(2013) 11 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 1327 of 2005

Industries Association and Another APPELLANT

Vs

Chandigarh Administration and Others RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0169

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : Sanjay Majithia and Mr. Shailendra Sharma, for the Appellant; Lisa Gill, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The Punjab Municipal Corporation Act, 1976 (hereinafter referred to as ''the said Act'') was extended to the Union Territory of Chandigarh with effect from 24.5.1994 by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994. In exercise of power u/s 399 of the said Act, the Chandigarh Municipal Corporation (Tax on Commercial, Industrial and Institutional Lands and Buildings) Bye-Laws, 2003 (hereinafter referred to as ''the said Bye-Laws'') was promulgated on 3.6.2003. The rate of tax to be levied on commercial, industrial and institutional lands and buildings in Chandigarh was specified by the Chandigarh Administration in exercise of power u/s 90(3) of the said Act at 3% of the rateable value of such land and building. The petitioner claims itself to be a registered association of industrial plot owners and has filed the present petition styled as a Public Interest Litigation (PIL) which was, however, subsequently treated only as a petition agitating the personal interest of the petitioners seeking to assail the said Bye-Laws as being arbitrary, not based on intelligible differentia and discriminatory and therefore, violative of Article 14 of the Constitution of India.

2. Learned senior counsel for the petitioners has drawn our attention to the provisions of Section 93 of the said Act to contend that the bye-laws framed seek

to make part of the section otiose and no interpretation of the provisions of the Act or Bye-Laws which claim to do so can be sustained as every provision of the said Act must be given effect to. In this behalf, learned senior counsel has referred specifically to the last proviso to the said section which 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) to (c) xxxxx xxxxx xxxxx

Provided that-

(i) in the calculation of the rateable value of any premises on 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 percentum 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.

3. It is thus, submission of the learned senior counsel that the proviso referred to the fair rent fixed under the law relating to rent restriction and the consequent fixing of the rateable value of the property. He submits that the bye-laws in effect seek to make applicable a flat rate ignoring the aforesaid provision.

4. In order to appreciate this plea, we will have to turn to the relevant provision of bye-laws which provide for a self-assessment form to be filed. The annual rateable value of a property is to be worked out by multiplying the average square foot rate by the area of floor of building multiplied by 12. A deduction of 10% on account of repair is admissible whereafter the net taxable value would be ascertained. The area of Chandigarh is divided into five groups which in turn is divided into four zones. Qua four of the groups, the relevant table in this behalf is reproduced hereunder:-

Unit: Rent Per Sq. Foot/Per Month

The rates of Ground Floors only have been provided in the above table according to Zone of a Group. In respect of basement the rate given in the column No. 3, 4 and 5 has to be reduced by 50% and for the upper storeys rate is to be reduced by 20% of the rent of the last floor (rounded of to the nearest rupee).

5. Thus, different sectors are placed in different groups and even qua a particular sector, there are different zones. The note below the table shows that though, rates of only ground floor are specified, there is an adjustment to be made qua

basement and different floors as per that note. Not only that, each sector of Chandigarh is also divided into SCOs (shop-cum-offices), SCFs (shop-cum-flats), booths, bay shops, others which fall in different zones in the same sector.

6. The grievance sought to be advanced by the learned senior counsel is that though, the aforesaid may be true, but no significance has been given to classification of building, use of buildings etc. He specifically seeks to raise the issue that while the members of the petitioner association may be using the properties for industrial user, subsequent schemes have permitted industrial user to be converted into commercial user, while the property tax remains same for all only dependent on the aforesaid formula and the chart.

7. In order to support his plea, learned senior counsel has referred to the judgments of the Hon''ble Supreme Court in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, and The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., The earlier judgment has infact been discussed in the latter one and the relevant portion referred to being para-5 is reproduced hereunder:-

5. But in enacting the Kerala Building Tax Act no attempt at any rational classification is made by the Legislature. As already observed, the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality. This Court in a recent judgment has decided that the levy of tax in exercise of the power under Entry 49, List II of the Seventh Schedule in respect of factory buildings in a municipal area based on floor area was illegal: New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, The Court held in that case that the method of adopting a flat rate for a floor area for determining the annual value adopted by the Corporation of Ahmedabad in exercise of the powers conferred upon it by the Bombay Provincial Municipal Corporation Act 49 of 1949 was against the provisions of the Act and the Rules made thereunder as well as all recognized principles of valuation for the purpose of taxation. If levy of tax in a municipal district based on floor area in respect of a factory building violates Art. 14 of the Constitution when the tax is sought to be levied by the Municipal Corporation, we see no reason to uphold the tax imposed under the impugned Act when the State in exercise of legislative authority conferred by Entry 49, List II Sch. VII, imposes liability to tax buildings solely on floor area. The vice of the Act in the present case is more pronounced than it was in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The

City of Ahmedabad and Others, ; in that case the Rules under which the tax was sought to be levied on the basis of floor area were restricted in their operation to factory buildings within the Corporation limits of Ahmedabad, whereas Act 19 of 1961 which is challenged in the present case applies to the whole State of Kerala in respect of buildings completed on or after March 2, 1961, whatever may be the nature or class of the building, the use to which it is put, materials used in its construction and the extent of profitable user to which the building may be put, its cost and its economic rental. It is unnecessary in the circumstances to consider whether imposition of a tax only on buildings constructed after March 2, 1961, and exempting buildings completed before that date may not violate Article 14 of the Constitution.

8. In nutshell the submission is that refusal to make a rational classification would itself amount to denial of equality and the factual matrix therein dealt with factory building in municipal area being assessed to tax based on floor area which was found to be illegal as it was a flat rate for floor area. Among the factors, it is submitted, that ought to be taken into account should be the nature or class of building, the use to which it is put, material used in its construction and the extent of profitable user to which the building may be put, its cost and its economic rental.

9. On perusing the record and appreciating the submissions advanced by learned counsels for the parties, we do not find any merit in the petition.

10. The observations of the Hon''ble Supreme Court have to be read in the context of the factual matrix in which they were made. The factual situation was where a flat rate was sought to be imposed over a large area. This is not so in the present case. The city of Chandigarh has been divided into groups and zones. Infact, due care has been taken to see that particular nature of user and particular area would fall within a group or zone depending on their ability to obtain rent and thus, it cannot be said that the exercise of making the bye-laws in the manner they are so made are in derogation of Section 93 of the said Act. Infact, it is a comprehensive and proper methodology to assess property tax based on the potentiality of the property which in turn is depending on its location and its permissible user.

11. Insofar as the plea based on conversion to other users of certain properties are concerned, that is an aspect to be examined by the respondents. If at all that plea is only that the persons who put it to commercial use by conversion should be charged at a higher rate, rather than making any difference to the persons like the petitioners.

12. These are the only pleas advanced before us.

13. We are not persuaded by the submissions advanced on behalf of the petitioners that the bye-laws are de hors the provisions of the said Act or make any part of the provisions redundant or otiose.

14. We are thus, not inclined to exercise jurisdiction under Article 226 of the Constitution of India. Dismissed.

