(1995) 09 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3017 of 1982

Charanjeet Lal APPELLANT

Vs

The Municipal Corporation and Another RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:
Punjab Municipal Act, 1911 — Section 93

Citation : (1996) 2 CivCC 284 : (1996) 113 PLR 675

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Premjit Kalia, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition is directed against the orders Annexure P-6 and P-9 passed respectively by the Commissioner, Municipal Corporation, Amritsar, and Commissioner, Jullundhar Division, Jullundhar. First order relates to the revision of the assessment of the property of the petitioner under the Punjab Municipal Corporation Act, 1976 and the second order relates to the dismissal of the appeal filed by the petitioner.

2. Property Unit No. 8/X11I situated at Green Avenue, Amritsar belongs to the petitioner and his three brothers, namely, Sarvshri Inderjit, Vijay Kumar and Anil Kapoor. The annual rental value of this property was assessed at Rs. 4,800/- by the Municipal Committee Amritsar, before becoming Corporation under the provisions of the Punjab Municipal Corporation Act, 1976.

3. On 27.11.1979, a notice was issued by the Municipal Corporation, Amritsar, u/s 103 of the Punjab Municipal Corporation Act,1976, proposing to assess the house-tax on the property on the basis of annual rental value of Rs. 49,884/-. Against this notice, an objection petition was submitted by the petitioner and after considering those objections, the Sub Committee of the Municipal Corporation decided that assessment be made at the rate of 50 paise per square

foot per month instead of 60 paise per square foot of the ground floor and 40 paise per square foot for the first floor for the self-occupied residential building. On that premise, the assessment value was fixed at Rs. 41124/- per annum w.e f. 1.4.1979. Against this order, the petitioner filed an appeal and the same has been dismissed by the Commissioner Jullundhar Division, Jullundhar, vide order dated 29.4.1981.

4. The main argument advanced by the learned counsel for the petitioner is that while assessing the property of the petitioner for the purpose of imposition of house-tax, the Municipal Corporation did not comply with the provisions of Section 93 of the 1976 Act. He submitted that this point was raised by the petitioner in his appeal filed before the Divisional Commissioner but the Divisional Commissioner has not at all dealt with the point raised on behalf of the petitioner and this failure on the part of the respondents 1 and 2 has resulted in substantial failure of justice. Section 93 of the 1976 Act reads as under : -

" 93. Determination of rateable value of lands and buildings assessable to taxes. Subject to the rules, if any, made by the State Government in this behalf, the rateable value of any land or building assessable to taxes specified in Section 91 shall be-

(a) in the case of land, the gross annual rent at which it may reasonably be expected to let ;

(b) in the case of any building, the gross annual rent at which such building together with its appurtenances and any furniture that may be let for use for enjoyment therewith, may reasonably be expected to let, subject to the following deductions:-

(i) such deduction not exceeding 20 per cent of the gross annual rent as the Commissioner in each particular case may consider a reasonable allowance on account of the furniture let therewith ;

(ii) a deduction of 10 per cent for he cost of repairs and for all other expenses necessary to maintain the building in a state to command ''such gross annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i);

(iii) where land is let with a building, such deduction, not exceeding 20 percent of the gross annual rent, as the Commissioner in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state of command such annual rent.

Explanation I. - For the purposes of this clause it is immaterial whether the house or building, and the furniture and the land let for use of enjoyment therewith, are let by the same contract or by_ different contracts, and if by different contracts whether such contracts are made simultaneously or at different times.

Explanation II. - The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant.

(c) In the case of any building, the gross annual rent of which cannot be determined under clause (b), 5 per cent on the sum obtained, by adding the estimated present cost of erecting the building less such amount as the Commissioner may deem reasonable to be deducted on account of depreciation, if any, to the estimated market value of the site and any land attached to the building Provided that-

(i) in the calculation of the rateable value of any premises no account shall be taken of any machinery thereon ;

(ii) when a residential building is occupied by the owner or is not let the rateable value shall be fifty per centum of the annual market rent prevalent at the time of assessment in the locality for- similar accommodation :

Provided further that in respect of any land or building the fair rent whereof has been fixed under the law relating to rent restriction for the time being in force, the rateable value thereof shall not exceed the annual amount of the fair rent so fixed or the actual rent for which the same has been let, whichever is higher."

5. The said provision has been interpreted by this Court in Banarsi Dass Mahajan v. State of Punjab and Anr. 1990 1 97 P.L.R. 1 (F.B.), and it has been held that even though there may not be any existing assessment of the property under the East Punjab Urban Rent Restriction Act, 1949, the assessment committee of the Municipal Corporation is duty bound to make a notional assessment of the fair rent of the property and then impose tax on that basis. In view of the aforesaid decision of this Court, I have little hesitation hold that respondents No. 1 and 2 have committed illegality in passing the orders Annexure P-6 and P-9.

6. Consequently, the writ petition is allowed and the impugned orders Annexures P-6 and P-9 are quashed. However, liberty is given to the Municipal Corporation to make fresh assessment of the property of the petitioner in accordance

