

(2013) 04 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1987 of 1990

Punjab State Electricity Board

APPELLANT

Vs

The Municipal Committee and Another

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Urban Rent Restriction Act, 1949 — Section 4
Punjab Municipal (executive Officer) Act, 1931 — Section 4, 4(b)(ii)
Punjab Municipal Act, 1911 — Section 236, 5, 65, 65(1), 67

Citation : (2013) 3 RCR(Civil) 35

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : M.L. Saini, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—The present civil writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing orders/notices issued by the respondents dated 19.12.1988 wherein, the petitioner was required to file objections against the proposed assessment on the annual rental value of property No. 1395-A/1 situated in the municipal limits of Kharar and the subsequent assessment done on 19.01.1989 by the Executive Officer and the demand for the subsequent year 1990-91 alongwith arrears. The pleaded case of the petitioner-Board is that its office sub yard is situated in village Khanpur adjoining Kharar town and was constructed in the year 1977 and since then no notice regarding construction or otherwise for payment of house tax was raised. The amenities provided in the residential colony which was situated outside the limits of Kharar were not done by the respondents in any manner. The petitioners had made separate provisions of sewerage, water supply, streets, street lights and roads etc. and the respondents had not spent any penny for providing amenities or maintenance of any amenities as contained in the complex. The term of the Municipal

Committee, Kharar had expired long back in the year 1985 and the SDO (Civil), Kharar was acting as the Administrator of the Municipal Committee, Kharar. The Municipal Committee had imposed house tax on the property within its limits and assessment lists were prepared long back and the petitioners were not asked to pay any house tax. A notice dated 19.12.1988 was received from the office of the respondents that the complex of the petitioner-Board fell within Ward No. 5 of the Municipal Committee and the same was numbered as 1395-A and the name of the petitioner could not be added in the assessment list which is required to be entered and the petitioner was asked to submit objections and the rental value of the property was assessed at Rs. 2,00,000/- and tax was assessed to the tune of Rs. 30,000/-. The Executive Engineer of the petitioner, in reply to the notice, wrote a letter on 03.01.1989 taking the plea that the buildings, store and the office were outside the municipal limits and that the buildings were being looked after by the employees of the department. The basic amenities like water supply, street lights, roads and sewerage were provided by the department itself and it's employees, whose pay was being charged from the funds of the department. Accordingly, notice was sought to be withdrawn and that the file be consigned. Thereafter, the respondent-Committee asked the petitioner to appear in the office for filing of objections and Shri Bal Krishan, Junior Engineer-I appeared on behalf of the petitioner and raised all objections but the respondent, in an arbitrary manner and by passing a non-speaking order, ordered that the area fell within the municipal limits of Kharar and tax can be imposed and note was made by the said Junior Engineer that he was not agreeing with the assessment. Thereafter, notice u/s 78(2) of the Punjab Municipal Act, 1911 (for short "The Act") was received by the petitioner where the petitioner was asked to deposit Rs. 60,000/- towards house tax upto the year 1990 and reply was sent but the petitioners were not under any obligation to pay since the buildings and colony were of the Board and all the basic amenities like water supply, street lights, roads and sewerage were provided by the department itself and it was prayed that the notices in question be recalled. It was further pleaded that the order dated 19.01.1989 was never served to the petitioner and the objections were never decided. The application for realization of the amount was moved before the Special Executive Magistrate, Ludhiana, who sent the notice for depositing Rs. 60,000/- towards the house tax for the year 1989-90, failing which, the amount would be recovered by attachment. Accordingly, the said orders were challenged on the ground that non-speaking order had been passed and the same deserved to be set aside since the complex of the petitioner did not fall within the municipal limits of the Committee and it had not spent a single penny for providing any basic amenity. The buildings were also constructed without taking any permission from the Municipal Committee in the year 1977 and the Committee was stopped from raising demand. u/s 4 of the Punjab Municipal (Executive Officer) Act, 1931, (for short "the Executive Officer Act") the Executive Officer alone had no power to revise the valuation and assessment u/s 65(1) of the Act and the said power could only be exercised by the sub-committee consisting of the Executive Officer and two members of the

committee. Therefore, the demand was totally illegal and arbitrary. The valuation of the complex had been wrongly assessed against the provisions of Section 4 of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Rent Act").

2. In the written statement filed by the Municipal Committee, plea of alternative remedy was taken that an appeal could be filed u/s 85 of the Act with the Deputy Commissioner and the remedy u/s 236 of the Act also provided power with the State Government. It was further pleaded that the petitioner was under an obligation to deposit the tax before filing the appeal and by filing the writ petition, by pass was being taken to the provisions of the Act.

3. On merits, it was pleaded that the complex was situated in village Khanpur which was situated in the municipal limits of Kharar town. The office and the colony was constructed and after the expiry period of exemption, the respondent had issued the notice for payment of house tax. The notification dated 04.03.1975 under sub section (3) of Section 5 was relied upon to show that Khanpur was within the municipal limits of Kharar. The respondent had sent notice on 19.12.1988 because the complex was within Ward No. 5 of the Municipal Committee and number was also allotted and the objections were called from the petitioner and the rental value was assessed at Rs. 2,00,000/- as per the property and as such Rs. 30,000/- was demanded as house tax. Accordingly, the tax levied was justified as per provisions of law. It was further pleaded that the order had been passed validly in accordance with law. The property being situated within the municipal limits of the Municipal Committee, the petitioner was duty bound to pay the house tax. It was further alleged that the order was passed in the presence of the Junior Engineer of the petitioner-Board and the petitioner could not allege that no order was communicated to it and only when recovery was being effected by attaching the property, the writ petition had been filed. It was further pleaded that the sanitary facilities had been provided by the respondents as the complex fell within the municipal limits of Kharar and the Committee was right in issuing show cause notice and if for few years, the tax was not imposed, the petitioner could not take advantage of the same. The assessment had been made for the first time and there was no necessity of sub-committee and the order passed by the respondent had been issued. Objections of the petitioner had been disposed of in accordance with law and the rental value had also been fixed in accordance with law. The petitioner was given a hearing and the objections were also invited and the order was passed. There was no violation of any provision of the Rent Act and the demand of Rs. 60,000/- was justified for two years.

4. Notice of actual date of hearing was sent to the counsel for the respondents. As per office report, he was duly served but none had appeared on two dates. Accordingly, the matter was heard in his absence.

5. Counsel for the petitioner has submitted that the impugned orders were liable to be quashed on the ground that the notice under Sections 65 /67 of the Act had been sent by the Executive Officer only calling for objections and under the

provisions of both the Acts, the sub-committee had to be constituted and the assessment could only have been done by the said sub-committee and thus, the demand was totally illegal. The order of assessment was also arbitrary and secondly that the procedure under the Rent Act had not been followed.

6. There is merit in the submissions made by counsel for the petitioner. A perusal of the record goes on to show that the initial show cause notice was issued under Sections 65 /67 of the Act by the Executive Officer, Municipal Committee alone. The petitioner has specifically pleaded that the term of the elected members of the Municipal Committee had expired long back in the year 1985 and the SDO (Civil), Kharar was acting as the Administrator of the Municipal Committee, Kharar since then. The said para has been admitted by the respondents. Section 65 of the Act provides that the Committee shall give the time of the publication of assessment lists by giving public notice and proceed to revise the valuation and assessment. Similarly, Section 67 of the Act provides that the Committee may, at any time, amend the list by inserting the name of any person whose name ought to have been inserted in the case of tax payable by the occupier after giving one month's notice. Sub-clause (2) further provides that objections may be given to the Committee in writing. Chapter V of the Act provides of the taxes which are to be imposed by general or special orders which the State Government may make and the Rules of the Committee may from time to time for the purposes of the Act impose. Relevant provisions of the Act read as under:-

2[61. Taxes which may be imposed. - Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:-

(a)3 A tax payable by the owner of building and lands not exceeding fifteen per cent of the annual value..

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Provided 5[...] that in the case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants;

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65. Public notice of time fixed for revising assessment list.-

(1) The committee shall at the time of the publication of such assessment list give public notice of a time, not less than one month thereafter, when it will proceed to revise the valuation and assessment; and in all cases in which any property is for the first time assessed, or the assessment thereof is increased, it shall also give notice thereof to the owner or occupier of the property.

(2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice, or orally or in writing at that time.

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67. Further amendments of assessment list.-

(1) The committee may at any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, or in the case of tax payable by the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time, not less than one month from the date of service at which the amendment is to be made.

(2) Any person interested in any such amendment may tender his objection to the committee in writing before the time, fixed in the notice or orally or in writing at that time, and shall be allowed an opportunity of being heard in support of the same in person or by authorized agent, as he may think fit.

7. That similarly, Section 4 of the Executive Officer Act provides that the valuation and assessment conferred by Section 65 is to be done by sub committee consisting of the Executive Officer and two members of the committee appointed by the committee for the purpose. Section 4(b)(ii) of the Executive Officer Act reads as under:-

4. Power of the Executive Officer. - In a [municipality or notified area as the case may be] in which an Executive Officer has been appointed -

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4(b)(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 sub-clause (1) of Section 67 of the Municipal Act shall be exercised by subcommittee consisting of the Executive Officer and two members of the committee appointed by the committee for the purposes.

8. Thus, from the perusal of the provisions of the above two Acts, it would be clear that the Executive Officer has no power alone to revise the valuation u/s 65 of the Act and assessment u/s 67 of the Act is to be done by the body of elected members of the Committee and the Sub committee consisting of the Executive Officer and two members of the committee appointed for that purpose. The said exercise could not have been carried out by the Executive Officer at his own level. Perusal of the impugned orders in the present case goes on to show that the Executive Officer had issued the initial notice under Sections 65 /67 of the Act and thereafter also passed the assessment order. Thus, the order passed by him in the absence of the constitution of the committee was without jurisdiction at that point of time. The petitioner has specifically averred regarding this lack of jurisdiction in their ground (ii)(a) and there is no specific reply to this in the written statement though in ground (iii), there is a mention that it was not a case for the revised valuation and assessment and that the assessment was being made for the first time and there was no necessity of a sub-committee.

9. On the second ground itself also, the writ petition is liable to be allowed since the order of assessment dated 19.01.1989 would show that the provisions of Section 4 of the Rent Act have not been followed. Perusal of the order of assessment goes on to show that the contention that the colony was not in the municipal limits of Kharar was rejected whereas the Executive Officer admitted that no amenity was being provided by the municipal committee.

10. Since the assessment is for the year 1989-90, therefore, unamended provisions of the Act would apply and the annual rental value of the house or the building is to be determined on the amount at which the house or the building may reasonably be expected to be let out for the year subject to certain deductions. The relevant unamended provisions of the Act read as under:-

(1) "annual value" means-

(a) * * * * *

(b) In the case of any house or building, the gross annual rent at which such house or building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith, may reasonably be expected to let from year to year subject to the following deductions:

(i) such deduction not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith;

(ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under Sub-clause (i);

(iii) where land is let with a building, such deduction, not exceeding 20 per cent of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent;

Explanation I. - For the purposes of this clause, it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts and if by different contracts, whether such contracts are made simultaneously or at different times.

Explanation II - The terms "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and the tenant have agreed that it shall be paid by the tenant.

11. From the provisions reproduced above, it would be clear that the procedure provided under the Act was never followed by the assessing authority and perusal of the order under challenge assessing the value of the property also goes on to show that the said procedure has not been followed. Accordingly, on

the said ground also, the order cannot be justified and is liable to be quashed. This issue is no longer *res integra* and has been settled conclusively firstly by the Hon"ble Apex Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and the said view was reiterated in *Balbir Singh and Others Vs. M.C.D. and Others*, 9. Thereafter, a Full Bench of this Court in *Banarsi Dass Mahajan Vs. The State of Punjab and Another*, also examined the issue and held that the Commissioner must first exercise powers under Clause (b) to determine the figure the building may reasonably be expected to be let out and according to the principles of rent law and give permissible deductions. The relevant paragraph reads as under:-

21. Before leaving this aspect of the case it is significant to note that clause (c) of Section 93 of the Corporation Act has an identical provision as in the Municipal Act and the Supreme Court in *Devan Daulat Rai Kapoor's* case (*supra*) was not unaware of that provision when examining the whole provision. Repeatingly and summingly, we hold that the Commissioner must first do the exercise under clause (b) to determine at what figure the building may reasonably be expected to let in accordance with the principles of the Rent Laws, give permissible deductions in the light of the Explanations, deviate to subclause (ii) of the first proviso if he can but keep foothold on his deliberations under clause (b), apply both the provisos in the above manner and then determine the annual rateable value. If he is unable to do so for any substantive reason, then he may take resort to clause (c) again keeping a foothold thereon and applying the provisos when applicable so as to arrive at a just figure. In so far as clause (c) is concerned, it provides determining the estimated present cost of erection of the building minus depreciation and adding to it estimated market value of the site and of any land attached to the building, from which 5 per cent of the sum total represents the gross annual amount. Now it is known that the cost of erection of buildings keeps rapidly changing, the rates of depreciation are minimal and the estimated market value of the site and any land attached to the building goes sky rocketing. The whole thing is inchoate in clause (c). The employment of this clause, as preferred by learned counsel for the Corporation, on the prospect of legitimate expectancies of a higher revenue dividend, and a justified measure to meet the cost of running day to day affairs of the Corporation which, at the Bar, were stated to be bordering on bankruptcy, cannot be permitted. The Legislature designedly made clause (c) apply only in the situation when the gross annual value of a building cannot be determined under clause (b). As stated before, to both clauses do the provisos apply but as an integral part the said two clauses, and that too as safeguards, so that neither the Corporation nor the tax-payer is dealt with unjustly. In the event of conflict between two successful determinations, the determination which is favourable to the tax-prayer would normally have to govern the field, and we hold it so, well settled as it is as a principle.

12. That on the ground of alternative remedy which has been raised in the written statement, the same would have no relevance at this point since the writ

petition was admitted for regular hearing on 19.02.1990 and a Division Bench of this Court in *Scheduled Castes Co-op. Society Vs. State of Punjab and Another*, has held that the objection of alternative remedy cannot be insisted upon in cases admitted for regular hearing and on admitted cases coming up for hearing after a long time on the ground it would be inequitable at that stage to dismiss the writ. The relevant observations read as under:-

31. The respondent-State of Punjab has, however, endeavoured to oppose the claim of the petitioner society, during the course of arguments, only on two grounds. It is first urged by Ms. Swati Gupta, learned Assistant Advocate General, Punjab, who appears for the State of Punjab, that under the Rules itself, there is a provision for filing an appeal and the petitioner society, having an alternative remedy, should be relegated to file an appeal against the impugned order. It is conceded position that objection with regard to availability of an alternative remedy has not been raised in the written statement. Further, availability of alternative remedy cannot be pleaded as an absolute bar for entertainment of a writ under Article 226 of the Constitution of India. We need not elaborate on this issue as the matter already stands settled by string of judicial precedents. Reference in this connection be made to a Division Bench judgment of this Court in *Jindal Strips Limited and Another Vs. State of Haryana and Others*, decided by the then Hon"ble Chief Justice and one of us (V.K. Bali, J.) wherein, entire case law has been discussed. Non-raising of objection with regard to alternative remedy at the motion stage and admission thereof and when the matter may come up for hearing after long years is one of the grounds on which the Court may not insist upon a party to approach alternative form for redressal of his grievance. Said principle applies to the facts of this case inasmuch as, as mentioned above, no objection has been raised with regard to availability of alternative remedy in the written statement nor such an argument, it is apparent, was pressed at the time of admission of the writ petition and the matter is pending in this Court since 1995. It would be too iniquitous at this stage to dismiss this petition on account of availability of alternative remedy.

13. Similar view was also taken in *DCM Limited Vs. The State of Haryana and Others*, Accordingly, keeping in view the above, notice dated 19.12.1988 and the assessment order and demand subsequently raised on 19.01.1989 are quashed with liberty to the municipal committee to assess the house tax in accordance with law. While adjudicating on the assessment, the assessing authority shall also examine the issue of the location of the colony and as to whether it fell within the municipal limits of Kharar at that point of time and also record a finding to that extent by passing a speaking order. The 50% of the house tax which was deposited by the petitioner in pursuance of the interim order dated 29.01.1991 shall be refunded to the petitioner. The writ petition is allowed accordingly with above observations.