

**\* HON'BLE Ms. JUSTICE G. ROHINI  
AND  
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**+ WRIT PETITION Nos.31515 OF 2010 & 22115 OF 2013**

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**W.P.No.31515 of 2010:-**

# Mr. K. Rajiv

..... Petitioner

AND

The Government of A.P. and others

.....Respondents

! Counsel for the Petitioner: Sri T. Lakshminarayana

^ Counsel for respondent No.1: GP for Municipal Administration

Counsel for respondent Nos.2 & 3: Mrs.Dr. Y. Padmavathi

**W.P.No.22115 of 2013:-**

# Mr. K. Rajiv

..... Petitioner

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! Counsel for the Petitioner: Sri T. Lakshminarayana

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? Cases referred:

(1971) The Andhra Weekly Reporter 78,

**HON'BLE Ms. JUSTICE G. ROHINI  
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**WRIT PETITION Nos.31515 OF 2010 & 22115 OF 2013**

**COMMON ORDER:-** (per Hon'ble Sri Justice Challa Kodanda Ram)

Since the parties and the issue involved in both the writ petitions are one and the same, the same are heard together and disposed of by this common order.

2) The petitioner is aggrieved by the property tax demand for the year 2010-2011, Bill No.20102011812869, dated 31.07.2010 issued by the 2<sup>nd</sup> respondent-The Greater Hyderabad Municipal Corporation, Hyderabad and also for the year 2013-2014 vide Bill No.100097412, Docket No.1043, dated 25.06.2013 issued by the 3<sup>rd</sup> respondent-the Assessing Authority, Greater Hyderabad Municipal Corporation, Circle No.10, Hyderabad and prayed for Writ of Certiorari and quashing the impugned Property Tax Demands. The petitioner is also seeking a direction to the respondents to fix the rateable value for the newly constructed building in Plot No.52, Road No.72, Jubilee Hills, Hyderabad duly following procedure prescribed under the Act and Rules.

3) The grievance of the petitioner is that he is the absolute owner and possessor of open Plot No.52 of an extent of 1108 Sq.yards which is less than 1000 Sq.meters situated at Road No.71, Jubilee Hills, Hyderabad, which was given the reference No.8-2-293/82/JIII/Plot 52, which devolved on him from his grandmother Smt. Janaki Devi. On 10.02.2006 he submitted an application with a request to grant permission for construction of the residential house (Ground Floor) in the open plot and also paid open land tax of Rs.66,420/- to the Municipal Corporation of Hyderabad for the period 01.04.2006 to 31.03.2007 under receipt No.13, dated 27.09.2006 and obtained permission vide Permit No.142/65 of 2006 under File

No.43/open/8/2006, but he could not start the construction. Later, again he made an application with revised plan for Cellar, Ground, First and partly Second floors on 31.07.2007 and paid Open Land Tax of Rs.66,420/- to the Corporation for the period 2007-2008, thereafter the Corporation issued the Permit No.156/53 of 2008 in file No.293/82/J-III/2/8/2007 on 30.01.2008 and accordingly he started construction work in the month of March, 2008 and completed the construction on 10.10.2010 and after obtaining completion certificate dated 18.10.2010 from a licensed architect he intimated the same to the Corporation under a letter of intimation dated 01.11.2010, which was acknowledged by the Corporation. Later, the Corporation has issued proceedings in Roc.No.293/TC10/T2/GHMC/2007, dated 14.03.2008 mutated the name of the petitioner in the Assessment Register in place of Smt. Janiki Devi. It is further submitted that ignoring the above facts the 2<sup>nd</sup> respondent issued the Property Tax Demand notice dated 31.07.2010 for the year 2010-2011 for a sum of Rs.2,44,753/-. Aggrieved by the same he filed W.P.No.31515 of 2010 on the file of this Court. While the matter stood thus, the Corporation again issued a Property Tax Demand bearing Bill No.100097412, docket No.1043, dated 25.06.2013 for the year 2013-2014 for an amount of Rs.6,22,966/- (Property Tax: Rs.66,420/- + Arrears: Rs.3,32,100/- + Interest: Rs.2,24,446/-). In W.P.No.22115 of 2013, the pleadings are more or less same as in W.P.No.31515 of 2010, except with respect to an additional contention that the petitioner had completed the construction by 01.11.2010 and as such no 'Vacant Land' tax can be levied and further rateable value of the newly constructed building has not yet been fixed. Therefore, the petitioner is challenging the said demand on the following grounds:

- i) Once the Corporation granted permission for construction and the construction commenced, the open plot ceased to be an open plot not fit for occupation during construction.
- ii) The 2<sup>nd</sup> respondent has not followed the procedure under Section 212 of GHMC Act and the rule 7 of the Hyderabad Municipal Corporation (Assessment of Property Tax) Rules, 1990, before issuing the impugned property tax demand notice dated 25.06.2013.

iii) The inclusion of arrears, without giving credit to the open land tax already paid and the calculation of interest and demand of interest thereon, is illegal and arbitrary.

iv) The impugned demand of open land tax for the recovery of the alleged arrears of tax beyond three years is hopelessly time barred and without jurisdiction and power.

v) The 2<sup>nd</sup> respondent till today did not fix the rateable value or fix the tax on the newly constructed building in Plot No.52 and unless the 2<sup>nd</sup> respondent fixes the rateable value for the newly constructed building in Plot No.52, the petitioner cannot avail any other remedy.

4) No counter-affidavit has been filed by the respondents in W.P.No.22115 of 2013. In both the writ petitions, no counter-affidavit has been filed on behalf of the 1<sup>st</sup> respondent-Government.

5) Counter-affidavit has been filed by the respondents 2 and 3 in W.P.No.31515 of 2010 stating that they had issued permission for construction of residential house, they got issued property tax demand to the petitioner as per the provisions under Section 266(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, the "Act"), as the same is collectable till the building construction is completed. It is further submitted that though the petitioner has made a representation dated 01.11.2010 informing that the building is completed and wardrobes work is in progress, but he has not made any specific request for levy of property tax on the building. Further the petitioner had paid property tax on vacant land till 31.03.2008 as admitted by him, but the amount shown in the impugned bill is for the period from 01.04.2008 to 31.03.2011 in which the amount paid for the period upto 31.03.2008 was deducted. It is further submitted that the amount for which the bills was issued is for the period of three years i.e. 01.04.2008 to 31.03.2011, which is not a time barred claim by the GHMC. The GHMC has followed the procedure contemplated under Section 212 of the Act and Rule 7(8) of the Hyderabad Municipal

Corporation (Assessment of Property Tax) Rules, 1990 (for short, the "Rules) and also followed Section 269 of the Act for levying penalty for non-payment of property tax. Hence, prayed for dismissal of the writ petitions.

6) Heard Sri T. Lakshminarayana, learned counsel appearing for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing for 1<sup>st</sup> respondent and Dr. Y. Padmavathi, learned counsel appearing for the respondents 2 and 3.

7) As can be seen from the pleadings in the writ petition, the grievance of the petitioner though not expressed in clear terms appears to be that

- i) Respondent-Corporation has demanded vacant land tax for the period 2006-10 and the same is unauthorised and there is no such thing like vacant land tax in the Act.
- ii) Though the petitioner had paid the demanded vacant land tax for the period 2006-10, he is not precluded from questioning the illegal demand and collection as the same is unauthorised and ultra vires the Act.
- iii) Assuming without conceding vacant land tax can be demanded once a building is constructed on the vacant land, the property tax alone can be levied on the basis of assessment made by following the procedure i.e., as a percentage of rateable value which presupposes fixation of the rateable value for the newly constructed building. Inasmuch as no rateable value has been arrived at, the levy and demand of the property tax in the impugned demand is ultra vires and illegal and thus liable to be set aside.

8) In the counter-affidavit filed by the respondents 2 and 3 in W.P.No.31515 of 2010 except stating that the procedure contemplated under Section 212 of the Act read with Rule 7(8) of the Rules have been followed, there is no material placed before the Court and nothing has been explained. The details of fixation of the rateable value qua the petitioner's property were not placed before the Court. W.P.No.31515 of 2013 relates to the property tax demand for the year 2010-11. In the counter-affidavit, it is not denied that open land tax of Rs.66,420/- for the period from 1.4.2006 to 31.3.2007 was collected on 27.9.2006 and again for the period 2007-08 a

similar sum was collected on 23.7.2007. In fact by stating that the tax on vacant land is collectable till the building is completed and assessed to property tax on building. It is indirectly admitted about collection of tax on vacant land. A construction permit No.156/53 of 2008 was issued on 30.1.2008 and the petitioner having completed the construction by 10.10.2010 and the same fact was brought to the notice of the respondent-Corporation. A demand dated 31.7.2010 was issued for the year 2010-11 for a sum of Rs.2,44,753/- in which the current year property tax was shown to be Rs.66,420/-. Even a cursory look at the demand notice would reveal that the amount collected in the previous years was demanded as the tax for the period 2010-11 which goes to confirm the allegation of the petitioner that no assessment as such was made taking into consideration of the construction of the building commencing in 2008 and completing in 2010. Tax amount could not have been the same for the periods between 2008-2010 and 2010-2011 on account of the fact of completion of the construction. In other words, there is total non application of mind in the issuance of the demand. On that simple ground alone, the impugned demand is liable to be set aside and quashed. While, we are on the issue, we may notice the relevant provisions dealing with the levy, assessment and collection of the property tax.

9) Section 197 of the Act which empowers the Corporation to impose taxes mentioned therein includes "taxes on lands and buildings." Under Section 197 of the Act, tax is directed to be assessed and levied in accordance with the provision of the Act and Rules made thereunder. Section 198 of the Act prescribes the procedure for levying of tax by the Municipal Corporation and Section 199 of the Act lays down what the property tax should consist of and at what rate it should be levied. For ready reference, Sections 197, 198 and 199 are reproduced hereunder:

**197. Taxation to be imposed under this Act:-** (1) (i) For the purposes of this Act, the Corporation shall impose the following taxes, namely:-

- (a) taxes on lands and buildings ;
- (b) octroi ;
- (c) taxes on vehicles;
- (d) taxes on animals and boats;

- (e) x x x;
  - (f) taxes on advertisements other than advertisements published in the newspapers;
  - (g) a tax on transfer of immovable property.
- (ii) In addition to the taxes specified in clause (i) the Corporation may for the purposes of this Act and subject to the provisions thereof also impose any of the following taxes:-
- (a) taxes on entertainments;
  - (b) x x x x ;
- (2) The Corporation may impose any tax other than those specified under sub-section (1) subject to the previous sanction of the Government.
- (3) The taxes specified in sub-sections (1) and (2) shall be assessed and levied in accordance with the provisions of this Act and rules made thereunder.

**198. Notice regarding levy of taxes:-** (1) Before the Corporation passes any resolution imposing a tax specified in sub-section (1) of Section 197 for the first time or at a new rate it shall direct the Commissioner to publish a notice in the Andhra Pradesh Gazette and in the local newspaper of its intention to do so and fix a reasonable period not being less than one month, from the date of publication of such notice in the Andhra Pradesh Gazette for submission of objections. The Corporation may, after considering the objections, if any, received within the period specified, determined by resolution to levy the tax. Such resolution shall specify the rate at which, the date from which and the period of levy if any, for which, such tax shall be levied.

(2) Where the Corporation shall have determined to levy any tax for the first time or at a new rate, the Commissioner shall publish a notice in the manner laid down in sub-section (1) specifying the date from which the rate at which, and the period of levy, if any, for which, such tax shall be levied:

Provided that if the Corporation is indebted to the Government, the rates of the taxes already levied shall not be reduced without the sanction of the Government.

**199. Property taxes of what to consist and at what rate leviable:-** (1) The following taxes shall subject to exceptions, limitations and conditions herein provided be levied on buildings and lands in the City and shall hereinafter be referred to as property taxes, namely:-

- (a) a general tax;
- (b) a water tax;
- (c) a drainage tax;
- (d) a lighting tax;
- (e) a conservancy tax;

(2) Save as otherwise provided in this Act these taxes shall be levied at such percentages of their rateable value as may be fixed by the Corporation :

Provided that the aggregate of the percentages so fixed shall not in the case of any land or building be less than 15 per cent or greater than 30 per cent.

10) A reading of the above provisions goes to show that Section 197 of the Act is the charging Section of the Act and it enumerates the taxes that can be imposed by a Municipal Corporation under the Act. Though said provision provides for imposing of taxes on lands and buildings, the provision does not provide for imposing of a vacant land tax. Coming to Section 198, whenever the Municipal Corporation proposes to impose a tax for the first time or at a new rate, the corporation shall direct the



Commissioner to publish a notice in the local newspaper of its intention and call for objection if any. The Corporation, thereafter, after considering the objections, determine by resolution to levy the tax. The provision further prescribes that the said resolution shall specify the rate at which and date from which such tax shall be levied. So far as Section 199 is concerned, while sub-section (1) lists out the taxes that shall be levied on lands and buildings in the city, sub-section (2) limits such levying to such percentage of their rateable value as may be fixed by the corporation.

11) Now, we shall refer to Section 212 of the Act which deals with the procedure of determining the rateable value. Section 212 insofar as it is relevant for the present case is extracted hereunder:

"212(2) Any vacant land not exceeding three times the plinth area of the building including its site or a vacant land to the extent of one thousand square metres, whichever is less shall be deemed to be adjacent premises occupied as an appurtenant with the provisions of this Section and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be deemed to be adjacent premises occupied as an appurtenant with the provisions of this Section and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be levied thereon at two percent of the estimated capital value of land."

(Provided that in the case of above vacant lands where garbage is being dumped and unhygienic conditions are prevailing a penalty of 0.25% of the capital value shall be levied till the garbage is lifted and unhygienic conditions ceases:) (Added with effect from 23.12.2002)

12) A plain reading of the above provision shows that it is not a charging section. It is also not a provision prescribing the procedure for imposing a tax nor fixing the percentage of tax. The said provision only provides for determining the rateable value for the purpose of fixing the percentage of tax to be levied by the Corporation under Section 199 of the Act. Therefore, no tax can be levied under Section 212 of the Act.

13) In the light of the scheme of taxation in the Act, levying of tax on the

vacant lands other than the land appurtenant to the buildings as provided under Section 212 (2) of the Act is *ultra vires*, unauthorized and illegal.

14) In the instant case, Corporation by itself has not fixed any percentage of tax on the rateable value of the vacant lands for the purpose of Section 212 (2) of the Act. Inasmuch as Section 212 (2) is not a charging section, no tax can be imposed by the 2<sup>nd</sup> respondent under Section 212 (2) of the Act. Under the circumstances, the demand and collection of the tax on vacant land for the period 2010-2011 is unauthorized and *ultra vires* the Act.

15) As a matter of fact, a Division Bench of this court in a judgment dated 20.03.1970 rendered in W.P.No.243 of 1967 and batch in **Himayatnagar Rate-Payers Association vs. The Commissioner of Municipal Corporation, Hyderabad etc.**, since reported in (1971) **The Andhra Weekly Reporter 78**, (printed as **Himmatnagar Ratepayers Association**) while dealing with the various aspects of levy of property tax under the Act had elaborately dealt with the method and manner of determination of rateable value by the Commissioner or his delegate valuation officer. In that context, the Division Bench had held:

“41. We must then turn to the question as to how the rateable value is to be determined by the Commissioner or his delegate valuation officer. It is not in doubt that the basis is not the capital value but is the annual rental value of the building or the land. Cases where tenants are occupying the buildings or lands do not present any difficulty. The actual rent paid by the tenant forms the basis of determining the rental value. In case of dispute as to what rent is paid, it is evident that the Commissioner will have to inquire and determine it. It is to be remembered that as long as fair rent is not determined under the Rent Act, the rent paid would be presumed to be fair rent and the same can be taken as the basis.

42. The difficulty, however, arises in cases where the buildings or lands are occupied by the owners themselves. In such a case, the Commissioner has to determine the rent which the property is likely to fetch. While determining that question, he has to keep in view the nature and the extent of the property and the rent which is usually fetched from the same or similar building in the locality in which it is situate. There is no scope for determining any notional rent. The Commissioner has to make enquiries and decide the question. The principles embodied in the

provisions of the Andhra Pradesh Buildings Lease and Rent Act for fixation of fair rent have to be kept in view while considering this question. And it is only on that line that the question has to be resolved. It is true that in such a case the Commissioner does not decide what the fair rent is under the Rent Act. He not being a Rent Controller cannot decide that question finally, but those provisions serve as a guidance to the Commissioner to arrive at a rental value of a building for the purposes of imposing the tax. It would not therefore be correct to contend that there is no guidance provided for the determination of the rental value. That the provisions of the Rent Act have necessarily to be kept in view in determining the rental value can be seen from the following decisions."

16) The Division Bench also had elaborately analysed the scheme of the Act and detailed the procedure to be followed in preparation of Ward Assessment books required to be prepared under Section 214 of the Act, and authentication of the same by following the procedure under Sections 220 to 223 of the Act, which alone can be basis for demand of property tax. The measure and methodology of levying of taxes mentioned in Section 199(1) of the Act has been set out in Section 199(2) of the Act as a percentage of rateable value as may be fixed by the Corporation. There is no other methodology provided in the Act. The reasons and analysis set out above would clearly apply to the case on hand. In the circumstances stated above, both the writ petitions are liable to be allowed by quashing the impugned property tax demands.

17) Accordingly, both the writ petitions are allowed quashing the impugned property tax demand for the year 2010-11 in Sl.No.37517, Bill No.20102011812869 dated 31.07.2010 of the 2<sup>nd</sup> respondent in W.P.No.31515 of 2010 and the impugned property tax demand for the year 2013-14 bearing Bill No.100097412, docket No.1043, dated 25.06.2013, served on the petitioner on 17.7.2013 of the 3<sup>rd</sup> respondent in W.P.No.22115 of 2013 giving liberty to the respondents in both the writ petitions to make proper demands keeping the principles as laid down in the judgment of the Division Bench of

this Court in **Himmatnagar Ratepayers Association** (1 supra). No order as to

costs. Miscellaneous petitions, if any, pending in these Writ Petitions shall stand dismissed.

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**G. ROHINI, J**

Date:11.10.2013.  
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**CHALLA KODANDA RAM, J**



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