

(2011) 02 P&H CK 0475
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19461 of 2009

Jagmohan Chopra

APPELLANT

Vs

Divisional Commissioner, Patiala Division, Patiala and others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Urban Rent Restriction Act, 1949 — Section 4
Punjab Municipal Corporation Act, 1976 — Section 103(1), 146, 91, 93, 97

Citation : (2011) 02 P&H CK 0475

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—The epitome of the facts, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that the Assessing Authority of Municipal Corporation, Ludhiana (respondent No. 2) (for brevity "respondent-Corporation") assessed the house tax of the property of the petitioner-assessee, at the rate of Rs. 72000/- for the assessment years of 1992-93 and 1993-94 and Rs. 1,95,600/- for the year 1994-95, by virtue of impugned order dated 20.3.1996 (Annexure P2), in view of the provisions of The Punjab Municipal Corporation Act, 1976 (hereinafter to be referred as "the M.C. Act"). The appeal (Annexure P-3) filed by the petitioner-assessee was dismissed by the Divisional Commissioner, Patiala Division (respondent No. 1) (appellate authority), by way of impugned order dated 24.2.2009 (Annexure P-4).

2. The petitioner-assessee still did not feel satisfied and preferred the instant writ petition, challenging the impugned orders (Annexures P-2 and P4), invoking the provisions of Articles 226 and 227 of the Constitution of India, inter alia pleading that the authorities below have illegally assessed the house tax without any basis, in an arbitrary manner and without getting fair rent fixed under the provisions of Section 4 of the East Punjab Urban Rent Restriction Act. The impugned orders were stated to be cryptic, non-speaking and against the

statutory provisions of the M.C. Act. On the basis of aforesaid allegations, the petitioner-assessee sought the quashment of the impugned orders (Annexures P2 and P4), in the manner indicated hereinabove.

3. The respondent Nos. 2 and 3 contested the claim of the petitioner-assessee and filed their joint written statement, inter alia pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the petitioner-assessee. According to the contesting respondents that in the wake of request of the petitioner-assessee, the house tax was exempted by the Commissioner, vide order dated 8.3.1991 and accordingly, the annual rental value of the property in question was assessed as Zero, for the assessment year 1990-91. After new building was constructed, the same was rightly assessed for the purpose of house tax for the assessment year 1992-93, in view of the provisions and after following the due procedure as contemplated under the M.C. Act. The impugned orders were stated to be legal and valid. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

4. Having heard the learned counsel for the parties, having gone through the record and relevant provisions of law with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted for the reasons depicted here-in-below.

5. As is evident from the record that the Assessing Authority of the respondent-Corporation assessed the house tax, by means of impugned order (Annexure P2). The appeal (Annexure P3) filed by the petitioner-assessee was dismissed by the appellate authority, by virtue of impugned order (Annexure P4), the operative part of which is as under:

The perusal of the documents shows that the assessment was proposed at annual rental value of Rs. 1,40,400/- for the year 1992-93 and Rs. 3,84,000/- for the year 1994-95. The present appellant was called and he filed objections thereby stating that first floor is under his self occupation for residential and it was also pleaded that firstly the assessment of year 1992- 93 be finalized and then for the year 1994-95. The objections of the present appellant were duly considered and after hearing the present appellant, the assessment was reduced from Rs. 1,40,400/- to Rs. 72,000/- for the year 1992- 93 and from Rs. 3,84,000/- to Rs. 1,95,600/- for the year 1994-95. Thus, it is clear that the present appellant was afforded full opportunity of hearing before finalizing the final assessment and he was already given the relaxation while approving the final assessment. In my opinion, there is no illegality in the assessment order passed by House Tax Assessment Authority. Thus, there is no merit in the present appeal filed and the same is hereby dismissed

6. What is not disputed here is that Chapter VIII of the M.C. Act regulates the provisions of taxes to be imposed by the respondent-Corporation. Section 91 postulates that the taxes on the lands and buildings in the City shall consist of

the following namely:

(a) ***

(b) ***

(c) a general tax of not more than fifteen per cent of the rateable value of lands and buildings within the City:

Provided that the general tax may be levied on a graduated scale, if the Government determines.

7. Sequelly, section 93 of the M.C. Act provides the method for determination of rateable value of lands and buildings assessable to taxes. Likewise, section 97 posits that the taxes on the lands and buildings shall be primarily leviable as follows:

(a) if the land of building is let, upon the lessor;

(b) if the land or building is sub-let, upon the superior lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests.

8. Similarly, section 103(1)(d) & (e) of the Act escalates that the Commissioner may. at any time, amend the assessment list by increasing or reducing for adequate reasons the amount of any ruleable value and of the assessment thereupon, or by making or cancelling any entry exempting any land or building from liability to any tax.

9. Not only that, the para materia provisions of the M.C. Act came to be considered before Hon"ble Apex Court in cases *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and *Lt Col P.R. Chaudhary (Retd.) etc. v. Municipal Corporation of Delhi & Anr.*, 2000 (2) R.C.R. (Civil) 711 : 2000 (1) R.C.R. (Rent) 474 : 2000 (3) CCC 120 (SC), wherein it was held that "where a building is governed by the provision of Rent Control Legislation, the landlord cannot reasonably be expected to receive anything more than the standard rent from a hypothetical tenant and the annual value of the building cannot therefore exceed the standard rent. The assessing authority would, in either case, has to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of the annual value of the building for the purpose of levying tax."

10. An identical question again arose before this Court in cases *Shri Gurparshad Khanna v. The Municipal Corporation, Amritsar*, 2005 (1) R.C.R. (Civil) 398 : 2005 (1) L.A.R. 381 and *Raj Guru Sood v. The Municipal Corporation through the Commissioner, Municipal Corporation, Ludhiana and Others*, 2005 (3) R.C.R. (Civil) 101 : 2005 (2) L.A.R. 50. Having interpreted the relevant provisions of the M.C. Act, it was ruled in *Raj Guru Sood's* case (*supra*) (para 13) as under:

The Apex Court in *Devan Daulat Rai Kapoor and other's* case and *Balbir Singh's*

case (supra), had laid down that the annual value of the building has to be determined on the basis of which building is reasonably expected to let and, therefore, the rent has to be determined under the provisions of the Rent Act for determining the annual value. Learned counsel for the respondent, however, could not point out that the Apex Court had in any case taken a contrary view to the one taken in the aforesaid two judgments. Even in Srikant Kashinath Ji-turi and other's case (supra), the Apex Court had held that the said question did not arise in that case and had not, therefore, expressed any final opinion on that issue. In view of the above settled legal position, it is held that the respondent-Municipal Corporation has erred in taking recourse to the provisions of Section 93(c) without first taking recourse to the provisions of Section 93(b) of the 1976 Act and, therefore, the action of the respondent is legally not sustainable.

The same view was earlier taken by this Court in cases *Sahib Dittamal v. The Commissioner, Jullundur Division*, Jullundur, 1993 (1) R.C.R.(Rent) 562 : 1992 (2) R.R.R. 364 : 1993 CCC 192 (P&H); *Municipal Corporation, Barnala v. Narsingh Lal Singla*, 1995 (2) R.R.R. 226 : 1995 (3)

11. Meaning thereby, the Assessing Authority can only assess the house tax on the grounds mentioned in the above indicated provisions of the M.C. Act, on the basis of cogent material on record and as mandate by the Hon'ble Supreme Court and this Court and not otherwise. This aspect of the matter has clearly been ignored with impunity by the appellate authority, despite the fact that the specific objections in this regard were taken by the petitioner-assessee in the memorandum of appeal (Annexure P3). Therefore, the impugned order (Annexure P4) deserves to be set aside in this behalf.

12. There is another aspect of the matter/which can be viewed from a different angle. The assessing and appellate authorities can assess/amend the assessment by increasing or reducing after recording adequate reasons, as envisaged u/s 103(1)(d) & (e) of the Act. As is clear that no such adequate reasons have been mentioned by the appellate authority. Hence, the argument of learned counsel for the petitioner-assessee that the impugned order (Annexure P4) is cryptic, non-speaking and non-reasoned, has considerable force. This controversy is not res-integra but is well settled.

13. Sequelly, this question was decided by a Division Bench of this Court in case *ANZ Grindlays Bank Limited, Amritsar v. Municipal Corporation, Amritsar*, 1999 (2) R.C.R. (Civil) 429 : 1999 (1) PLR 254, wherein having interpreted the provisions of Section 146 of the Act, it was ruled (para 6) as under:

We have given serious thought to the respective submissions and agree with Shri Sarin that the order passed by the government deserves to be voided on the ground of principles of natural justice because it does not contain reasons. It cannot be disputed that while deciding the appeal filed by the petitioner u/s 146 of the Act of 1976, the government was discharging quasi-judicial functions and therefore it was duty bound to record cogent reasons for not accepting request

of the petitioner to hear and decide the appeal without insisting on prior deposit of the tax. In any case, the government should have given opportunity to the petitioner to deposit the tax if it felt that the appeal does not deserve to be entertained without prior deposit of the arrears of tax. In our view, the government's failure to give an opportunity to the petitioner to fulfill the requirement of the statute and also in view of the fact that the petitioner deposited the amount of arrears immediately after the rejection of its appeal, we find it just and proper to set aside the order Annexure P-9 with the direction that the appeal filed by the petitioner be decided afresh.

The ratio of law laid down in the aforesaid judgments "*mutatis mutandis*" is applicable to the facts of the present case and is the complete answer to the problem in hand.

14. In this manner, the impugned order (Annexure P4) is non-speaking, non-reasoned order and is the result of lack of application of mind in this regard. The appellate authority ought to have discussed the material on record and was legally required to record valid reasons for arriving at a right conclusion, in order to decide the real controversy between the parties in the right perspective. Such statutory authority, exercising the powers under the M.C. Act, should act independently instead of functioning as a representative of the State/M.C. It is now well settled principle of law that every action of such authority must be informed by reasons. The order must be fair, clear, reasonable and in the interest of fair play. Every order must be confined and structured by rational and relevant material on record because the valuable rights of the parties are involved.

15. Exhibiting the importance of passing speaking and reasoned order, the Hon'ble Apex Court in case *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*, has held (para 8) as under:

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.V. Mukherjee v. Union of India*, is that people must have Confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

In other words, all the essential ingredients/requirements of the rule of law are completely lacking in the instant case.

16. Thus, seen from any angle, the impugned order (Annexure P4) cannot legally be maintained, in the obtaining circumstances of the case. To me, interest of justice would be sub-served if the matter is remanded back to the appellate authority.

17. In the light of aforesaid reasons and without commenting further anything on

merits, lest it may prejudice the case of either side, during the course of subsequent hearing of the appeal, the instant writ petition is accepted. Consequently, the Impugned order (Annexure P4) is hereby set aside. The matter is remitted back to the Appellate Authority (Divisional Commissioner, Patiala Division) (respondent No. 1), to decide the matter afresh, in view of the aforesaid observations and in accordance with law and not otherwise.

18. The parties, through their counsel, are directed to appear before the Appellate Authority on 24.3.2011 for further proceedings