(2013) 07 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No. 585 of 2013

Gran Surjit Cineplex APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 9 ADJ 76

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : Ashok Kumar, Praveen Kumar and S.C. Pandey, for the Appellant;

Judgement

1. We have heard Shri Ashok Kumar, learned counsel for the petitioner. Learned Standing Counsel appears for the State respondents. By this writ petition the petitioner has prayed for following reliefs:

(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 10.7.2009 passed by the respondent No. 3 withdrawing the exemption.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 3 to prepare and furnish its report to the State Government called in pursuance of application dated 15.10.2012 at the earliest and to decide the review application dated 15.10.2012.

(iii) Issue a writ, order or direction in the nature of certiorari quashing the order dated 10.7.2009 issued by No. 3 and issue a mandamus commanding the respondent No. 3 to press the recovery certificate No. 197 dated 13.8.2012 (Annexure 16).

2. Earlier the petitioner had filed a Writ Petition No. 544 of 2013, which was found to be defective as the order of the District Magistrate dated 10.7.2009 was not challenged by the petitioner. The writ petition was dismissed as withdrawn with liberty to file fresh writ petition challenging the order of the District Magistrate, if he is so advised.

3. In this fresh writ petition challenging the order of the District Magistrate dated 10.7.2009 withdrawing the exemption of entertainment tax granted on 8.1.2001 and availed in full by the petitioner from the year 2004 to 2009, considering the fact that the petitioner has been asked to deposit and the recovery has been initiated by the impugned order for Rs. 5,71,35,671/-, and that the filing of appeal will entail predeposit of 50% of the amount, we entertained the writ petition and directed the Standing Counsel to produce the original record of the case.

4. Brief facts given rise to this writ petition are that in pursuance to exemption granted by the State Government vide Government Order dated 11.8.2000 to the new cinema halls for a period of five years and the amended Government Order dated 9.1.2001 the petitioner applied for construction of new cinema hall. The Sub-Divisional Magistrate, Aligarh was required to submit his report on the availability of the land and to find out whether there is any recognised school/ hospital, civil or criminal Court within radius of 75 mtrs. of land. The report was submitted by the Revenue Inspector, Kol on 7.1.2001, which was forwarded by the Sub-Divisional Magistrate to the Additional District Magistrate (Finance & Revenue) on the same day on 7.1.2001 and on the same day it was forwarded to the Additional District Magistrate (Finance & Revenue).

5. By an order dated 8.1.2001 signed by the Assistant Entertainment Tax Commissioner, Aligarh; Additional District Magistrate, Aligarh and District Magistrate. Aligarh all on the same day on 8.1.2001 relying upon the report of the Sub-Divisional Magistrate as well as the building plans sanctioned by the Executive Engineer, Prantiya Khand, Public Works Department, Aligarh dated 4.1.2001, the permission was granted to construct new cinema hall subject to conditions including obtaining permission from the Senior Superintendent of Police and Fire Officer, Aligarh.

6. The petitioner started construction of the cinema hall and completed the same in the year 2004. He availed the entire benefit of the exemption from 2004 to 2009 vide the orders of the District Magistrate dated 8.1.2007, under the Government Orders dated 18.1.2000 and 9.1.2001.

7. It is submitted by learned counsel for the petitioner that Shri Amrit Pal Singh, the Assistant Commissioner of Entertainment Tax, Aligarh, illegally demanded huge amount from the petitioner as bribe. When the petitioner refused to pay the amount, as his cinema had availed exemption strictly in accordance with the Government Orders, he initiated proceedings for withdrawing exemption purportedly on the ground that inspection of site was made by the Revenue Inspector, Kol on 17.1.2001; his report was submitted on the same day on 17.1.2001 and was forwarded to the Sub-Divisional Magistrate on 17.1.2001 and thereafter by the Sub-Divisional Magistrate to the Additional District Magistrate on 17.1.2001. He found some overwriting on the dates in the report. Taking advantage of such overwriting, he on his own, without obtaining permission or the sanction of the District Magistrate sent the two documents namely letter of

the Additional District Magistrate (Finance & Revenue) dated 6.1.2001 and the report of the Sub-Divisional Magistrate dated 7.1.2001 to the Forensic Laboratory, U.P. and obtained answers on queries made by him in respect of overwriting on the dates on the documents (report of the Revenue Inspector, Kol, with forwarding note of Sub-Divisional Magistrate). The Forensic Laboratory, U.P. by its report dated 23.9.2009 forwarded its opinion that the dates pointed out at Q-1, Q-3, Q-4 and Q-5 are overwritten.

8. With this report the Assistant Commissioner initiated proceedings against the petitioner and on which the District Magistrate, Aligarh sent a notice to the petitioner on 6th June, 2009 to show-cause as to why the entire amount of entertainment tax be not withdrawn as the order dated 8.1.2001 of District Magistrate was obtained by playing fraud in which the report of the Revenue Inspector and the Sub-Divisional Magistrate were backdated from 17.1.2001, to 7.1.2001 for obtaining exemption.

9. The petitioner submitted his reply to the show-cause notice and denied that he had any access to the records or that the report has been backdated. He denied of any manipulation in the dates in the documents referred to as above and stated that the site was inspected and report was prepared and forwarded on 7.1.2001, and further stated that the building plans were sanctioned by the Executive Engineer, Prantiya Khand, Public Works Department on 4.1.2001. On the request of the Additional District Magistrate (Finance & Revenue) dated 6.1.2001, the report was submitted by the Revenue Inspector on 7.1.2001 and was forwarded by the Sub-Divisional Magistrate to the Additional District Magistrate (Finance & Revenue) on the same day on 7.1.2001.

10. The District Magistrate was not satisfied with the explanation and passed order on 10th July, 2009 recording his finding that a conspiracy was hatched in which report dated 17.1.2001 was backdated to 7.1.2001 by overwriting on the documents and on that basis the then District Entertainment Officer gave permission to construct cinema hall on 8.1.2001.

11. The petitioner made a complaint to the Commissioner of Entertainment Tax as well as the State Government in which the Principal Secretary, Finance, Tax and Registration initiated enquiry to be made by the Assistant Entertainment Tax Commissioner, Muzaffarnagar, who submitted detailed report after examining the original records. He was of the opinion that the entire allegations against the petitioner are false in as much as permission was granted by the District Magistrate on 8.1.2001 on the reports received by him. He could not have granted exemption, if the reports were not available. There is no allegation that date in the permission letter was subjected to any manipulation or that the facts found in the report were incorrect.

12. Learned counsel for the petitioner submits that the entire proceedings were initiated on the mala fides of Shri Amrit Pal Singh, the then Assistant Entertainment Tax Commissioner, Aligarh. He had made illegal demand from the

petitioner and when such demands were not satisfied the entire proceedings were initiated without sanction of the District Magistrate. The documents were sent to the forensic laboratory without the permission of the District Magistrate. The queries made by him were replied by the forensic laboratory on which proceedings were initiated without realising that under Rule 3 of the U.P. Cinematograph Rules, 1951 there was no requirement of any report to be submitted for the purposes of permission to construct cinema hall. The Assistant Entertainment Tax Commissioner did not explain as to how the Executive Engineer, Prantiya Khand, Public Works Department could have sanctioned building plan on 4.1.2001 and that the District Magistrate gave permission on 8.1.2001, if the reports were allegedly obtained on 17.1.2001 and were backdated to 7.1.2001.

13. There was no allegations against the Executive Engineer, PWD and the District Magistrate of having backdated their sanction and permission. He submits that if there were any such fault, action should have been taken against the petitioner, within reasonable time. The respondents should not have waited for 8 years after the exemption was allowed and the petitioner availed the entire exemption.

14. Learned Standing Counsel submits that as soon as the manipulation of the documents were noticed, the Astt. Entertainment Tax Commissioner sent records to the forensic laboratory and after he was satisfied that the site was inspected on 17.1.2001, which was later than the permission, given by the District Magistrate, the show-cause notice was given to which the petitioner did not submit satisfactory explanation. The exemption was taken by playing fraud and thus entire amount of entertainment tax in pursuance to the scheme has been withdrawn and recovery was initiated, after adding interest to the amount, which could not have been availed by the petitioner as exemption.

15. Rule 3 of the U.P. Cinematograph Rules, 1951 provides for application for constructing a building. The Rule is quoted as below:

3. Application for constructing a building.--(1) A person desirous of constructing a permanent building to be used for cinematograph exhibition shall submit an application specifying the site on which the proposed building is to be constructed together with a plan and specifications thereof to the officer authorised in this behalf by Government.

(2) The plan mentioned in the aforesaid sub-rule shall contain the elevations and sections of the buildings, the proposed electrical installations, arrangements for ventilation, sanitation and parking of vehicles and the position of the premises in relation to adjacent premises and public through fares on which the building abuts, within a radius of one furlong.

(3) The licensing Authority may, if it is satisfied that the site plans and specifications fully conform to the rules, grant to the applicant a certificate signifying his approval thereto. The period within which the construction shall be

completed shall also be stated in the certificate.

16. Rule 3 quoted as above as well as the Government orders dated 11.8.2000 and 9.1.2001 do not provide for any site inspection. The inspection of the site is only for the purposes of finding out whether the land is owned by the person, who has applied for permission and is not within 75 mtrs. of any recognised public school, 25 bedded hospital or civil or criminal Court. It is not denied that the petitioner has applied for permission and on which the Additional District Magistrate (Finance and Revenue) had directed the Sub-Divisional Magistrate to submit his report vide his letter dated 6.1.2001. There appears to be some overwriting on letters ''0'' preceding ''7'' in the report of the Revenue Inspector, Kol and the officer, who forwarded the same to the Sub-Divisional Magistrate. We have, however, on examining the recorder do not find that there is any overwriting on date 07/1/2001, put under signature of Sub-Divisional Magistrate, Koal, who had forwarded the report to the Additional District Magistrate (Finance & Revenue).

17. In the present case we find that question of overwriting on the date of the report of the Revenue Inspector is not relevant both on the ground that no such inspection is mandatory under Rule 3 or under the notification and further that the permission was granted by the District Magistrate on 8.1.2001. The order granting permission by the District Magistrate on 8.1.2001 is also singed by the Assistant Entertainment Tax Commissioner, Aligarh and the Additional District Magistrate. Both the Assistant Entertainment Tax Commissioner and the District Magistrate have clearly put the date 8.1.2001 below their signatures. In the impugned order nothing has been said about date of the permission and as to how the permission could be granted by the District Magistrate on 8.1.2001, if the inspection of the site was made on 17.1.2001. In the enquiry findings was also recorded that there could be no explanation as to how the District Magistrate granted permission on 8.1.2001 on the report of the Sub-Divisional Magistrate, if it was submitted on 17.1.2001. The State Government found everything in order except some overwriting, which did not require any explanation at all as the relevant order is the order of permission and not the order by which any inspection of the site was made by the revenue official.

18. In the impugned order passed by the District Magistrate he has nowhere explained as to how his predecessor could have given permission on 8.1.2001 on report submitted on 17.1.2001. Infact he has not questioned the permission given by his predecessor and the date of the permission at all. The entire case appears to have been based on the report of the Assistant Entertainment Tax Commissioner against whom malafides have been alleged by the petitioner.

19. For the aforesaid reasons, we find that entire initiation of the proceedings against the petitioner was with mala fide intentions for withdrawing exemption. The District Magistrate was falsely prompted by a manipulated report generated by the Assistant Entertainment Tax Commissioner, Aligarh, who acted on his own in calling for report from the forensic laboratory on the questions prepared by

him and the documents, which were sought to be examined. If the Assistant Entertainment Tax Commissioner was concerned about the backdating of the document, he should also have sent the order of permission signed by his predecessor and the District Magistrate on 8.1.2001 for examination by the forensic laboratory.

20. We further find from the record that the District Magistrate, Aligarh in his notice to the petitioner on the aforesaid allegations on 6th June, 2009 calling for explanation also directed cinema hall to be closed. The petitioner filed an appeal against the order, which was allowed by the State Government on 8th July, 2009 cancelling the order of the suspension of the cinema hall during the pendency of the proceedings and directed the District Magistrate to decide the matter on the notice expeditiously. The District Magistrate passed order within two days of the receipt of the appellate order on 10.7.2009. These dates also support our findings that the then Assistant Entertainment Tax Officer had some score to settle with the petitioner and that he wanted the proceedings to be concluded against him and recovery be initiated. On the aforesaid discussion, we allow the writ petition and while setting aside the order passed by the District Magistrate dated 10.7.2009 and the recovery certificate No. 197 dated 13.8.2012, direct the State Government to initiate enquiry against Shri Amrit Pal Singh, the then Assistant Entertainment Tax Commissioner for having acted with mala fide intention against the petitioner and putting the petitioner to great harassment and inconvenience. We also direct costs of Rs. 1 lac to be paid by the State Government to the petitioner for involving him into unnecessary and uncalled for proceedings and litigation. It will be open to the State Government to realise this amount from Shri Amrit Pal Singh, the then Assistant Entertainment Tax Commissioner, Aligarh after making an enquiry against him.

