

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE Mr. JUSTICE M.G.S. KAMAL

WRIT PETITION No.33252 OF 2012 (LB-RES)

BETWEEN:

1. UNION OF INDIA
REPRESENTED BY SECRETARY
DEPARTMENT OF MINES AND GEOLOGY,
MINISTRY OF MINES,
3RD FLOOR, 'A' WING,
SHASTRI BHAVAN,
NEW DELHI-110001.
2. THE DIRECTOR GENERAL
GEOLOGICAL SURVEY OF INDIA,
NO.27, J.L. NEHRU ROAD,
KOLKATTA-700016.
3. THE DEPUTY DIRECTOR GENERAL
MINES AND COASTAL
SURVEYS DIVISION,
PANDESWARA,
MANGALORE-575001.

...PETITIONERS

(BY SRI. H. SHANTHI BHUSHAN, ASST. SOLICITOR GENERAL
OF INDIA)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF URBAN DEVELOPMENT,
VIDHANA SOUDHA,
DR. B.R. AMBEDKAR VEEDHI,
BANGALORE-560001.
2. MANGALORE MUNICIPAL CORPORATION,
REPRESENTED BY ITS COMMISSIONER,
LALBAGH,
MANGALORE-575003.
3. THE ASSISTANT REVENUE OFFICER
MANGALORE MUNICIPAL CORPORATION,
LALBAGH,
MANGALORE-575003.

...RESPONDENTS

(BY SMT. M.C.NAGASHREE, AGA FOR R1;
SRI. HAREESH BHANDARY T., ADVOCATE FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO STRIKE DOWN THE SECTION 110(1)(j) OF THE KARNATAKA MUNICIPAL CORPORATIONS ACT, 1976, IN SO FAR AS NON EXEMPTING THE LAND USED OR INTENDING TO BE USED FOR RESIDENTIAL OR COMMERCIAL PURPOSES BY THE UNION OF INDIA FROM TAXES AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Present petition is filed by the Union of India and others seeking following reliefs;

“(i) To strike down the Section 110(1)(j) of the Karnataka Municipal Corporation Act, 1976 in so far as non exempting the land used or intending to be used for residential or commercial purposes by the Union of India from taxes.

(ii) To quash the demand notice dated 04.06.2010 in No. EDS/ Kum.Vi/P.R. 173/ R.13232/ 09-10 /A7 issued by the Assistant Revenue Officer, Mangalore Municipal Corporation, Mangalore, i.e., the respondent No.3 vide Annexure-C and notice dated 16.07.2011

No.Kum.Vi/EDS/PR.173/R.13232/09-10/ A7 issued by the Revenue Officer, Mangalore Municipal Corporation, Mangalore i.e., the respondent No.4 vide Annexure-F.

(iii) Direct the respondent Nos.2 to 4 to refund a sum of Rs.4,11,317/- received vide DD No.280420 dated 28.03.2007, a sum of Rs.15,679/- received vide DD No.288751 dated 31.10.2007 and a sum of Rs.15,679/- received vide DD No.172171 dated 02.04.2008 from the petitioner No.3 towards property tax in respect of the residential quarters owned by it to the petitioner No.3 along with interest from the date of receipt till the date of repayment”.

2. Sri. H.Shanthi Bhushan, learned Additional Solicitor General appearing for the petitioners fairly submits that he would not press the relief No.(i). Hence, the same is does not survive for consideration. Therefore, the present petition is taken up for consideration of relief Nos. (ii) and (iii).

3. It is the case of the petitioners that it owns buildings in Mangalore City which has been used for residential quarters for its employees and the said building is situated within the jurisdiction of respondent No.2-Corporation. That respondent No.3 had demanded property tax in respect of the building used for residential purposes by the petitioner No.3. That the petitioner No.3 in advertently with bonafide intention made the payment in an aggregate sum of Rs.4,42,675/- to the respondent No.2-Corporation in compliance with the demand notices issued during the

year 1994-95 to 31.03.2008 as per the following details;

- “(a) A sum of Rs.4,11,317/- vide DD No.280420 dated 28.03.2007,
- (b) A sum of Rs.15,679/- vide DD No.288751 dated 31.10.2007 and
- (c) A sum of Rs.15,679/- vide DD No.172171 dated 02.04.2008”.

4. It is the further contention of the petitioners that it was subsequently noticed that demand made by the respondent No.-2 corporation with regard to payment of property tax was illegal and contrary to the provisions of Article 285 (1) of the Constitution of India. Therefore, a representation dated 25.02.2010 as per Annexure-A was made to the respondent No.2 seeking exemption of the building from the payment of property tax and also sought for refund of the amount already paid by it. Since, no action was taken, the petitioner No.3 made another representation on 25.05.2010 as per Annexure-B

reiterating its earlier requisition. However, on 04.06.2010, respondent No.3 relying upon the provision of Section 110(1)(j) of the Karnataka Municipal Corporation Act, 1976 (hereafter referred to as the KMC Act) rejected the claim of the petitioner No.3 and demanded for payment of property tax for the year 2009-10 as per Annexure-C. In response thereof, petitioner No.3 after obtaining opinion from its Law Department made yet another representation on 28.09.2010 as per Annexure-D seeking exemption from payment of property tax as provided under Article 285 (1) of the Constitution of India. The respondent No.4 without considering the representations given earlier, issued another demand notice dated 16.07.2011 demanding payment of arrears of property tax in respect of the building belonging to the petitioners on the premise of the provisions of the Section 110(j) of the KMC Act, 1976.

Being aggrieved by the aforesaid demand, petitioners are before this Court.

5. This Court considering the fact and situation of the matter had directed the learned Additional Solicitor General appearing for the petitioners and learned counsel appearing for the respondent Nos.2 to 4 to furnish the details with regard to the date of construction of building in question. Learned counsel for the respondent No.3 has submitted copy of the building licence concerning the property in the nature of demand register extract. It is seen that the building licence has been issued by the respondent No.2 on 26.04.1991 and building has been completed and occupancy certificate has been issued on 10.06.1994. The aforesaid information was required in view of the Article 285 of the Constitution of India which provides as under;

"285. Exemption of property of the Union from state taxation.- (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State".

6. Thus, it is clear from reading of the clause (1) of Article 285 of the Constitution extracted hereinabove that if a building belonging to Union of India was in existence prior to coming into effect of the Constitution and said building unless Parliament may by law otherwise be exempt from levy of tax by the State or any other authorities. Clause (2) of the Article 285 of the Constitution on the other hand makes it clear that if a building was in existence prior

to commencement of the Constitution and till Parliament by law otherwise provides the same shall not levy tax thereon. In the instant case as noted above, the building in question has come into existence in the year 1994 subsequent to commencement of Constitution.

7. Learned ASG also relies upon the judgment of this Court in the case of **Union of India and others vs. City Municipal Council, Rani Bennur** and another reported in **AIR 2000 Karnataka 104**, wherein dealing with identical situation, this Court at paragraph 7 as held as under;

"7. Provisions of Article 289 exempt the property of the State and that of Article 285, provide exemption to property of the Union are complementary to each other with a view not to levy the tax by State Legislature on the property of the Union and also by the Parliament on the property of the State. Article 285 refers to the property of the Union. If the property belongs to the Union, then, irrespective of its use, no tax could be levied by the State Legislature or by Municipal Authorities. The concept of use is

not provided under Article 285. The denial of exemption under the proviso to Section 94 of the Act on the ground that the property is used or intended to be used for residential or commercial purpose cannot be considered to be inconsonance with the spirit of Article 285 of the Constitution of India. Any property belonging to the Union of India irrespective of its use could not be subjected to tax and therefore the proviso of Section 94 of the Karnataka Municipalities Act to that extent is ultra vires of Article 285 of the Constitution of India”.

8. Learned counsel for the respondent Nos. 2 to 4 does not dispute the aforesaid legal position. In that view of the matter, petition deserves to be allowed quashing the demand notices as per Annexures-C and F. As regards the prayer for refund of Rs.4,42,675/- is concerned which was apparently paid by the petitioners under bonafied intention, learned counsel for the respondents submits that the petitioners though not liable for property tax, are liable to pay service tax for the amenities provided and that the amount so paid would be adjusted/set off

against the said claim. Learned ASG has no objection for the same. The respondent -authorities shall intimate about the service tax which the petitioners are liable to pay and the amount already paid by the petitioners as noted above shall be adjusted against the said demand.

With the aforesaid observations, the petition is disposed of.

**Sd/-
JUDGE**

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