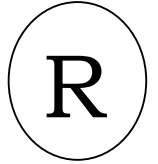




NC: 2023:KHC:42569
WP No. 28561 of 2019



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 28561 OF 2019 (LB-TAX)

BETWEEN:

M/S B M HABITAT



(BY SRI. RAJASHEKAR S .,ADVOCATE)

...PETITIONER

AND:

1. THE COMMISSIONER AND
COMPETENT AUTHORITY
MYSURU CITY CORPORATION
SAYYAJI RAO ROAD,
MYSURU-570 024
2. JOINT DIRECTOR
TOWN PLANNING MYSURU CITY CORPORATION
SAYYAJI RAO ROAD,
MYSURU-570 027
3. THE REGIONAL COMMISSIONER
REGIONAL OFFICE ZONE-4,
TA.RA.CO CIRCLE NEAR AKASHAVANI
YADAVAGIRI
MYSURU-570 004



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4. REVENUE INSPECTOR
REGIONAL OFFICE ZONE-4,
TA.RA.SO CIRCLE NEAR AKASHVANI
YADAVAGIRI
MYSURU-570 004

...RESPONDENTS

(BY SRI. PALLAVA.R., ADVOCATE FOR R1 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI TO QUASH THE ORDER DATED 15.2.2018 PASSED IN NO. VA.KA.KA.R4PR (ME) 85/15-16 BY THE R-1 VIDE ANNEXURE-A AND ETC.

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

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- 1. Issue a writ of certiorari to quash the order dated 15.2.2018 passed in No.Va.Ka.Kam.R4PR (me) 85/15-16 by the respondent No.1 vide Annexure-A*
- 2. Issue a writ of mandamus directing the Respondents to consider the representation dated 27.12.2013 vide Annexure-B*
- 3. Issue any other writ, order or direction as this Hon'ble Court deems fit and proper relief's as this Hon'ble Court deems fit and proper under the circumstances of this case.*

2. The petitioner is aggrieved by the demand made by the respondent – Corporation for payment of property tax calculated from 17.01.2008 on the



ground that the building was completed on that date even though the Occupancy Certificate came to be issued on 25.04.2011.

3. The petitioner claims to be the owner of the property bearing No.2270/E, D-22/E, 2270/A1 situated at Vinobhanagar Road, Jayalakshmipuram, Mysuru. The petitioner having applied for sanction plan, such a sanction was issued on 18.01.2006 and the commencement certificate in terms of the applicable Building Bye-law came to be issued on 03.05.2007. Thereafter, the petitioner commenced the construction and submitted an application on 02.12.2010 for issuance of occupancy certificate, which came to be issued on 25.04.2011.
4. Subsequent thereto, the respondent – Corporation vide order dated 02.05.2015 called upon the petitioner to make payment of property tax from 17.01.2008 which came to be challenged by the petitioner before this Court in W.P.No.21481/2015



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and this Court vide its order dated 21.05.2015 permitted the petitioner to furnish his explanation to the said demand which was directed to be considered by the Corporation and necessary orders to be passed thereon and until then, the respondent No.3 was restrained from taken any further steps.

5. After hearing the petitioner and considering the documents furnished by the petitioner, the impugned order dated 15.02.2018 has been passed wherein the very same order dated 17.01.2008 has been confirmed and the demand made for payment of property tax from 17.01.2008 was also confirmed, which is under challenge in the present proceedings.
6. Sri.S.Rajashekar, learned counsel for the petitioner would submit that the petitioner completed the construction only in July 2010 on account of NOC to be issued by the Deputy Commissioner for running multiplex as also the fire clearance having been delayed and it is only thereafter that the application



for grant of occupancy certificate was made on 05.07.2010. Since the same was not considered, another application was submitted on 02.12.2010. Thereafter, inspection was carried out and occupancy certificate was issued on 25.04.2011. This delay on part of the respondents in considering the application cannot be mulcted on the petitioner. The petitioner has not made use of the building for its own purposes or for rental during that time. The building being used only after the occupancy certificate having been issued, the property tax was required to be calculated from the date of occupancy certificate and not prior thereto.

7. Sri.Pallava R., learned counsel for respondents No.1 to 4 would submit that the date of completion of the building has wrongly been mentioned by the petitioner inasmuch as the building is deemed to have been completed as on 17.01.2008 on account of the plan sanction being valid upto that date and it



is on that basis, he submits that the building ought to have been constructed by 17.01.2008 and therefore, the property tax is liable to be paid from the date of the deemed construction being complete of the building. The delay by the Deputy Commissioner in issuing NOC and/or fire services in issuing NOC is not to the account of the Corporation and their delay cannot deprive the Corporation of their valid and due tax. Lastly, he submits that there is an appeal provision under Section 113 of the Karnataka Municipal Corporations Act which can be resorted to by the petitioner. On the above grounds, he submits that this petition needs to be dismissed.

8. Heard Sri.S.Rajashekar, learned counsel for the petitioner and Sri.Pallava R., learned counsel for respondents No.1 to 4 and perused papers.
9. The short question that would arise for consideration is as to from when the property tax is required to be payable on the property and could there be a



deeming fiction taken into consideration by the Corporation to contend that the building was ready for levy of property tax?

10. It is not in dispute that the plan was sanctioned on 18.01.2006, commencement certificate was issued on 03.05.2007 and that the total constructed area is 2,20,860 sq.ft. If the submission of Sri.Pallava R., learned counsel for respondents No.1 to 4 is to be accepted, then this would mean that between 03.05.2007 and 17.01.2008 i.e., within less than a period of 8 months, 2,20,860 sq. ft. construction has been put up over four floors.
11. Though the plan was valid upto 17.01.2008, in my considered opinion, the Corporation cannot seek to bring deeming fiction to contend that since the plan expires on a particular date, the construction is deemed to have been completed by that date without verifying actual status and without necessary documentation being placed on record, that the



building was constructed and was put to use. The very impugned order takes note of the fact that NOC was issued on 01.02.2010. Until such NOC was issued, the petitioner could also not have made use of the property for any of the purposes let alone as a multiplex or a mall. After NOC was received on 01.02.2010 and after carrying out the finishing works, an application for issuance of Occupation certificate was made on 05.07.2010. This application did not yield any results inasmuch as the Corporation did not carry out the inspection of the property to ascertain the construction has been put up and whether the said construction is in accordance with the plan sanction requiring the petitioner to submit one more application on 02.12.2010 and it is only on 25.04.2011 that the occupancy certificate was issued. Thus, there is considerable delay on part of the Corporation also in inspecting the property and issuing an occupancy certificate. This delay also cannot be made use of by the Corporation to shift



the date of completion of the construction and/or occupancy. There is no document placed on record that the petitioner has occupied or used the property prior to the occupancy certificate. The use of the property having commenced only post the occupancy certificate having been issued, the property being used for the benefit of the petitioner only thereafter it is only then that the building would become exigible for tax since the application of the property tax is on the building once completed and until then the incidence of property tax would only be on the vacant/open land and not on the constructed building.

12. In that view of the matter, I am of the considered opinion that no deemed fiction can be made use of by the Corporation to insist that the building was ready by the date on which the plan expired. If at all the construction had not been completed by the date on which the plan expired or that the building was



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constructed thereafter, it would have been available for the Corporation to take necessary action at that point of time which cannot also now be taken due to lapse of time. Thus, looked at from any angle, the action on part of the Corporation are completely unjustified. This Court refrains from using any other stronger words in relation thereto. Hence, I pass the following:

ORDER

- i) The Writ Petition is allowed, a certiorari is issued, the order dated 15.02.2018 passed in No.Va.Ka.Kam.R4PR(me)-85/15-16 by respondent No.1 at Annexure-A is quashed.
- ii) Respondent No.1 is directed to receive the property tax commencing from 25.04.2011.

Sd/-
JUDGE