

*THE HONBLE SRI JUSTICE V.V.S. RAO

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+WRIT PETITION No.25483 of 1996

%Dated 10-07-2003

P.RAMACHANDRAIAH.
..PETITIONER.

VERSUS

\$ THE COMMISSIONER,
HINDUPUR MUNICIPALITY,
HINDUPUR, ANANTHAPUR.
..RESPONDENT.

! Counsel for Petitioner:SRI.R.V.SUBBA RAO.

^Counsel for Respondent:SRI.K.M.MAHENDER REDDY,
S.C. FOR MUNICIPALITY.

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? Cases referred

1. 1. AIR 1999 SC 22.

C/8.

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25483 OF 1996

ORDER:

The petitioners are owners of agricultural land admeasuring Acs.8.35 in S.Nos.486/2 and 487/1 of Hindupur. They made an application for conversion of the agricultural land to non-agricultural land which was duly granted. Later, they submitted a lay out dividing the land into eighty plots. Same was approved in 1992. As per municipal lay out rules petitioners donated land earmarked for roads, parks and for community purpose to the respondent Municipality. The respondent issued a demand notice dt.24.9.1996 under Rule 29(1) of Taxation Rules contained in Schedule II of A.P.Municipalities Act, 1965 (for short, the Act) read with Section 130 of the Act calling upon the petitioners to pay an amount of Rs.97,512/- towards vacant land tax. The petitioners were also informed that if they fail to pay the amount, they will be prosecuted in accordance with Rule 30(2) of the Taxation Rules. Assailing the said demand notice, present Writ Petition is filed contending that the same is not preceded by special notice as required under Rules 10 and 11 of Taxation Rules.

The respondent filed a counter affidavit denying the allegations made by the petitioners. The respondent states that eighty special notices bearing Nos.11601 to 11680 were issued to concerned owners of the plots, and that they have received notices and in spite of the same they did not pay the amount. It is also stated that the petitioners have failed to pay the amount for the second half of assessment year of 1994-95, and first half of assessment year 1996-97.

In the reply affidavit filed by the petitioners, the receipt of notices bearing Nos.11601 to 11680 is denied. It is further stated

that though eighty plots were laid and the plots were sold, petitioners are continued to be owners. Along with the reply affidavit, a bunch of notices issued under Rules 10 and 11 of Taxation Rules are also placed before this Court. These notices were issued on 10.10.1996 and therefore the impugned notice dt.24.9.1996 is clearly in violation of law.

It is no doubt true that it is competent for the respondent to assess vacant land to tax and collect the same. Before doing so, the respondent is required to follow the procedure contemplated under Rules 10 and 11 of the Taxation Rules. It is necessary to extract Rules 10(1) and 11 of the Taxation Rules, which read as under.

10. (1) When assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the Commissioner shall give public notice stating that revision petitions will be considered, if they reach the municipal office within the period of sixty days from the date of such notice in the case of the Government or a railway administration or a company and of, thirty days from the said date in other cases. The notice shall be affixed to the notice board of the municipal office and on the same day be published in the municipality by beat of drum:

Provided that in every case where there is an enhancement in the assessment, the Commissioner shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned:

Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso, the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice.

(2)

11. In every case which between one general revision and another, the Commissioner assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the Commissioner shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within sixty days from the date of service of such notice in the case of the Government or a railway administration or a company, and within thirty days from the date in other cases.

A plain reading of the same would show that if there is any assessment of property tax between one general revision and another, the Commissioner is required to issue special notice intimating the owner who is liable to pay property tax and then only it is competent for the authority to issue demand notice under Rule 29(1) of the Taxation Rules read with Section 130 of the Act. In view of this, the submission made by the learned

counsel for the petitioners appeals to this Court.

Sri K.M.Mahender Reddy, learned Standing Counsel for the respondent Municipality brought to my notice Rule 12 of the Taxation Rules and contends that the petitioner has effective alternative remedy of filing revision before the Commissioner, and therefore Writ Petition is not maintainable. Rule 12 of the Taxation Rules relied on by the learned Standing Counsel for the respondent reads as under.

12. Any person may, at any time not being less than thirty days before the end of a half-year move the Commissioner by revision petition to reduce the tax to which he is liable for the forthcoming half-year on the ground that the capital value or the annual rental value of the property in respect of which the tax is imposed has decreased, since the assessment of the property was last made or revised.

A reading of the same would show that remedy of revision is available against any assessment of property if a person seeks reduction of tax, which he is liable for half of the year. In this case, this Court is convinced that for the first time the petitioner is being assessed and therefore Rule 12 of the Taxation Rules has no application. In any event, applying the Rule laid down by the Supreme Court in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*^[1] I have overruled the objection. The learned counsel for the respondent contends that as there is no revision of tax in Hindupur Municipality, notice dt.10.10,1996 was issued and demand was issued in relation to arrears payable by the petitioners for the assessment years 1994-95, 1995-96 and 1996-97. This submission is also belied by the very averment made in paragraph-5 of counter affidavit. It is stated therein that said notices bearing Nos.11601 to 11680 were issued to land owners who received the same. If the land owners received notices who are admittedly liable to pay property tax, I fail to understand as to how respondent could come to a conclusion that for the second half year of 1994-95 and first half of assessment to 1996-97, the petitioners failed to pay the amount. This falsifies the case of respondent. Further, even notices dt.10.10.1996 bearing Nos.11641 to 11648 would show that the petitioners are being assessed property tax for the first time and therefore special notices were issued. As the impugned notice was issued without following procedure contemplated under Rule 11 of the Taxation

Rules, the impugned demand notice cannot be sustained and the same is liable to be set aside.

Accordingly the Writ Petition is allowed and the impugned notice dt.24.9.1996 is set aside.

(V.V.S.RAO, J)

10.7.2003

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[\[1\]](#) AIR 1999 SC 22.