HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)
TUESDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE
PRESENT

THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO: 28103 OF 2022

Between:

Sri. J.Lakshmipathi Rao, S/o Bala Koteswara Rao, Occ. Retired Employee, R/o.H.No.9-53, Venkateswara Nagar Malkajgiri, Hyderabad

...PETITIONER

AND

1. The State of Telangana, Rep by Prl.Secretary, MA and UD department, O/o at Secretariat Premises, Near Tank Bund, Hyderabad-500029.
2. The Greater Hyderabad Municipal Corporation, Rep by its Commissioner, O/o GHMC office, near Tank bund, Hyderabad-500063
3. The Deputy Commissioner, GHMC, Malkajgiri Circle, Circle No.28 Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ, or Writs, Order or Orders more particularly in the nature of mandamus thereby declaring the action of the Respondents herein demanding the property tax notice No.1 dated 06.09.2021 and No.Tax/MKJ/GHMC/21-22 dated 18.10.2021 including penalty in respect of premises bearing NO.25- 40/73/2A(PTIN NO.1170605142), East Anandbagh, Malkajgiri, Malkajgiri Circle-28, GHMC without considering the representations dt.22/10/2021, 20/12/2021 made by the Petitioner, insisting the payment of the property tax the as being, illegal, arbitrary and violative of Article 14 of the constitution of India and consequently set a side property tax notice No.1 dated 06/09/2021 and No.Tax/MKJ/GHMC/21-22 dated 18/10/2021 including penalty in respect of premises bearing NO.25-40/73/2A(PTIN NO.1170605142), East Anandbagh, Malkajgiri, Malkajgiri Circle-28, GHMC and consider the petitioners representation dt.22/10/2021,20/12/2021 including restoration of his H.NO. 25-40/73/3, East Anandbagh, Malkajgiri, Malkajgiri Circle-28, GHMC

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings in pursuance demanding the property tax notice No.1 dated 06/09/2021 and No .Tax/MKEGHMC/21-22 dated 18/10/2021 including penalty in respect of premises bearing NO.25- 40/73/2A(PTIN NO.1170605142), East Anandbagh, Malkajgiri, Malkajgiri Circle-28, GHMC

Counsel for the Petitioner:SRI. VSRMV PRASAD SANAKA

Counsel for the Respondents: GP FOR MCPL ADMN URBAN DEV

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.28103 of2022

ORDER:

The writ petition is filed seeking the following relief:

"... to issue Writ, or Writs, Order or Orders more particularly in the nature of mandamus thereby declaring the action of the Respondents herein demanding the property tax notice No.1 dated 06.09.2021 and No. Tax/MKJ/GHMC/21-22 dated 18.10.2021 including penalty in respect of premises bearing No.25-40/73/2A (PTIN NO.1170605142), East Anandbagh, Malkajgiri, Malkajgiri, Circle-28, GHMC without considering the representations dt.22.10.2021, 20.12.2021 made by the Petitioner, insisting the payment of the property tax the as being illegal, arbitrary and violative of Article 14 of the constitution of India and consequently set a side property tax notice No.1 dated 06.09.2021 and No. Tax/MKJ/GHMC/21-22 dated 18.10.2021 including penalty in respect of premises bearing NO.25-40/73/2A (PTIN NO.1170605142), East Anandbagh, Malkajgiri, Malkajgiri, Circle-28, GHMC and consider the petitioners representation dt.22.10.2021, 20.12.2021 including restoration of his H.NO.25-40/73/3, East Anandbagh, Malkajgiri, Malkajgiri Circle-28, GHMC and .....".

2. Mr. VSRMV Prasad Sanaka, learned counsel for the petitioner submits that the petitioner is absolute owner and possessor of H.No.25-40/73/3 in Sy.No.565/1-3 admeasuring 266sq.yds situated at East Anandbagh, Malkajgiri, which is purchased under registered sale deed dated 27.02.1984 along with K. Satyanarayana Murthy. Thereafter, the said Satyanarayana Murthy has executed release deed in favour of petitioner vide registered document dated 23.09.1991 and ever since, the petitioner is in peaceful possession of the said land without being any interference from any of the third party. The petitioner has obtained permission for construction of a residential house consisting of ground floor from Malakajgiri Municipality

vide permission dated 25.02.2002. Thereafter, the petitioner has obtained permission for the second floor in the year 2005. Further, the petitioner has constructed some commercial shops in the said premises and they have also been regularized by GHMC vide proceedings dated 14.07.2011 and accordingly, the petitioner has been paying the taxes without default.

3. Learned counsel for the petitioner submits that initially, the property tax for the said premises was Rs.2,000/- and subsequently, it was enhanced to Rs.4,196/-. He submits that the GHMC authorities without conducting any enquiry, without personal verification have changed the house number to 25-40/73/2A stating that the petitioner has constructed a new building and in the year 2009-10, the GHMC authorities have not issued any tax notice and being a dutiful citizen, the petitioner has approached the authorities. It is submitted that the respondent No.3 without conducting any enquiry, without inspecting the premises have enhanced the tax from Rs.4,196/- to Rs.80,202/- per annum in the year 2012, against which, the petitioner has preferred M.A.No.353 of 2012 before the Chief Judge, City Small Causes Court at Hyderabad Initially, an interim order was passed in I.A.No.587 of 2012 suspending the impugned notice and directed the petitioner to pay an amount of Rs.10,000/- per year without default, in case, the said condition is violated, the petitioner will be dismissed. In view of the said order, the petitioner has paid the property tax till disposal of the said M.A.No.353 of 2012.

4. Learned counsel for the petitioner submits that the respondent No.3 without following the order passed by the court on 03.04.2012, again issued a revision notice on 30.12.2014, for reassessment of the property under Section 220(2)(3) of GHMC Act. The said notice is sub-judice and the 3rd respondent in continuation with the said notice has passed the order of reassessment on 18.10.2021 without following the court order in M.A.No.353 of 2012 dated 22.04.2016 and considered the said notice dated 30.12.2014 instead of 25.03.2012. Hence, the said notice is illegal and liable to be set aside.

5. Learned counsel for the petitioner submits that M.A.No.353 of 2012 was allowed by the Chief Judge, City Small Causes Court at Hyderabad on 22.04.2016. The appeal is allowed setting aside the impugned demand notice in respect of premises bearing No.25-40/73/2A situated at Malkajgiri. The matter is reverted back to the assessing authority of the corporation with a direction to reassess the property tax in respect of the demised premises on duly following the procedure laid down under law and on providing reasonable opportunity of hearing to the appellant to put forward his tenable objections. The order passed by the court setting aside the impugned notice does not absolve the liability of the appellant to pay up to date property tax @ Rs.10,000/- per annum on or before 31.05.2016, failure if any on the part of the appellant to abide by the condition, any appropriate action can be initiated. The petitioner has submitted a copy of the said

order. Thereafter the 3rd respondent has issued a notice on 18.08.2020 for hearing to be conducted on 20.08.2020 at 3pm for reassessment of the property tax in respect of the premises in view of the orders passed in M.A.No.353 of 2012 dated 22.04.2016. It is stated that the petitioner is paying property tax up to date without default to the respondent authorities, from 2008 onwards, they are receiving property tax through cheques and encashed the said cheques till 2020, but they did not issue any receipts in respect of the property tax of the said premises. some of the tenants of petitioner are insisting accepting the preemies as a tenant, asking the petitioners the latest property tax receipts in respect of the said premises, because of the wrongful acts of the respondents, the petitioners is getting very less income through rents.

6. Learned counsel for the petitioner submits that all of a sudden, the 3rd respondent authorities called upon the petitioner on 28.03.2021 demanding to pay Rs.12,00,000/- on or before 31.03.2021, otherwise, the petitioner has to pay Rs.35,00,000/- including penalty without following the court orders and without deciding the reassessment of the property tax. As such, the petitioner has made another representation on 30.03.2021 to the respondent No.3 disclosing all the facts, but no action has been taken his representation. As such, he made another application on 30.03.2021 through mail and also sent a letter on 01.06.2021 along with cheque of

for the current year property tax, but the said DD was not encashed by the respondent authorities.

7. Learned counsel for the petitioner submits that without deciding the said procedure, without communicating any order about hearing conducted on 20.08.2020, the respondents have issued a demand bill to pay property tax on 06.09.2021, in that bill, the arrears are shown as Rs.10,10,098/-, penalty of Rs.20,95,066/- and total amount of Rs.31,90,234/- without assigning any reasons. Then the petitioner has made another representation on 01.10.2021 to the 3rd respondent informing the same. The 3rd respondent has issued an intimation dated 18.10.2021 and informed the petitioner that the GHMC has approved the revision of the proeprty tax and refixed the property tax from 2,16,098/- to Rs.85,064/- per annum from 01.04.2011. The said intimation is quite against the GHMC property tax assessment rules and he submits that reassessment of property tax seeking arrears can only be for the last three years. After receiving the said intimation letter, he made representation on 22.10.2021 to the 3rd respondent seeking clarification how the assessment has been calculated and how the penalty has been imposed without verifying the documents and how the new door number has been assigned without having any new construction by enclosing all the documents. But, there is no response from the 3rd respondent. It is stated that the petitioners is a senior citizen aged about 87 years and he lost his son and he is only looking after the day to day

affairs of the building and due to the illegal, unethical acts of the respondents, the petitioner is suffering with serious health ailments.

8. Learned counsel for the petitioner submits that without verifying the building which is partly residential and partly commercial, which is disclosed in the BRS proceedings, the respondent authorities are treating the entire premises as commercial premises and new house number along with PTIN number is assigned. He submits that against this illegal action of the respondents, the petitioner has no other remedy, except to approach this court.

9. When this matter came up on 07.07.2022, this court has passed an interim order observing that the amount raised for the last three years is Rs.85,064/- and balancing the interest of the petitioners as well as the respondent corporation, there shall be stay of all further proceedings pursuant to demand notice dated 06.09.2021 and intimation letter 18.10.2021 subject to the petitioner paying an amount of Rs.85,000/- within two weeks from the date of receipt of copy of the order and the same is subject to further orders passed in the writ petition and on such payment, the respondent corporation shall not take any coercive steps and if the petitioner fails to pay the amount as directed by this court, the respondent corporation is at liberty to proceed in accordance with law.

10. A counter affidavit has been filed on behalf of the respondents. It is stated that they have called upon the petitioner to remit an amount of Rs.2,16,098/- as the petitioner has converted the maximum extent of the building into commercial one, to which the petitioner approached the respondents and submitted the regularization proceedings along with the plan copy and subsequently, they have reduced the tax amount from Rs.2,16,098/- to Rs.85,064/- and informed the same to the petitioner and the petitioner has never turned up to the office. It is stated that there is no bar for revision of the property tax of the petitioner building pending the above M.A.No.353 of 2012. It is stated that in compliance with the orders dated 22.04.2016 passed by the Chief Judge, City Small Causes Court at Hyderabad, served a hearing notice to the petitioner on 18.08.2020 calling upon the petitioner to attend the office of the Dy. Commissioner on 20.08.2020 at 3pm for hearing. It is stated the petitioner attended the office and put forth his contentions and basing on the same, they have passed the order dated 28.08.2020. It is stated that even after considering the objections and passing necessary orders, the petitioner has failed to pay necessary requisite property tax as fixed by the respondents in spite of the petitioner paying Rs.10,000/- only towards property tax which reflects the adamant nature of the petitioner and establishes malafides on the part of the petitioner. As the petitioner fails to pay the tax, they have issued the notice dated 06.09.2021 calling upon the petitioner to make payment as per the

said notice. He submits that the whole endeavor of the petitioner is to evade the payment.

11. Initially when the petitioner was paying an amount of Rs.4,196/-, when he received a demand notice asking him to pay Rs.5,60,308/- within three days, the petitioner having come to know that the property tax was enhanced to Rs.80,202/- per annum, he has approached the Chief Judge, City Small Causes Court at Hyderabad by filing M.A.No.353 of 2012. Initially the said notice was suspended and thereafter by judgement dated 22.04.2016, the matter was reverted back to the assessing authority of the corporation with a direction to 'reassess' the property tax in respect of the demised premises on duly following the procedure laid down under law and on providing reasonable opportunity of hearing to the appellant to put forward his tenable objections. It is also observed that the order passed by the court setting aside the impugned notice which is received by the appellant on 25.03.2012 does not absolve the liability of the appellant to pay up to date 'property tax' at the rate of Rs.10,000/- per annum on or before 31.05.2016 and failure if any on the part of the appellant to abide by the above condition, gives liberty to the respondent to initiate steps for recovery of such amount as per law and accordingly the appeal was disposed of.

12. When this appeal was disposed of on 22.04.2016, the respondents have kept quiet and issued notice on 18.08.2020 for hearing to be conducted on 20.08.2020 at 3pm for reassessment of the property tax. According to

the petitioner, he received the notice calling upon him to pay an amount of Rs.35,00,000/-. As per the counter affidavit of the respondents, they have passed the order on 28.08.2020. Whenever, the property tax is enhanced, a notice shall be given to the affected parties and their objections have to be called for and they should understand the reasons for such enhancement and as per Section 223 of the Hyderabad Municipal Corporations Act, 1955 (for short "the Act"), there should be a hearing conducted by the Commissioner and any person aggrieved by such fixation of the tax can appeal to the court under Section 282 of the Act.

13. After the orders are passed by the court, the respondents have issued an intimation letter dated 18.10.2021 and informed the petitioner that the GHMC has approved the revision of the property tax and refixed the property tax from 2,16,098/- to Rs.85,064/- per annum w.e.f. 01.04.2011. As rightly argued by the learned counsel for the petitioner, when the petitioner has made his objections, the respondents ought to have considered the same and should have come to just conclusion by giving reasons. The order that is passed by the respondents while revising the tax, the said order should contain the reasons so that the aggrieved party can approach the court. But, it appears that the respondents have failed to take any such steps except stating that they have revised the tax from Rs.2,16,098/- to Rs.85,064/- per annum.

14. In view of the same, this court finds that the respondents have not considered the petitioner's case as per the order passed in M.A.No.353 of 2012 and the objections of the petitioner are not properly considered.

15. Hence, the writ petition is disposed of setting aside the demand notice dated 06.09.2021 and intimation letter dated 18.10.2021 and further, the respondents are directed to consider all those objections of the petitioner raised in his representation dated 22.10.2021 and shall pass a reasoned order afresh in accordance with law. There shall be no order as to costs.

The Miscellaneous Applications, if any shall stand automatically closed.

SD/-T. TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Prl.Secretary, MA and UD department, O/o at Secretariat Premises, Near Tank Bund, State of Telangana, Hyderabad-500029.
2. The Commissioner, Greater Hyderabad Municipal Corporation, O/o GHMC office, near Tank bund, Hyderabad-500063
3. The Deputy Commissioner, GHMC, Malkajgiri Circle, Circle No.28 Hyderabad.
4. One CC to SRI. VSRMV PRASAD SANAKA Advocate [OPUC]
5. Two CCs to GP FOR MCPL ADMN URBAN DEV (TG) ,High Court for the State of Telangana. [OUT]
6. Two CD Copies

HIGH COURT

LK,J

DATED:24/01/2023

ORDER

WP.No.28103 of 2022

WP IS DISPOSED OF
WITHOUT COSTS