

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

WRIT PETITION NO: 31765 OF 2015

Between:

1. RAJENDRA KUMAR KIMTEE, (Died per Lr, P 2 to 4),
2. Smt. Pushpa Kimtee, W/o. Late Rajendra Kumar Kimtee, Aged about 81 years, Occ Housewife, R/o. 8-2-686, Pushpa Raj Kunj, Kimtee Enclave, Road No. 12, Banjara Hills, Hyderabad.
3. Vinod Kimtee, S/o. Late Rajendra Kumar Kimtee, Aged about 61 years, Occ Business, R/o. 8-2-686, Pushpa Raj Kunj, Kimtee Enclave, Road No. 12, Banjara Hills, Hyderabad.
4. Vikram Kimtee, S/o. Late Rajendra Kumar Kimtee, Aged about 54 years, Occ Business, R/o. 8-2-686, Pushpa Raj Kunj, Kimtee Enclave, Road No. 12, Banjara Hills, Hyderabad.

(Petitioner Nos. 2 to 4 are brought on record as Lrs. of deceased Petitioner No.1, as per Court order dt 09-12-2024, vide I.A. No.1 of 2024, in WP. No.31765 of 2015)

...PETITIONERS

AND

1. Greater Hyderabad Municipal Corporation, Represented by its Commissioner, Lower Tank Bund Road, Hyderabad
2. The Deputy Commissioner, Greater Hyderabad Municipal Corporation Circle-10, Hyderabad
3. State of Telanagana Rep. by its Principal Secretary, MAandUD Dept., Secretariat, 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 a writ, order or direction more in the nature of the writ of mandamus declaring the action of the Respondents in issuing demand notice for property tax for Plot No. 12, Road No. 12, Banjara Hills, Hyderabad for the assessment year 2015-16 belonging to the Petitioner and collection and retention

a sum of Rs. 12,24,761/- towards vacant land tax in respect of the said property for the assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 is without authority in law and contrary to the decision of this Honble Court in WP No. 31515 of 2010 and WP No. 22115 of 2010 dated 11-10-2013, illegal and contrary to the provisions of the Constitution of India and consequently direct the Respondent to refund or release the sum of Rs. 12,24,752 to the Petitioner or alternatively direct the Respondent to adjust the amount of Rs. 12,24,752/- collected towards future payment of property tax on property bearing Plot No. 12 , Road No. 12, Banjara Hills, Hyderabad

I.A. NO: 1 OF 2015(WPMP. NO: 41060 OF 2015)

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 suspend all further proceedings or actions of the Respondents pursuant to the demand notice bill No.100064122 for property tax for the assessment year 2015-16 pending disposal of the above writ petition

Counsel for the Petitioners: SRI V. SRIKANTH HARI FOR SRI. V HARI HARAN

Counsel for the Respondents: SRI MIDDE ARUN KUMAR SC FOR GHMC

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.31765 of 2015

ORDER: *(Per the Hon'ble Sri Justice J. Sreenivas Rao)*

Petitioner No.1 filed this writ petition questioning the action of the respondents in issuing demand notice for payment of property tax contrary to the Division Bench decision of erstwhile High Court of Andhra Pradesh at Hyderabad in W.P.Nos.31515 of 2010 and 22115 of 2013 dated 11.10.2013.

2. Heard Sri V. Srikanth Hari Haran, learned counsel representing Sri V.Hari Haran, learned counsel for the petitioners, and Sri Midde Arun Kumar, learned Standing Counsel for the Greater Hyderabad Municipal Corporation, for the respondents.

3. Facts giving rise to filing of this writ petition briefly stated are that petitioner No.1 was the owner and possessor of the land bearing plot No.12, Road No.12, Banjara Hills, Hyderabad, admeasuring approximately 1100 sq. yards and the same was purchased in the year 1968 and in the said property, he erected

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a small tin shed without any RCC roof for the purpose of security personnel to safeguard the electric connection and meter. The subject land is an open and vacant land. Respondent Nos.1 and 2 illegally demanded and collected vacant land tax since 2009-2010 to 2013-2014 and he paid an amount of Rs.12,24,761/- for the said period. Petitioner No.1 submitted representations on 02.04.2012 and 30.04.2012 requesting the respondent authorities to refund the vacant land tax paid by him, as the subject land is not liable for payment of tax as per the order passed by the erstwhile High Court of Andhra Pradesh at Hyderabad in W.P.Nos.31515 of 2010 and 22115 of 2013 dated 11.10.2013. In spite of repeated requests made by petitioner No.1, the respondent authorities have not refunded the said amount, on the other hand issued demand notice for payment of the property tax for the assessment year 2015-2016. Hence, petitioner No.1 filed the present writ petition.

4. **Submissions of learned counsel for the petitioners:**

4.1. Learned counsel for the petitioners submitted that the subject land is open and vacant land and the respondent authorities ought not to have collected the vacant land tax of an

amount of Rs.12,24,761/- from 2009-2010 to 2013-2014. In spite of the representations submitted by petitioner No.1 dated 02.04.2012 and 13.07.2015, the respondent authorities have not taken any steps to consider the claim of the petitioners for refund of the above said amount, on the other hand issued demand notice and the same is contrary to law.

4.2. In support of his contention, he relied upon the decision of erstwhile High Court of Andhra Pradesh at Hyderabad in **K. Rajiv v. The Government of Andhra Pradesh, Rep. by its Secretary and two others**¹.

5. Submissions of learned Standing Counsel for the respondents:

Learned Standing Counsel submitted that the subject property is liable for payment of vacant land tax and the respondent authorities had rightly issued demand notice for payment of tax and the petitioners are not entitled the relief sought in the writ petition. He submitted that respondent Nos.1 and 2 will consider the representations submitted by petitioner

¹ 2014 (1) ALD 170

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No.1 in accordance with law and requested this Court to grant reasonable time.

Analysis:

6. This Court considered the rival submissions made by the respective parties and perused the records. Admittedly, this Court in **K. Rajiv** (supra) while considering the provisions of Greater Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as 'the Act') and the Hyderabad Municipal Corporation (Assessment of Property) Tax Rules, 1990, specifically held that 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.
7. Admittedly, in the case on hand, the petitioners specifically claimed that the subject property is open and vacant land and they have not made any construction except a small tin shed without any RCC roof. It reveals from the record that petitioner No.1 has submitted representations to respondent No.2 on 02.04.2012 and 13.07.2015 for refund of the tax, which was already paid by him for the years from 2009-2010 to 2013-2014

to an amount of Rs.12,24,761/- by enclosing the copy of the decision of this Court in **K. Rajiv** (supra). However, the respondent authorities have not passed any order.

8. It is relevant to mention that whether in the subject property, the petitioners made construction or it is open and vacant land, is a disputed question of fact and the same cannot be adjudicated at this juncture in the writ petition on the ground that the respondent authorities have not filed counter affidavit nor passed any order on the representations submitted by petitioner No.1.

9. Hence, this Court is of the considered view and to meet the ends of justice, respondent Nos.1 and 2 are directed to consider the representations submitted by petitioner No.1 dated 02.04.2012 and 13.07.2015 and pass speaking order, by duly taking into consideration the decision passed by the Division Bench of this Court in **K. Rajiv** (supra), within a period of two months from the date of receipt of a copy of this order, after giving opportunity to the petitioners including personal hearing.

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10. With the above direction, the writ petition is disposed of.

No costs.

Miscellaneous petitions, pending if any, shall stand closed.

SD/- P. PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

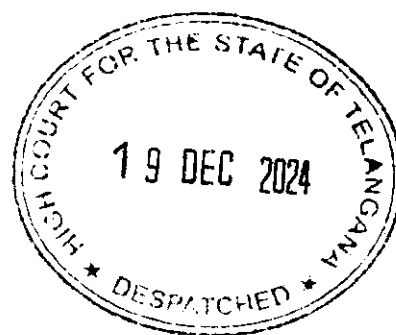
1. The Commissioner, Greater Hyderabad Municipal Corporation Lower Tank Bund Road, Hyderabad
2. The Deputy Commissioner, Greater Hyderabad Municipal Corporation Circle-10, Hyderabad
3. The Principal Secretary, MAandUD Dept., Secretariat, Hyderabad.
4. One CC to SRI. V HARI HARAN Advocate [OPUC]
5. One CC to SRI MIDDE ARUN KUMAR SC FOR GHMC [OPUC]
6. Two CD Copies

KKS
KKS



HIGH COURT

DATED:10/12/2024



ORDER

WP.No.31765 of 2015

**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS**

⑧
17/12/24
LWS