
(2011) 10 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18621 of 2011

Faridabad Model School and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 03-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Municipal Corporation Act, 1994 — Section 138, 139, 140, 149(1), 87(3)

Citation : (2012) 1 RCR(Civil) 622

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : Ashwani Chopra and Mr. Aashish Chopra, for the Appellant;

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The epitome of the facts, which requires to be noticed, for the limited purpose of deciding the sole controversy involved, in the instant writ petition and emanating from the record, is that in exercise of powers conferred by sub-section (3) of Section 87 read with sub-section (1) of Section 149 of the Haryana Municipal Corporation Act, 1994 (hereinafter to be referred as "the Act") and all other powers enabling him in this behalf and in super session of Haryana Government, Local Government Department (Committees) notification Nos. 5576- ICI-75/24073 dated 30.7.1975, 19/147-ICI-78 dated 17.3.1979, 22/40/84-3 CII dated 1.7.1999 and 22/40/84-3C-II dated 12.11.2002, the Governor of Haryana specified the rate of tax to be imposed on the buildings and lands, by virtue of notifications dated 12.11.2002 (Annexure P2) and 30.9.2003 (Annexure P3). The claim of the petitioner-school, that it is exempted from tax, did not find favour with the Municipal Corporation (for brevity "the MC"), Faridabad-respondent No. 2 and it raised a demand of house tax, by way of bill/notice No. 28196 dated 17.8.2009 (Annexure P5) from it. The petitioner-school filed the reply (Annexure P6) and denied its liability to pay the house tax. Sequelly, the petitioner-school again moved the representation dated

2.11.2010 (Annexure P8) and claimed exemption from the payment of house tax, in pursuance of indicated notifications.

2. The joint Commissioner of respondent-MC negated the claim of petitioner-school in this regard, by means of impugned order dated 16.11.2010 (Annexure P9), which, in substance, is as under :-

In the eye of justice, the representative has been called for personal hearing. Sh. H.S. Malik, on behalf of Faridabad Model School appeared at the time of personal hearing on 02.11.2010 and he filed an objections.

After examine the case file and also heard to Sh. H.S. Malik by the undersigned. It has been found that clause 3 of notification No. 14/47/2003-3 CII dated 30.09.2003 provides that :-

All building and lands or portions there of used exclusively for educational purposes where fees at rates prescribed by government or equivalent to government schools are charged, including approved colleges, schools boarding's, hotels (Sic. hostels) and libraries, if such building and lands or portion thereof are either owned by the educational institutions without payment of any rent. Note : No exemption will be given to any property as defined in clause (1) and (3), if any portion there of has been constructed or used for commercial purposes.

Hence as per the above notification provides that only "all building and lands or portions thereof used exclusively for educational purposes and charged the fees at rates prescribed by government or equivalent to government schools are charged, including approved colleges, schools boarding's, hotels (Sic. hostels) and libraries" shall be exempted from the House Tax. Sh. H.S. Malik submitted the Fee structure for year 2008-09 and 2009-10, which itself speaks that the said fees structure is not equivalent to government schools.

In view of the facts, I have found no merit in this case and also satisfied that the Faridabad Model School does not cover under the exemption in any circumstances being they are not charged the fees equivalent to government schools. I have satisfied that the Faridabad Model School is liable to pay the House Tax.

Hence, the demand of payment of house tax raised by the MC from the petitioner-school was affirmed by the Joint Commissioner.

3. Instead of filing the statutory appeal and revision, the petitioner-school straightway jumped to file the instant writ petition, invoking the provisions of Articles 226/227 of the Constitution of India.

4. After hearing the learned counsel for the petitioner-school, going through the record & relevant legal provisions with his valuable assistance and after considering the entire matter deeply, to my mind, the instant writ petition is not directly maintainable under Articles 226/227 of the Constitution of India at this

stage in this Court.

5. As is evident from the record that the respondent-MC has levied and demanded the house tax from the petitioner-school, by way of house tax bill/ notice (Annexure P5) under sub-section (3) of Section 87 read with sub- section (1) of Section 149 of the Act. The Joint Commissioner negatived its claim for exemption of house tax, in pursuance of notifications (Annexures P2 and P3), by virtue of impugned order (Annexure P9) and reiterated the levy of house tax in this context.

6. What is not disputed here is that only those buildings and lands or portion thereof used exclusively for educational purposes are exempted from levy of tax, as contemplated in the notification (Annexure P3), where fees at the rates prescribed by the Government or equivalent to Government schools are charged, including approved colleges, schools, boarding's hostels and libraries, if such buildings and land or portion thereof are either owned by the educational institutions concerned or have been placed at the disposal of such Educational Institution without payment of any rent. As per the note of clause 3 of notification (Annexure P3), no exemption will be given to any property if any portion thereof has been constructed or used for commercial purposes.

7. In other words, the exemption of house tax can only be granted, if all the essential indicated ingredients are complete and not otherwise. Whether the petitioner-school is using the building exclusively for educational purposes, what are the rates prescribed by the government or being charged by the government schools and what is fees structure of the petitioner-school and other essential ingredients, are the questions of fact, the determination of which, require the evidence and only the appellate authority can determine such questions of fact based on the evidence. Such intricate questions can only be determined by the appellate authority after production of relevant evidence and not by this Court in exercise of extraordinary jurisdiction under Articles 226/227 of the Constitution of India.

8. Sequelly, section 138 of the Act postulates that "an appeal against the levy or assessment of any tax under this Act, shall lie to the Divisional Commissioner, and every such appeal shall subject to the provisions of this Act, be received, heard and disposed of by him." Likewise, section 139 posits that "no appeal shall be entertained u/s 138, unless the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.

9. Not only that, according to section 140, any person aggrieved by an order passed in appeal u/s 138 may, within thirty days of the communication to him of such order, make an application in writing to the Government for revision against the said order and the Government may confirm, alter or rescind the said order.

10. Meaning thereby, the petitioner-school has the statutory rights of appeal and revision and it cannot legally be permitted to ignore/bypass these remedies at this stage in the garb of Articles 226/227 of the Constitution, unless very strong,

extremely compelling, overriding and exceptional grounds in this regard are made out. No such cogent and compelling reasons are forth coming on record to directly entertain the writ petition. Moreover, the appellate authority can effectively decide both questions of fact and law. There is no reason why the petitioner-school should not follow and adopt the statutory alternative remedy, instead of invoking the extraordinary jurisdiction of this Court. The existence of statutory alternative remedy of appeal and effective adjudication of matter by the appellate/revisional authorities are the good grounds for this Court to decline the exercise of extraordinary jurisdiction under Articles 226/227 of the Constitution of India, in view of the ratio of law laid down by the Hon''ble Apex Court in cases Mr. Rohtagi, of State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, and Orissa Agro Industries Corporation Ltd. and Others Vs. Bharati Industries and Others, , wherein, it was ruled that under such circumstances, if the statutory alternative remedies of appeal and revision are available to a party, then, invoking the writ jurisdiction was wholly misconceived and was not maintainable in law. The crux of the law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of this case and is the complete answer to the problem in hand and the contrary contentions of learned counsel for the petitioner-school "strictosensu" deserve to be and are hereby repelled under the present set of circumstances.

11. Again, it is not a matter of dispute that the petitioner-school did not avail the indicated statutory remedies and if the instant petition is directly entertained, then, it will amount to nullifying the legislative intent to incorporate the statutory provisions of appeal and revision in the Act, which is not legally permissible. Therefore, to me, the present writ petition is not directly maintainable in this Court, in the obtaining circumstances of the case.

12. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of any subsequent hearing of the matter, the instant writ petition deserves to be and is hereby dismissed, as being not maintainable at this stage. Needless to mention that nothing observed here-in-above would reflect in any manner on the merits of the case, as the same has been so recorded for a limited purpose of deciding this petition.