***THE HON'BLE SRI JUSTICE M.LAXMAN**

+ C.M.S.A. Nos.5, 6, 7, 8 AND 9 OF 2022

% 28—07—2022

Greater Hyderabad Municipal Corporation,
Rep. by its Deputy Commissioner

…Appellant

vs.

$ Muzaffar Ali Khan

… Respondent

!Counsel for the Appellant: Sri N.Ashok Kumar,
Standing Counsel for GHMC

^Counsel for Respondent: Sri S.V.Ramana

<Gist :

>Head Note :

? Cases referred

1. 2003(1) ALT 236
2. 1976 (2) APLJ 41
3. 2002 (4) ALD 711 (DB)

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

*** * * ***

C.M.S.A. Nos.5, 6, 7, 8 AND 9 OF 2022

Between:

Greater Hyderabad Municipal Corporation,
Rep. by its Deputy Commissioner

…Appellant

And

Muzaffar Ali Khan

… Respondent

JUDGMENT PRONOUNCED ON: 28.07.2022

THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

M.LAXMAN, J

THE HON'BLE SRI JUSTICE M. LAXMAN

C.M.S.A. Nos.5, 6, 7, 8 AND 9 OF 2022

COMMON JUDGMENT:

1. All these appeals have been directed against the order dated 15.03.2021 passed in M.A.No.42 of 2020, M.A.No.46 of 2020, M.A.No.43 of 2020, M.A.No.45 of 2020, and M.A.No.44 of 2020 by the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the learned Chief Judge quashed the demand notices dt.08.02.2020 issued by the respondent for recovery of tax due amounts holding that the respondent cannot make demand for arrears beyond the three years.

2. The present appeals are at the instance of the respondent before the Chief Judge.

3. The sum and substance of the case of the respondent herein is that all the demand notices except the demand notice under M.A. No.42 of 2020 the demands were made for payment of arrears of property tax from 2013-14 to 31.03.2020, but in M.A. No.42 of 2020 the demand notice was issued for payment of arrears from 2009-10. The demand notices were challenged before the Appellate Judge i.e. Chief Judge, City Civil Court at Hyderabad. By the impugned orders in all these appeals the demand notices were set aside on the ground that they were beyond three

years and barred by limitation by placing reliance on the decisions of Division Bench of this Court in **V.K. Roy Vs. Commissioner of M.C.H., Hyderabad**[1] and the writ petition No.2272 of 2017 dt. 06.04.2013. Aggrieved by the same, the present appeals are filed by the Greater Hyderabad Municipal Corporation.

4. The contention of the learned Standing Counsel for the appellants is that while setting aside the demand notices, the learned Chief Judge has not taken into consideration the amended provision of Section 278-A of the Greater Hyderabad Municipal Corporation Act (hereinafter referred to as Act). According to him, all the decisions relied on by appellate Judge for setting aside the demand notices were rendered prior to introduction of Section 278-A of the Act. Prior to amended provision, there was no limitation prescribed under the Act for making a claim. By relying upon the general limitation contained under the Limitation Act, it was held that claim for arrears of more than 3 years cannot be made. Such decisions have no relevancy to the present issue.

5. The learned counsel for respondents herein tried to defend the order of the Chief Judge on the ground that the said orders of the Chief Judge are based on ratios laid down by the Division Bench of this High Court in the judgment cited herein before. According to him, there is no

[1] 2003(1) ALT 236

question of law involved in the present appeals and no interference is needed and the appeals are liable to be dismissed.

6. Now, the question of law involved in the present case is:

> "Whether the claims under the demand notices dt. 08.02.2020 are barred by limitation?"

7. In this regard, it is apt to refer Section 278-A of the Act which reads as under:

> "**278-A. Limitation for recovery of dues:-** (1) No distraint shall be made, no prosecution shall be commenced and no suit shall be instituted in respect of any sum due to the Corporation on account of a property tax or tax on vehicles and animals or any other sum due under this Act after the expiration of the period of three years from the date on which distraint might have been made or after the expiration of a period of six years from the date on which prosecution might first have been commenced or after the expiration of nine years from the date on which a suit might have been first instituted, as the case may be, in respect of such sum."

8. A reading of the above provision makes it clear that this amendment was made by Act 15 of 2013 which came into effect from 05.08.2013. It prescribes various limitations for recovery of arrears of taxes. There are three modes of recovery prescribed under the Act i.e. (1) by issuing distraint warrant, (2) by prosecution and (3) by filing a suit.

9. In this regard, it is relevant to refer the respective provisions which are hereunder:

> "**269. Distress:-** (1) If the person liable for the payment of the said tax does not within fifteen days from the service of the (bill)

> pay the sum due, or show sufficient cause for non-payment of the same to the satisfaction of the Commissioner, and no appeal is preferred against the said tax, as hereinafter provided, such sum with all costs of the recovery, may be levied under a warrant in the form of schedule L, or to the like effect, to be issued by the Commissioner, by distress and sale of the goods and chattels of the defaulter, or if the defaulter be the occupier of any premises in respect of which a property tax is due, by distress and sale of any goods and chattels found on the said premises or, if the tax due in respect of any vehicle or animal by distress and sale of such vehicle or animal in whomsoever's ownership, possession or control, the same may be.
> (2) …
> (3) If, for any reason the distraint or a sufficient distraint of the defaulter's property is impracticable, the Commissioner may prosecute the defaulter before the competent Court of jurisdiction.
>
> Section 278: Instead of proceeding against a defaulter by distress and sale as hereinbefore provided, or after a defaulter shall have been so proceeded against unsuccessfully or with only partial success any sum due or the balance of any sum due, as the case may be, by such defaulter, on account of a property-tax or of tax on vehicles and animals may be recovered from him by a suit in any court of competent jurisdiction."

10. In respect of the mode of recovery of taxes by issuing distraint warrant, the limitation prescribed is 3 years from the date right to sue and for prosecution the limitation prescribed is 6 years. For filing the suit for recovery of arrears the limitation prescribed is 9 years. Prior to this amendment, there was no limitation prescribed under the GHMC Act. A Division Bench of this Court in **Municipal Corporation through Special Officer Vs. Champalal**[2], held as under:

> "8. Now, it is not disputed that if the Municipality chooses to file a suit for recovery of taxes due, the provisions of the Limitation Act will apply. While instituting such a suit two courses are open to the

[2] 1976 (2) APLJ 41

> Corporation, viz., it can file a suit merely for the recovery of tax due in which case the period of limitation would be three years, being governed by Article 113 of the Limitation Act, 1963. The other course open to the Corporation is to file a suit to enforce the statutory charge created by the Act upon the immovable property of the defaulter, in which case the relevant Article applicable would be Art.62 of the Limitation Act, 1963 (Corresponding to Art.132 of the Limitation Act 1908) i.e., a period of twelve years. But, the argument of the learned counsel for the appellant is that, when the Corporation does not choose to go to a Civil Court for recovery of taxes due and proposes to recover the same on its own, under Section 269 or Section 270 of the Act, the Limitation Act does not apply at all and that, there is no period of limitation fixed for such mode of recovery. The learned Counsel referred to the decision of the Supreme Court in Nityanand v. L.I.C of India (2) ((1969) 2 SCC 199 : AIR 1970, S.C 209) in support of his contention that the Limitation Act applies only to Civil Courts and not to other Tribunals and forums. He also relied upon the decision in A.S.K Krishnappa v. S.V.V Somaiah (3) AIR 1964, S.C 227), for the proposition that the Limitation Act cannot be extended by inference and analogy. The learned Counsel also referred to Sec. 365 of the Andhra Pradesh Municipalities Act, 1965, which provides a period of limitation for recovery of taxes by a Municipality, and contends that in the absence of a similar provision in the present Act, no such bar can be inferred. The learned Counsel contended that the mode of recovery by distraint is an independent remedy given to the Corporation by law and that, approaching the Civil Court is only discretionary on the part of the Corporation."

11. In **V.K. Roy Vs. Commissioner of M.C.H., Hyderabad**[3], the Division Bench of this Court by relying upon the previous Division Bench Order in **Champalal** case (cited supra) held as under:

> 18. Having regard to our discussion in the foregoing paragraphs and in the light of the ratio laid down by the Supreme Court in the decision cited (3) supra, we hold that the respondents are not entitled to recover arrears of property tax by way of distraint after the expiry of three years from the date when the tax becomes due. If the respondents so choose to recover such tax, it is open to them to take recourse to the provisions contemplated under Section 278 of the Hyderabad Municipal Corporation Act.

12. A reading of the judgment in **Champalal**'s case (cited supra), it is a case where no special limitation was prescribed under the Act for

[3] 2002 (4) ALD 711 (DB)

recovery of arrears of property tax. By relying upon general limitation under Article 113 of Limitation Act, the Division Bench held that 3 years is the limitation from the date of tax due. It is needless to say that when the special limitation is prescribed under the Act, the general law of Limitation does not apply. In the present case, the limitation of 3 years was only prescribed in respect of mode of recovery by way of distraint warrant, and for prosecution, 6 years and to file a suit, 9 years is prescribed. In **V.K. Roy**'s case (cited supra), the Court rightly held that no distraint order can be issued after three years from the date of tax due. Such decision is in terms of Section 278-A of the Act.

13. In the present case, the respondents herein have challenged the very demand notices on the ground that they were issued for recovery of property tax beyond 3 years. There is misconception on the part of the respondent that 3 years limitation is contemplated for recovery of the amounts. As per general law of limitation, the limitation is 3 years. The 3 years under Greater Hyderabad Municipal Corporation Act is in respect of one mode of recovery i.e. by issuing distraint warrant. The larger limitation is 9 years. This means for 9 years arrears the Corporation is entitled to issue demand notice and they have right to recover the amounts up to 9 years by way of filing the suit. If they want to invoke

speedy recovery mode i.e. by issuing warrant of distraint and by way of prosecution, the limitation prescribed is 3 years and 6 years respectively.

14. The learned Chief Judge was erred in coming to the conclusion that limitation for recovery of amount is only for 3 years and the demand notices were beyond the 3 years. These findings are required to be set aside. Such conclusion was drawn by the learned Chief Judge basing on the judgment of the Division Bench, which is not with reference to such amended provision of Section 278-A but prior to amended provision. Therefore, the said ratio is not applicable to the present case. Even in the said case also, the challenge was made only in respect of distraint warrant and not the demand notice. Therefore, the Chief Judge was wrongly taken as precedent for deciding the issue before him. In all demand notices, except demand notice amount in M.A. 42 of 2020, the notices were issued for arrears from 2013-14. The said notices were within larger limitation of 9 years. Therefore, the said notices cannot be quashed or set aside.

15. In so far as the demand notice in M.A. No.42 of 2020 is concerned, the arrears of property tax were claimed from 2009-10 and the amended provision came into force w.e.f. 05.08.2013. The amended provision is substantiate provision, which cannot be applied retrospectively unless the

Act specifically gives such effect and the larger limitation of 9 years cannot be extended prior to 2013 which are barred by limitation.

16. The Learned Standing Counsel representing the Greater Hyderabad Municipal Corporation has contended that in 2016 there was an acknowledgment in PARISHKARAMU in the year 2016. According to him, said acknowledgment gives a right to institute a suit by taking limitation from 2016 on the ground that the said receipt has to be taken as acknowledgment. As per the definition of acknowledgment as defined under the Limitation Act, the acknowledgment has to be made before the limitation is completed. In the present case, the limitation for the previous arrears up to 2012-13 is 3 years and if such arrears are taken, then 3 years time expires in 2015. This means the acknowledgment must have been made in respect of said arrears in the year 2015. However, in the present case, the acknowledgment was made in 2016. Thus, the appellant is not entitled to recover the arrears of property tax prior to 2013-14.

17. In the result, the appeals are disposed of as follows:

i) C.M.S.A. Nos. 5 to 8 of 2022 are allowed and the orders of the Chief Judge are set aside and consequently, the validity of demand notices are upheld.

ii) C.M.S.A. No. 9 of 2022 is partly allowed by partly confirming the order of the Chief Judge to the extent of arrears from 2009-10 to 2012-13. For the remaining arrears, the demand notice is upheld.

iii) It is made clear that Greater Municipal Corporation of Hyderabad, is entitled to recover arrears of tax beyond the three years by way of prosecution which is up to 6 years and beyond 6 years up to 9 years by way of instituting the suit. It appears on account of pending litigation, the original period contemplated under Section 278-A for filing prosecution and a suit, is completed. Therefore, the authorities may take the benefit of Section 470 of the Code of Criminal Procedure and Section 14 of the Limitation Act if they choose to institute such proceedings.

There shall be no order as to costs. As a sequel, pending miscellaneous applications, if any, shall stand closed.

M. LAXMAN, J

DATE: 28.07.2022
Note: LR copy be marked
B/o. BDR