(1998) 07 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15459 of 1994

Sri Satyanarayana Talkies APPELLANT

Vs

Commissioner, Narasaraopet Municipality RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:
Andhra Pradesh Municipalities Act, 1965 — Section 85

Citation : (1998) 5 ALT 758

Hon'ble Judges : Y.V. Narayana, J;Motilal B. Naik, J

Bench : Division Bench

Advocate : Darsi Sudhakara Rao, for the Appellant; E. Sambasiva Pratap, SC, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Municipality.

2. Writ of Certiorari is sought pertaining to the record relating to demand notice No. 1307 dated 18-7-1994 issued by the Narasaraopet Municipality and seeks to quash the same declaring it as void in the set of circumstances stated by the petitioner.

3. The petitioner, who is a resident of Narasaraopet Town, owns a theatre situate in Narasaraopet town. Property tax was levied @ Rs. 956/-per year upto the assessment year 1981-82. According to the petitioner, the Narasaraopet Municipality effected a general revision of property tax on the assessee from 1-10-1981 and revised the property tax payable by the petitioner and fixed at Rs. 3374-80 per half year.

4. While so, an association, in the name and style of ''the Narasaraopet Rate Payers Association'', filed a suit in O. S. No. 30 of 1982 on the file of the Additional Subordinate Judge, Narasaraopet alleging that the existing tax has been increased in an arbitrary and most high-handed manner and increased upto

nearly 400% without following any established procedure or guidelines. The said Association prayed for an injunction against the enhanced tax levied and sought to be collected. Initially the Court below granted injunction in favour of the Association. The petitioner got himself impleaded as one of the defendants supporting the case of the plaintiff therein. However, there was no injunction in his favour obtained from the said Court. Neither he paid the enhanced tax, nor the Municipality made efforts to collect the tax so enhanced.

5. However, the suit filed by the Association in which the petitioner was one of the defendants supporting the cause of the Association, was dismissed by judgment dated 22-3-1994.

6. Thereafterwards, according to the petitioner, the respondent-Municipality issued the impugned demand notice dated 18-7-1994 raising a demand of Rs. 58,032 for the period commencing from the year 1981-82 till the date of issue of the said notice i.e., 18-7-1994, i.e., for a period of nearly 13 years against which the present writ petition is filed.

7. Sri D. Sudhakar Rao, the learned Counsel for the petitioner firstly contended that the claim of the respondent is barred by limitation inasmuch as when the initial revision is made in the year 1981-82i.e., on 1-10-1981 revising the property tax and fixing it at Rs. 3374-80 per half year, seeking to demand the tax to the tune of more than Rs. 58,000/- after 13 years is not permissible and hit by limitation. It is secondly contended that despite there being no injunction in favour of the petitioner, the respondent-Municipality having kept quiet for all these years and having not taken steps to do so, it is not open to the Municipality to reopen the issue and seek to recover the tax. Thirdly it is contended that the initial revision in property tax is on 1-10-1981; the respondent-Municipality has not implemented and collected the revised tax from, the petitioner, it is deemed that the Municipality has waived its claim and therefore pleaded that at any stretch of imagination the demand cannot be sustained and the Writ Petition has to be allowed.

8. No counter has been filed on behalf of the respondent-Municipality despite notice being served. However, on a submission made by the learned Counsel for the petitioner Sri Sudhakar Rao, this Court is called upon to examine whether the submissions made on his behalf are justifiable.

9. Insofar as the first submission made by the learned Counsel for the petitioner is concerned, that is, the claim is barred by limitation, we do not think that such a plea could be available to the petitioner. It may be noted that this petitioner is a party to the civil suit filed by the Association in O.S. No. 30 of 1982 having got himself impleaded as one of the defendants in the said suit. That suit was dismissed on 22-3-1994. Having been a party to the suit as one of the defendants supporting the cause of the plaintiff therein and having seen the result of the suit, it is not now open to him to say that the claim of the respondent-Municipality is barred by limitation. In fact, after dismissal of the suit

the revised notice claiming more than Rs. 58,000/- for all these years has been issued afresh calculating the difference of property tax per year and therefore we are of the view that the demand is not hit by limitation. 10. Coming to the second limb of submission that having not acted upon the revision of tax for all these years by the Municipality, the contention that the Municipality has waived its claim is also not acceptable to us. Since the Municipality has been agitating on this aspect contesting the matter in the civil Court in a suit filed by some of the property owners, the petitioner also being one of the parties to the suit and that being the factual position, we are1 afraid that the submission that the Municipality has not taken recourse and has waived its right is not acceptable. Since the matter was agitated in the civil Court on the revision of the property tax, it cannot be understood to say that the Municipality has not taken steps to recover the demand issued pursuant to the revision of taxes.

11. Though the learned Counsel for the petitioner contended that the initial revision is in the year 1981 and the respondent has not implemented the order upto 1994 and as such the action now sought to be taken amounts to arbitrary exercise of powers, we do not see any arbitrariness in the orders passed by the respondent-Municipality. Since the petitioner is a party to all the proceedings, he is well aware of the revision and the contents of the suit and the judgment and decree of the suit, and so it is not open to him to make all these allegations in the Writ Petition filed under Article 226 of the Constitution of India. Since the competent civil Court has gone into the merits of the case on the basis of the oral and documentary evidence and the suit has been decided, we do not think that we should examine the validity of the notice in this writ petition under Article 226 of the Constitution of India.

12. Sri D. Sudhakar Rao, the learned Counsel for the petitioner stated that since the amount involved is a huge sum, some time may be granted to the petitioner to clear off the demand pursuant to the impugned notice. We are inclined to accept this request made on behalf of the petitioner and we permit the petitioner to pay the demand as raised in the impugned notice in six (6) monthly instalments commencing from 1-9-1998.

13. Subject to the above direction, the Writ Petition is dismissed. No costs.

