(2014) 04 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 11177 of 2011

Asha Builders Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:
State Financial Corporations Act, 1951 — Section 2(c)

Citation : (2014) 175 PLR 498

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Rajiv Joshi, Advocate for the Appellant; Rupam Aggarwal, D.A.G., Punjab, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—Challenge in this petition is to the order dated 27.4.2011 passed by the Commissioner, Jalandhar Division. A Mortgage Deed No. 1198 dated 26.6.2001 was got registered by Asha Builders Ltd.-petitioner after securing a loan of Rs. 165 lacs from Punjab Financial Corporation for the purpose of setting up unit consisting of an air condition farm palace/Banquet Halls, air conditioned restaurant, pub mini amusement park and Punjab Dhaba. The Mortgage Deed without possession was executed in favour of PFC without payment of stamp duty of Rs. 3.30 lacs (2% of Rs. 165 lacs). A notice was issued on 30.5.2003. Reference was made by the Collector u/s 47-A of the Indian Stamp Act. Vide order dated 17.8.2010 the Collector proceeded on the notification and directed the petitioner to deposit Rs. 3.30 lacs as stamp duty along with 12% interest from the date of registration and 3% penal interest. On appeal, this order has been affirmed by the Commissioner vide order dated 27.4.2011 (Annexure P3).

2. The short question for consideration before this Court is-Whether the notification dated 7.7.1973 issued by the Punjab Government (Annexure P1) was applicable in the case of the petitioner for exemption of stamp duty?

3. It is not being disputed by the parties that in the present case the Mortgage Deed No. No. 1198 dated 26.6.2001 was got registered after securing a loan from Punjab Financial Corporation for the purpose of setting up unit consisting of an air conditioned farm/palace/Banquet Halls, air conditioned restaurant, pub, mini amusement park and Punjab Dhaba. As per the definition of "Industrial Concern" in Section 2(c) of the State Financial Corporation Act, 1951 it includes the hotel industry; setting up or development of tourism related facilities including amusement parks, convention centres, restaurants, travel and transport (including those at airports), tourist service agencies and guidance and counselling services to the tourists; providing commercial complex facilities and community centres including conference halls.

4. The Concern of the petitioner squarely falls within the definition of "Industrial Concern" as it includes Community Centres, Amusement Park and Restaurant. Therefore, the benefit of the notification dated 7.7.1973 (Annexure P1) should have been extended to the petitioner. The notification (Annexure P1) clearly states that the stamp duty leviable on Mortgages without possession executed "by the Industrial Concern in favour of PFC is not to be levied/it is to be removed. The Mortgage Deed has been rightly registered without payment of the stamp duty and in view of the definition of the "Industrial Concern" this writ petition is allowed. The order dated 27.4.2011 passed by the Commissioner, Jalandhar Division is set aside. The amount deposited by the petitioner pursuant to the order dated July 15, 2011 shall be returned by the respondents.

