

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

TUESDAY, THE THIRTY FIRST 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: 31770 OF 2015

Between:

1. Rajendra Kumar Kimtee (DIED), S/o Sampatlalji Aged about 72 years, Occ Business D-6, Mayur Kushal Complex, Gunfoundery, Abids, Hyderabad.
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 records as Lrs of deceased Petitioner No.1, as per Court Order dt: 31-12-2024, vide IA.No. 1 of 2024, in WP.No.31770 of 2015)

...PETITIONER

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. 23, Road No. 12, Banjara Hills, Hyderabad for the assessment year 2015-16 and in illegally collecting, retaining and not refunding a sum of Rs. 5,76,991/- towards vacant land tax for the assessment years 2009-10,

2010-11, 2011-12, 2012-13, 2013-14 contrary to the decision of this Hon'ble 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. 5,76,991/- to the Petitioner or alternatively direct the Respondent to adjust the amount of Rs. 5,76,991/- collected towards future payment of property tax on property bearing Plot No. 23 , Road No. 12, Banjara Hills, Hyderabad.

I.A. NO: 1 OF 2015(WPMP. NO: 41067 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 to suspend all further proceedings or actions of the Respondents pursuant to the demand notice bill No.100064124 for property tax for the assessment year 2015-16 pending disposal of the above writ petition.

Counsel for the Petitioners: M/s. PREETHI FOR SRI V.HARI HARAN
Counsel for the Respondent Nos.1 & 2: SRI MIDDE ARUN KUMAR, SC FOR
GHMC
Counsel for the Respondent No.3: GP FOR MCPL ADMN-URBAN DEV

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.31770 of 2015

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

Petitioner 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 Ms.Preethi, learned counsel representing Sri V.Hari Haran, learned counsel for the petitioner, 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 was the absolute owner and possessor of the land bearing plot No.23, Road No.12,

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Banjara Hills, Hyderabad, admeasuring approximately 610 sq. yards and the same was purchased in the year 1968 and in the said property, he erected 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.5,76,991/- for the said period. Petitioner submitted representations on 02.04.2012 and 14.07.2015 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, 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 filed the present writ petition.

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

4.1. Learned counsel for the petitioner 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.5,76,991/- from 2009-2010 to 2013-2014. In spite of the representations submitted by petitioner dated 02.04.2012 and 14.07.2015, the respondent authorities have not taken any steps to consider the claim of the petitioner 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 others¹**.

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

¹ 2014 (1) ALD 170

respondent authorities had rightly issued demand notice for payment of tax and the petitioner is not entitled for the relief sought in the writ petition. He submitted that respondent Nos.1 and 2 will consider the representations submitted by petitioner 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 petitioner specifically claimed that the subject property is open and

vacant land and he has not made any construction except a small tin shed without any RCC roof. It reveals from the record that petitioner has submitted representations to respondent No.2 on 02.04.2012 and 14.07.2015 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.5,76,991/- 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 petitioner 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.

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 dated

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02.04.2012 and 14.07.2015 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 petitioner Nos.2 to 4 including personal hearing.

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, MA and UD Dept., Secretariat, Hyderabad, State of Telanagana.
4. One CC to SRI V.HARI HARAN, Advocate [OPUC]
5. One CC to SRI MIDDE ARUN KUMAR, SC FOR GHMC [OPUC]
6. Two CCs to GP FOR MCPL ADMN-URBAN DEV, High Court for the State of Telangana, at Hyderabad. [OUT]
7. Two CD Copies

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HIGH COURT

DATED:31/12/2024

ORDER

WP.No.31770 of 2015



**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS**

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G.B

21/1/25