(1981) 10 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1041 of 1972

Ishar Dass APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 23-10-1981

Acts Referred:

Citation : (1982) ILR (P&H) 101 : (1982) PLJ 16 : (1986) RRR 165

Hon'ble Judges : S.S.Kang, J

Advocate : Mr. H.R. Bansal, Advocate., Advocates for appearing Parties

Judgement

S.S. Kang, J.

1. Factual Matrix First.

The petitioner owns houses and shops in Mansa Town of District Bhatinda.

2. Finding that revenues of the Municipal Committee, Mansa, respondent No. 2, were insufficient to provide amenities to its citizens, the State Government, respondent No. 1 in exercise of powers conferred by Sections 62A and 61 of the Punjab Municipal Act, 1911 (hereinafter called the Act) issued a notification dated August 11, 1971, directing respondent No. 2 the Municipal Committee to impose house tax at the rate of 10 per cent on the annual rental value of buildings and lands as defined in subsection (1) of Section 3 of the said Act within a period of 60 days in the said Municipal Committee. It was made clear that in case the Committee failed to comply with the directions, action will be taken under subsection (3) of Section 62A of the Act. The Municipal Committee failed to impose the house tax.

3. The Punjab Government then imposed house tax at the rate of 10 per cent of the annual rental value of the buildings and lands within the jurisdiction of Municipal Committee, Mansa, payable by the owners of such buildings vide notification dated 16th November, 1971. Exemptions were granted in certain cases with which we are not concerned. Thereafter, the Executive Officer

requested the Municipal Committee to appoint an Assessing Authority for the purpose of assessing the house tax to be imposed `Consequently, on 22nd February, 1972, the Municipal Committee passed a resolution unanimously appointing Sarvshri Kishore Chand and Hukam Singh Narula as Assessing Authority. Vide this very resolution Sarvshri Roshan Lal, Maghar Singh, Dalbir Singh and Executive Officer were appointed members of the Sub Committee for hearing appeals. Thereafter notices were issued by the Executive Officer to the different owners of immovable properties in Mansa town including the petitioners intimating them that the Municipal Committee had assessed the rental value of the houses and shops and invited objections thereto (One of such notices is Annexure `D'' appended to this petition). A bare reading of this notice reveals that it was the Municipal Committee who had assessed the rental value of the different properties for the purpose of house tax on the basis of the present rent. Aggrieved by these notices, the petitioners have filed this petition.

4. Mr. J.R. Mittal had raised two preliminary points (1) that the petitioners have prayed for quashing the assessment order. In fact, no assessment order has been passed. After the determination of the rental value on receipt of the notices the petitioners could file the objections under law. They have not done so., (2) that they could have also filed appeals against the orders, if any, rejecting their objections. Since the petitioners have not availed of these remedies, this petition is not competent.

5. It has been argued by Mr. H.R. Bansal, learned counsel for the petitioners, that the powers to prepare the assessment list of the house tax in a municipal area is conferred by Section 63 of the Act on the Municipal Committee. However, by Section 4 of the Punjab Municipal (Executive Officers) Act, 1931 (thereinafter called the Executive Officer Act) these powers have been conferred on the Executive Officers. The Municipal Committee have explicitly been divested of this powers of assessment of rental value and consequently house tax.

6. Mr. J.R. Mittal, learned counsel for the Municipal Committee, has controverted the pleas of the petitioners. He has contended that the power to administer the municipal area has been vested in the Municipal Committee. The Executive Officer is only an officer of the Municipal Committee. All the powers which have been conferred on him by any statute can be exercised by a Committee also. In the present case the Executive Officer had himself requested the Municipal Committee to constitute a committee which may assess the rental value of the assessable properties. Thus exercising the powers vested in them under section 63 of the Act and complying with the wishes of the Executive Officer the members of the Municipal Committee held a meeting and decided so constitute a Committee consisting of Sarvshri Kishore Chand and Hukam Singh Narula to act as an Assessing Authority and on the basis of their recommendations the Committee had assessed the annual rental value.

7. First let us examine the preliminary objections. The petitioners have been aggrieved by the issuance of the notices, like Annexure `D'' to them which were

based on the assessment of the rental value of their properties by an Assessing Committee consisting of Sarvshri Kishore Chand and Hukam Singh Narula. They have challenged the very competence and constitution of the Assessing Committee. It was a question of jurisdiction of the Municipal Committee and the same could not be decided by that body. In any case the motion Bench admitting the petition was not impressed by the existence of this socalled alternative remedy. Now, after nine years of the pendency of this petition, this plea cannot be plausibly raised by Mr. Mittal, when this objection was not raised by filing a written statement at an early date. For these very reasons the second objection is also without any merit.

8. So far as merits are concerned, it will be useful to notice the relevant statutory provisions.

Section 63. Preparation of assessment list. The committee shall cause an assessment list of all building and lands on which any tax is imposed to be prepared, containing

(a) the name of the street or division in which the property is situated;

(b) the designation of the property either by name or by number sufficient for identification;

(c) the names of the owner and occupier, if known;

(d) the annual value, area or length of frontage on which the property is assessed; and

(e) the amount of the tax assessed thereon by the committee.

Section 4(b)(ii) of the Executive Officer Act reads as under :

(b) the powers conferred and duties imposed upon, the functions vested in, and the objections to be tendered and notice given to the Committee under the sections of the Municipal Act mentioned in Schedule I shall not be exercised or performed by vested in, or be tendered or given to the committee, but may be exercised or shall be performed by, or shall vest in, or shall be tendered or given to the Executive Officer, provided that

(i) xx xx xx

(ii) the power to revise the valuation and assessment conferred by Section 65 of the Municipal Act and the power to amend the assessment list conferred by subclause (1) of Section 67 of the Municipal Act shall be exercised by a subcommittee consisting of the Executive Officer and two members of the committee appointed by the committee for the purpose.''''

Schedule I

(Vide Clauses (b) of Section (4) Sections of the Punjab Municipal Act.

``Sections 39, 63, 64, 65, 66, 67, 70, 74, 75, 76, 77, 80, 81, 82, sub sections (2) and (3) of Section 96 subsection (1) of Section 97 Sections 99, 100, 101, 102, 105, 109, 115, 115A, 116, 117, 118, 119, subsections (1) and (2) of Sections 121, 122, 124, 125, 126, 127, 128, 129, 130, 131, 134, 135, subsection (1) of Section 140, Sections 142, 143, clauses (b) and (c) of Sections 170, 170A, sub section (2) of Section 172. Sections 170, 176, 176A, 177, 182, subsection (1) (2) and (4) of Section 189, Sections 101, 195A, 197A, 220 and subsection (3) of Section 233.''"

A combined reading of the statutory provisions makes it clear that the Legislature in its wisdom have divested the Municipal Committees, in which Executive Officers have been appointed, of the powers conferred on them by Section 63 of the Act. It has been provided by Section 4 of the Executive Officers Act that the powers conferred under the different sections of the Act which are mentioned in Schedule I to the Executive Officers Act cannot be exercised by the Municipal Committee concerned. They have to be exercised by the Executive Officer only Section 63 of the Act which gives the powers of making the assessment and determining the annual rental value has been included in Schedule I of the Executive Officers Act. So, it is apparent that the powers under section 63 of the Act can be exercised only by the Executive Officer and not by the Municipal Committee.

9. The question then arises as to whether the Executive Officer could delegate these powers to somebody else. There is no provision in either of the Acts authorising the Executive Officer to delegate his power to any body else. These powers had to be exercised by the Executive Officer only and by no one else. The mere fact that the Executive Officer made a request to the Municipal Committee to constitute an Assessing Committee for the purpose of assessment does not give the Municipal Committee the powers to assess the rental value. The result is that the Assessing Committee consisting of S/Shri Kishore Chand and Hukam Singh Narula was acting wholly without jurisdiction and the Municipal Committee could not on the recommendation of this Committee or itself determine the annual rental value of different immovable properties for the purpose of assessing house tax. The notices thus issued are not in accordance with the provisions of the Act and, therefore, liable to be quashed.

10. No arguments have been addressed challenging the validity of the notifications issued by the State Government.

11. For the afore going reasons, I allow this petition and quash the orders of the Assessing Committee or the Municipal Committee assessing the rental value of the immovable properties of the petitioners as also the notices issued by the Executive Officer to the petitioners inviting objections against this determination. However, it shall be open to the Municipal Committee to proceed in the matter in accordance with law. There shall, however, be no order as to costs.

