(1995) 11 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1317 of 1982

Municipal Committee, Urmar Tanda APPELLANT

Vs

Deputy Commissioner, Hoshiarpur RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Citation : (1996) 3 LJR 330 : (1996) PLJ 114 : (1996) 2 RRR 53

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : Mr. Gopal Mittal, Advocate, Mr. Arun Palli, Advocate, Mrs. Vandana Malhotra, Advocate, Mr. J.K. Sibal, Sr. Advocate, Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.—The Municipal Committee, Urmar Tanda filed this writ petition challenging the orders of SubDivisional Officer (Civil), Dasuya, reducing the house tax by his order dated 27.4.1981 (Annexure P7).

2. The 3rd respondent is a partnership firm owning a cinema hall known as Nanak Palace situated on Hargobind Pur Road, Urmar Tanda. In the year 1976, the Municipal Committee, Urmar Tanda assessed the cinema hall to yearly house tax of Rs. 9,909.20. The Municipal Committee issued a notice to the owners of the cinema hall, Nanak Palace, intimating that the committee has prepared the list regarding house tax for the year 197677 and that the house tax in respect of the cinema hall has been assessed at Rs. 9909.30 per annum. The said notice also called upon the cinema hall owners to file any objections if any to the said assessment within thirty days from the date of receipt of the said notice. The said notice is attached as Annexure P1 with the writ petition. The 3rd respondent Nanak Palace filed a reply to the said notice on 6.8.1976. In the said reply, they stated that they were running three shows daily and working on full house capacity average income comes to Rs. 3,13,550/ and 20% of the said average income comes to Rs. 63,510/ and 15% of this figure will be Rs. 9526.50 and not Rs. 9909.30 and according to them since they have 3 daily shows, approximately Rs. 2,000/ as yearly house tax and the same should not be 4/5 folds. At the time of hearing the objections under Annexure P2 dated 6.8.1976, the owner of the

cinema hall gave a statement before the Executive Officer, Municipal Committee, Urmar Tanda on 16.8.1976 under Annexure P3. In the said statement he requested the Committee to impose tax upon them on the basis of the shows exhibited. He further stated that they are ready to pay the tax @ Rs. 7461.98 per annum against the tax proposed to be imposed, on the cinema hall. On the same day, the Municipal Committee acceded to the request of the proprietor of the cinema hall and reduced the tax from Rs. 9909.30 to Rs. 7468.65. The 3rd respondent continued to pay the said tax till 1980. On 28.3.1980, a partner of the cinema hall filed an application before the Executive Officer of the Municipal Committee, Urmar Tanda stating that the house tax imposed on the cinema halls situated at Dasuya and Pathankot was far less. The cinema owners at Dasuya were paying Rs. 1200/ per annum whereas at Pathankot the cinema owners were paying only 2016/ per annum as house tax, and therefore, prayed for reduction of the house tax keeping in view the status of the city. Thereafter, the representative of the cinema hall was asked to appear before the Executive Officer of the Municipal Committee. In spite of the notice issued, the partner of the cinema hall did not appear before the Executive Officer. Thereafter, the representation of the partner of the cinema hall was rejected by the sub committee. Aggrieved by the same, partners of the cinema hall 3rd respondent went in appeal before Sub Divisional Officer (Civil), Dasuya who by the impugned order reduced the house tax of Rs. 2,000/ per annum for the year 198081 and the Municipal Committee was further advised to assess the tax for the next year keeping in view the provisions of the Punjab Municipal Committee Act referred to in his order. Aggrieved by the same, the Municipal Committee, Urmar Tanda filed this writ petition.

3. The learned counsel for the writpetitioner argued that the assessment was made for the year 1976 and the amount of tax was imposed on the plea and admission of the proprietor of the cinema hall and thereafter there was no revision or new assessment of tax and therefore, there was no occasion for the 3rd respondent to file an appeal. Simply because the representation of the 3rd respondent was rejected it does not give him a cause of action for filing an appeal. The appeal can be made only against an order of assessment or levy of tax under Section 84 of the Punjab Municipal Act, 1911. He further contended that the tax collected by the Municipal Committee, Pathankot and Dasuya cannot be taken into consideration while determining the tax payable by the owners of the buildings in Municipal Committee, Urmar Tanda.

4. On the other hand it is contended by the learned counsel for the 3rd respondent that the tax collected by the Municipal Committee is illegal and not in accordance with the provisions of the Act and that similarly situated cinema halls in the neighbouring Municipal Committees have been paying less tax than the one being paid by the 3rd respondent and therefore, the 3rd respondent made a representation to the Municipal Committee for reduction of the tax and the statement made by the proprietor of the 3rd respondent cinema hall cannot be binding for all times to come and when the representation of the 3rd respondent

was rejected, the 3rd respondent had a right to file an appeal under Section 85 of the Punjab Municipal Act, 1911 and that the appellate authority Sub Divisional Officer (Civil) rightly exercised his powers of the appellate authority and reduced the tax as the tax which was being collected was not in accordance with the provisions of the Act and also in excess of the tax collected in the cinema theatres in the adjoining Municipal Committees of Pathankot and Dasuya.

It is, therefore, to be seen whether the tax imposed by the Municipal Committee, Urmar Tanda by its order dated 16.8.1976 at Rs. 7468.65, on the basis of the statement of the proprietor of the 3rd respondent is said to be illegal and that the Sub Divisional Officer (Civil), Dasuya is empowered to reduce the tax.

5. Section 61 of the Punjab Municipal Act deals with imposition of the tax by the Municipal Committee. It empowers the Municipal Committee to impose a tax payable by the owner of a building not exceeding 15% of the annual value. Therefore, it is within the power of the Municipal Committee to impose a tax on the building not exceeding 15% of the annual value. Thus, the maximum rate at which the tax can be imposed was fixed by the statute and freedom was given to the respective Municipal Committee to determine the rate of tax at which it was payable, but the same shall not exceed 15%. There is noting on record to show that at which rate the Municipal Committees at Pathankot and Dasuya were imposing the building tax. There is also no material either before the appellate authority or this Court to show as to the rate at which the Municipal Committee of Tanda Urmar was imposing the housetax or building tax. It is not the contention of the learned counsel for the 3rd respondent nor is it a ground on which the Sub Divisional Officer (Civil), Dasuya allowed the appeal that the tax for the year 1976 was imposed contrary to Section 61 and was being collected from the 3rd respondent in excess of the maximum limit of 15% of the annual value of the building. When power is there to impose a tax then it cannot be said that levy itself is illegal.

6. In the order passed by the Sub Divisional Officer (Civil), he relied on the comparison of the house tax imposed on the cinema halls at Pathankot and Dasuya and that the comparison shows that the tax imposed by the Municipal Committee, Tanda Urmar was not justified. According to him, the Pathankot city was much more flourished town than Urmar Tanda and therefore, the imposition of tax at Urmar Tanda at a rate more than the tax at Pathankot cannot be justified. He is also of the opinion that the 3rd respondent was not prevented from challenging the assessment on the ground that he agreed to pay tax at certain rate namely Rs. 7468.65. The Sub Divisional Officer further noted that there was no material before him to determine the house tax in accordance with the provisions of Section 61 of the Punjab Municipal Act.

7. There is no evidence before the Sub Divisional Officer in regard to the rate of tax applied by the Municipal Committees at Pathankot or Dasuya. The rate of tax need not be uniform in all the Municipal Committees of the entire State of Punjab. It may differ from one Municipal Committee to another Committee. One

Municipal Committee may decide to impose tax at 5% while the other may decide to impose at 15%. It cannot be said that the different rates of the tax imposed by the various Municipal Committees are illegal as Section 61 itself prescribes the higher rate of tax a Municipal Committee can impose. Therefore, the rate of tax may differ from one Municipal Committee to another Municipal Committee. On this ground it cannot be said that there is any discrimination among the cinema halls situated in different Municipal Committees. Even if it is assumed that the Municipal Committees of Pathankot and Dasuya are charging tax at lesser rate from the rate of tax imposed by the Municipal Committee at Urmar Tanda, there is no discrimination in this regard because there was no evidence before the Sub Divisional Officer (C) in regard to the position of the cinema halls situated at Pathankot and Dasuya and their seating capacity and plinth area. There was also no evidence before the Sub Divisional Officer that what rates the cinemagoers were charged. In the absence of that material it cannot be said that the rate of tax imposed at Tanda Urmar was not justified. The learned counsel for the 3rd respondent sought to reply upon Annexure Rs3/1 filed alongwith the written statement. That document cannot be looked into at this stage as the same was not produced either before the Municipal Committee alongwith the representation filed by the 3rd respondent or before the appellate authority namely Sub Divisional Officer (Civil) while deciding the matter. Therefore, I am refrained to look into the said document as the same cannot be looked at this stage as the same was not placed before the authorities below. Further it is only a contrative table prepared by the 3rd respondent showing the tax imposed by different Municipal Committees.

8. The learned counsel for the 3rd respondent argued that he could challenge the tax at any time whenever it is sought to be recovered but I am not able to accept this contention in view of the provisions of the Act. Under Section 62 of the Act a Municipal Committee can pass a resolution proposing imposition of any tax. Admittedly, it was proposed in the year 1976 to impose a tax on the 3rd respondent. In pursuance of the said proposal a notice (Annexure P1) was given to the partners of the cinema hall namely Harbans Singh and Gurmit Singh, who are the partners of the cinema hall Nanak Palace calling for objections to the proposed tax. In reply to the said notice the partners of the cinema hall filed their objections on 6.8.1976. An opportunity was given to the partners of the cinema hall before finalising the imposition of the tax and Harbans Singh who is a partner of the cinema hall appeared before the Committee and objected to the imposition of the tax of Rs. 9909.30 paise, and agreed to pay annual tax @ Rs. 7144.87. This was accepted by the Municipal Committee and accordingly the tax at that rate was finalised and it is pertinent to note that the 3rd respondent did not make any grievance if it either by filing an appeal before the competent authority under Section 84 of the Act within the period prescribed. When an assessment of the tax is made, an appeal is provided under Section 84 of the Act and the said appeal has to be filed within one month after publication of the notice under Section 66 or 68 or after the date of the final order under Section

61. When the tax was finalised in the year 1976, an appeal challenging the same had to be filed within one month from the date of finalisation. The 3rd respondent kept on waiting till 1980. The demand notice was issued in the year 1980 for collecting the tax for the year 198081. It is neither a demand of fresh tax nor imposition of levy. Therefore, the provisions of Section 84 are not attracted. In order to enable the 3rd respondent to file an appeal. The appeal therefore filed in the year 1982 questioning the demand notice for collection of the tax at the rate determined in the year 1976 is not maintainable. Therefore, the appeal itself cannot be sustained, and the order passed thereon is without jurisdiction.

9. The learned counsel for the 3rd respondent relied on a decision of the Supreme Court in Dharangadhna Chemicals Works Ltd. v. State of Gujarat & others, AIR 1973 SC 1041 and contended that admission or argument by the 3rd respondent in the year 1976 to pay house tax at the rate of Rs. 7468.65 is not binding on him. He relied on the following passage in the decision of the Supreme Court:

``On behalf of the respondent it was submitted that the appellant was estopped from questioning the validity of the tax as it obtained benefit under the agreement on September 28, 1960 and therefore, the discretion of the High Court was rightly exercised by dismissing the petition. The respondent further submitted that the appellant was aware of the illegality ratified in 1953 and that with open eyes it entered into an agreement with the Municipality, undertaking to pay tax in vogue on July 1, 1953 and in consideration thereof, the Municipality agreed not to enhance the tax for a period of one year, and so, the appellant cannot be allowed to challenge the legality of the tax. We do not think that there is any substance in this contention. There was no agreement to pay the tax waiving the illegality attaching to it. There is also nothing to show that the appellant was aware of the illegality in the imposition of the tax and that it waived the illegality with full knowledge of it''''.

10. There is no dispute about the said proposition. But in the above cited case the Supreme Court itself said that the imposition of the tax was illegal as the mandatory provisions of Sections 60 and 62 have not been compiled with. Therefore, the Supreme Court held that the imposition of the tax is illegal for noncompliance of the statutory provisions. In the case on hand, the learned counsel for the 3rd respondent was not able to show how the imposition of the house tax under Section 61 of the Act is illegal. He did not bring to my notice any noncompliance of the provisions of Section 61 or in the procedure prescribed in the Act. Admittedly, Section 61 gives the power to the municipality to impose house tax at a rate not exceeding 15% of the annual value of the building. It is not the case of the 3rd respondent that the municipality while imposing tax at Rs. 7468.65 exceeded the limit of 15% of the annual value. He cannot also take the plea that no notice was served before imposing the said tax. Admittedly, notice was served on him and he filed objections and his statement was also

recorded. Therefore, there was complete compliance of the procedure prescribed in the Act before imposition of the tax. When there is compliance of the provisions of the Act, it cannot be said that the imposition of the tax is illegal. In this view of the matter I am of the opinion that the decision of the Supreme Court relied upon by the learned counsel has no bearing on the facts of the case on hand. I am, therefore, of the view that the order of the SubDivisional Officer (Civil) dated 27.4.1981 (Annexure P7) cannot be sustained. The same is hereby quashed.

The result is the writ petition succeeds and is accordingly allowed. There will be no order as to costs.

