussion, the impugned demand notices are quashed. We give liberty to the competent authority i.e., the Revenue Divisional Officer, Khamrnam in regard to Fasli 1403 and the Mandal Revenue Inspector in regard to Fasli 1404 to initiate fresh proceedings for the determination of the non-agricultural land assessment keeping in view the observations made above. Pending fresh assessment, the tax already collected need not be refunded.

6. The Writ Petitions are accordingly allowed. We consider it a fit case to award costs. Accordingly we do so. Advocate''s fee is fixed at Rs. 250-/- in each case.