

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND THIRTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

**CIVIL MISCELLANEOUS SECOND APPEAL Nos.19, 20,
21 and 22 of 2012**

CMSA Nos.19 and 22 of 2012:

BETWEEN

K. Rajeshwar Rao.

...APPELLANT

AND

Greater Hyderabad Municipal Corporation, Hyderabad.

...RESPONDENT

CMSA Nos.20 and 21 of 2012:

BETWEEN

K. Satyanarayana Rao.

...APPELLANT

AND

Greater Hyderabad Municipal Corporation, Hyderabad.

...RESPONDENT

Counsel for the Appellants: MR. P. CHANDRASEKHARA REDDY

**Counsel for the Respondents: MR. C. DAMODAR REDDY
SC for GHMC**

**The Court made the following order:
COMMON JUDGMENT:**

All the appeals are substantially between the same parties relating to the same property and arising out of appropriate tax assessments made by the respondent corporation under the Hyderabad Municipal Corporation Act, 1955.

2. The appellant in CMSA.Nos.19 and 22 of 2012 is the brother of the appellant in CMSA.Nos.20 and 21 of 2012 and each of the aforesaid two sets of appeals relate to separate properties of respective brothers. The dispute, which was subject matter of all these proceedings, relates to the enhancement of property tax proposed by the respondent corporation under special notice dated 22.02.2012, with respect to each of the premises, given to the respective owner. By the aforesaid notice, the gross annual ratable value was revised and accordingly, the impugned tax applicable was revised by enhancing the same with effect from 01.04.2009. The appellants gave objections whereupon a detailed hearing was conducted and the Deputy Commissioner, Circle No.8, GHMC, disposed of all the said objections under his proceedings dated 24.11.2010 upholding the special notice dated 22.02.2010. Questioning the same, the appellants herein filed municipal appeals, being M.A.Nos.252, 217, 218 and 253 of 2010, respectively before the Chief Judge, City Small Causes Court, Hyderabad, which is the appellate authority under the HMC Act.

All the said four appeals were disposed of by similar but separate orders whereby the appellate authority upheld the contention of the appellants that the retrospective effect given to the enhanced property tax and its recovery under the special notice dated 22.02.2012 is not sustainable. Consequently, the appellate authority set aside the impugned property tax confirmation letters and also further directed that the respondent corporation shall be entitled to recovery of tax at the enhanced rate with effect from 22.02.2010.

3. Aggrieved to the extent of the said directions, the present appeals are filed on the substantial questions of law under para 2 of the grounds of respective appeals. All the appeals were admitted, accordingly, by this Court

on 24.07.2012 and have since been coming up for hearing.

4. Heard learned counsel for the appellants and the learned counsel for the respondent corporation.

5. The primary contention raised by the learned counsel for the appellants is that there cannot be recovery of enhanced tax under the special notice dated 22.02.2010. The enhancement of property tax effected under the special notice is with retrospective effect i.e. from 01.04.2009 and the lower appellate Court having held that the retrospective effect cannot be given to the special notice seeking recovery of enhanced tax with effect from 01.04.2009, ought not to have granted liberty to the respondent to recover the enhanced tax from 22.02.2010.

6. Learned standing counsel for the respondent corporation submits that the enhancement of tax is clearly based upon G.O.Ms.No.635 MA & UD Department dated 27.08.2007, which is in turn based on Area Based Unit Rate System. The enhancement, therefore, according to the learned standing counsel has scientific basis and is uniformly adopted throughout the city.

7. The objections of the appellants before the respondent corporation as well as before the lower appellate Court were, primarily, with respect to the action of the respondent corporation in seeking to recover the enhanced property tax with retrospective effect.

The proceedings of confirmation of the said demand by the Deputy Commissioner dated 24.11.2010 rejected the said contentions of the appellants by upholding the retrospective recovery of enhanced tax. The said proceedings clearly states that from 01.04.2007 the appellants are entitled to pay at the pre-revised rate and from 01.04.2009 at the revised rate with penal interest. The lower appellate Court has rightly considered the said aspect and has rightly declared that retrospective effect from 01.04.2009 cannot be given to the said enhancement under the special notice dated 22.02.2010. The order of the lower appellate Court to that extent, having not appealed

against by respondent corporation, therefore, protects the appellants and the appellants also have no grievance. So far as the direction in the last sentence in para 10 of the impugned order is concerned, the enhanced tax is permitted to be recovered with effect from 22.02.2010, which is the date of special notice enhancing the tax. Thus, the lower appellate Court has taken off the retrospective effect under the said special notice and directed that it would operate only prospectively from the date of notice.

8. I have seen the copy of the special notice issued to each of the appellant, copy of which was placed before this court by the learned standing counsel and I have also seen the details furnished by the learned counsel for the appellants with respect to each appellant showing payment of tax up-to-date so far as appellant in CMSA.Nos.19 and 22 is concerned and such payment up to 2010, so far as appellant in CMSA.No.20 and 21 is concerned. Since the order of the lower appellate Court gives rise to some ambiguity with respect to the period from which the revised tax is to be recovered, it is just and necessary to clarify the said aspect.

9. Accordingly, these appeals are disposed of by holding that the revised tax payable by the appellants shall be effective only from the date of special notice i.e. 22.02.2010 and arrears, if any, in that respect may be paid by the respective appellant on or before 31.03.2013 for which no penalty or interest shall be levied by the respondent corporation. In the event of amount of arrears remaining due after 31.03.2014 from any of the appellant, the respondent corporation shall be free to recover arrears together with interest and penal charges as per rules. In view of the said limited grievance of the appellants having redressed, it is not necessary to consider the questions of law independently.

10. So far as the complaint of the appellants with regard to mutation is concerned, the respondent corporation itself stated before the lower appellate Court that mutation is already effected before passing the adjudicatory order dated 24.11.2010. However, since the grievance of the appellants remains, the respondent corporation is directed to consider and pass appropriate

orders with regard to mutation, as sought for by the appellants, if not already done.

The appeals are, accordingly, disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 31, 2013
DSK