(2013) 08 P&H CK 0692

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14131 of 1992

Punjab State Ware Housing Corporation APPELLANT

Vs

The Municipal Committee RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2013) 4 PLR 635

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the order dated 27.3.1991 (Annexure P-2) passed by the Administrative Officer, Municipal Committee, Tapa, thereby enhancing the House Tax on the godown of the petitioner-Corporation and also the appellate order dated 17.7.1992 (Annexure P-4), passed by the Additional Deputy Commissioner, Sangrur, upholding the revised rental value for the purpose of House Tax, but modifying the date of enforcement w.e.f. 1.4.1992.

Facts first.

The petitioner-Corporation had constructed godowns for scientific storing and preservation of food grains in different parts of the State of Punjab. One such godown was constructed by the petitioner-Corporation at Tapa within the Municipal limits of Tapa, Municipal Committee, District Sangrur. Rental value of godown of the petitioner-Corporation had earlier been assessed, which stood revised by the respondent Municipal Committee. Notice dated 22.2.1991 was issued by the respondent Municipal Committee. Petitioner filed its reply dated 19.3.1991 (Annexure P-1). Objections raised by the petitioner-Corporation were considered and thereafter, the impugned order dated 27.3.1991 (Annexure P-2) was passed by the Administrative Officer, Municipal Committee, Tapa. Feeling aggrieved, the petitioner filed its appeal (Annexure P-3), which was partly allowed vide impugned order dated 17.7.1992 (Annexure P-4).

2. Dissatisfied, the petitioner has approached this Court by way of instant writ petition.

3. The case was admitted for regular hearing vide order dated 23.10.1992 passed by this Court and pursuant thereto, written statement was filed on behalf of respondent No. 2. That is how, this Court is seized of the matter.

4. Learned counsel for the petitioner submits that since earlier assessment for rental value of godown of the petitioner for the purpose of House Tax was erroneously made, the respondent Committee was not competent to pass the impugned order. He relies upon two judgments of the Hon''ble Supreme Court and two judgments of this Court. So as to substantiate his arguments. The judgment of the Hon''ble Supreme Court in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and Dr. Balbir Singh and Others Vs. M.C.D. and Others, . Judgments of this Court relied upon by learned counsel for the petitioner are Virinder Mohan and Others Vs. Municipal Committee/ Municipality Raman and Another, and Budh Ram Vs. Municipal Committee and Another, . Learned counsel for the petitioner also submits that since no fair rent of godown of the petitioner was assessed before passing the impugned orders, the same were liable to be set aside.

5. Per contra, learned counsel for the respondent Municipal Committee, Tapa, submits that requirement of fixing the fair rent would be only when rental value of any property was being determined for the first time. He further submits that the Municipal Committee would always be entitled for re-assessing or increasing the rental value of any property for the purpose of House Tax, even if the earlier assessment was erroneous or based on fraud or mistake. He next contended that the impugned orders were self speaking and supported with sound reasons. There was no illegality in the decision making process. Even the appellate authority re-considered the whole matter and whatever relief was found due, it was granted to the petitioner. He prays for dismissal of the writ petition. He also relies upon two Division Bench judgments of this Court, i.e. L.P.A. No. 1534 of 2012 Food Corporation of India Vs. Municipal Committee and Another, decided on 26.7.2012 and judgment dated 4.10.2000 passed by the Division Bench of this Court in Punjab State Ware Housing Corporation Vs. Municipal Council dismissing an identical writ petition of the petitioner Corporation.

6. Learned counsel for the State while supporting the arguments raised by learned counsel for the Municipal Committee, also relies upon the judgment of this Court in Municipal Committee, Patiala Vs. Model Town Residents Asson. and Others, and another judgment of this Court in Parshotam Dass v. The Municipal Committee, Samana and another, (2010-4) 160 P.L.R. 369.

7. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that present one

is not a fit case warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than, which are being recorded hereinafter.

8. The power of the Municipal Committee to revise the rental value of any property for the purpose of House Tax is not in dispute. Learned counsel has argued that the procedure adopted by the respondent Municipal Committee for revising the rental value of godown of the petitioner for the purpose of House Tax was erroneous. This argument raised by learned counsel for the petitioner has been found to be without force. It is so said because it is not the case of the petitioner that no opportunity of being heard was granted to it. Show cause notice was issued to the petitioner, which was replied by the petitioner vide Annexure P-1. Thereafter, considering the objection raised by the petitioner, a self speaking and well reasoned order was passed by the competent authority, vide Annexure P-2. The impugned order Annexure P-2, has been found to be based on sound reasoning which deserves to be upheld. Similarly, the appeal filed by the petitioner was duly considered and rightly decided by passing the impugned order Annexure P-4, vide which the due relief was granted to the petitioner for which it was found entitled.

9. During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, so as to persuade this Court for taking a different view than the one taken by the respondent authorities. Thus, the impugned order deserves to be upheld for this reason, as well. So far as the judgments relied upon by learned counsel for the petitioner are concerned, there is no doubt about the law laid down therein, but the same are not applicable in the present case, being clearly distinguishable on facts.

10. Learned counsel for the respondent Municipal Committee as well as learned counsel for the State were right in advancing this common argument that it was not a case of first determination of rental value, but admittedly the rental value was being revised. The judgment in Virinder Mohan''s case (supra), would have no application in the present case. Similarly, since the power of the Municipal Committee in re-assessing the rental value is not in dispute, the respondent Municipal Committee rightly proceeded on factually correct and legally justified approach, while revising the rental value of godowns of the petitioner for the purpose of House Tax. Thus, the cited judgment in Budh Ram''s case (supra) will also not apply to the present case. Since the present case is based on entirely different set of facts, the judgment of the Hon''ble Supreme Court in Dr. Balbir Singh''s case (supra), would also have no application on the facts in the present case.

11. It is the settled principle of law that peculiar facts of each and every case are to be examined, considered and appreciated first, before applying any codified or judge-made law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in

Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

12. The action taken by the respondent authorities has been found to be just and reasonable. Having said that, this Court feels no hesitation to conclude that the respondent authorities have committed no error of law, while passing the impugned orders and the same deserve to be upheld.

13. The above said view taken by this Court also finds support from the following Division Bench judgments of this Court, in Punjab State Warehousing Corporation''s case (supra) and F.C.I''s. case (supra), referred here-in-above. First was in the case of the petitioner Corporation itself which is based on identical facts and circumstances. The relevant observations made therein, read as under:--

The second point for consideration is whether the house tax is leviable on the market rent or it is leviable on the rent being collected by the petitioner from different agencies including Food Corporation of India. Learned counsel appearing on behalf of the petitioner submitted that earlier assessment was on the lower side and there are no basis made out from the respondent authority to increase the assessment. Learned counsel submitted that the assessment should be made as per the rent of the similar godown situated in the similar situations. We are not in a position to accept the contention raised by the learned counsel for the petitioner because the provisions of law have been amended in the year 1994 authorising the Committee to assess the house tax on the actual rent recovered by the land owner. In this case the petitioners are collecting rent@ 43 paise per bag but the Committee has assessed that tax @ 20 paise per bag. We have gone through the impugned order Annexure P-18 dated 11.6.1999, especially paras 4 and 5 of the said order, which quoted below:--

In his reply, the learned counsel for the respondent stated that the property is a godown which has the capacity of 9900 MT and this godown is kept reserved for F.C.I. Lehragaga for 8388 MT. Besides this, the appellant is keeping in it other material on different rates. Learned counsel while further arguing contended that the Director, Food and Supplies, Punjab Chandigarh has fixed a rent at the rate of 20 paise per bag monthly vide his letter No. A.S.-2 (godown pleth) 95/4576 issued on 21/28/3.1995. As per the capacity of 99000 bags the annual rent of the godown is calculated Rs. 6,00,000/. The Committee vide its order dated 31.12.1998 has fixed the remaining amount as annual rent from the amount Rs. 2,87,600/- instead of Rs. 6,00,00/- after deducting the 10% depreciation charges vide its notice, which is as per law. The Municipal Council has already assessed the calculated amount which is as per the capacity of godown instead of covered area value of the land under property. In the end the learned counsel has requested to dismiss the appeal.

After hearing the arguments of both the learned counsel and perusal of the record from which it was found that after fixing the annual rent value u/s 3(B)(C) of the Punjab Municipal Act, 1911 by the Municipal Council, Lehrgaga of the property under appeal has issued notice dated 23.11.1998. But the assessment which has been finally made by the committee has been passed keeping in mind the capacity of the godown and the rent fixed by the Punjab Government.

14. Another recent judgment rendered by the Division Bench of this Court in Food Corporation of India''s case (supra) is also directly applicable in the present case and relevant observations made, which can be gainfully followed in the present case, read as under-

Learned counsel for the appellant argued that when no alteration or addition was made in the godown owned by the appellant since its last assessment, therefore, while revising the assessment, the rental value could not be increased as the annual rental value was to be fixed in accordance with the provisions of the Rent Act which does not permit the revision of the rent without there being any addition or alteration. However, he is not disputing the right of the respondent-Committee to revise the assessment list. In the present case, the revision of the assessment list was based on the rental value, and on increase of the rent, the annual rental value was increased and assessed on the basis of 16 paise instead of 10 paise per bag per month, as earlier done. After considering all the objections raised by the appellant, the said assessment was upheld by the Civil Court. After losing the case in the Civil Court, the appellant filed an appeal before the Deputy Commissioner. In the present case the assessment was revised after hearing the appellant and on the basis of increase in the rent. In our opinion, the revision of the assessment list on the ground of increase of annual rental value is fully justified and in the facts and circumstances of the case when the assessment had already been upheld by the Civil Court, we do not find any ground to interfere in the same.

> 15. Learned counsel for the State has rightly relied upon the judgment of this Court in Parshotam Das''s case (supra) wherein following relevant observations was made:--

Whenever authority follow summary procedure, requirement of law is that order should reflect application of mind. It is not necessary that order should be speaking one. Counsel for the petitioners has placed reliance on Budh Ram v. Municipal Committee, Mama and another, (2005-2)140 P.L.R. 63, to contend that in case notice does not specify the ground which called for enhancement, notice is bad.

The judgment cited by the learned counsel is not attracted in the facts of the present case. In that case, objections were not filed and were not dealt with. Para 1 of the aforesaid judgment shows that son of the petitioner in that case had agreed to the assessment and the petitioner was not present. In the present case, petitioners had filed the objections in person, they were considered and the relief which was due was granted to the petitioners.

Furthermore, in two writ petitions, appeals were filed and the Appellate Authority had upheld the orders of enhancement. The impugned order states that after perusal of the record, rental value was assessed. Therefore, this amounts to fair rent. Hence, no interference is warranted and the present writ petitions are dismissed.

16. Upholding the vires of the Punjab Municipal Act, 1911, while allowing the appeal of the Municipal Committee, Patiala, the Hon''ble Supreme Court upheld the powers of the Municipal Committee for assessing and revising the assessment, determining the rental value of any building for the purpose of House Tax. The above said judgment relied upon by the learned counsel for the respondents could not be distinguished by the learned counsel for the petitioner.

17. Recapitulating the facts of the present case and respectfully following the law laid by the Hon''ble Supreme Court as well as by this Court, it is unhesitatingly held that the respondent Municipal Committee rightly passed the impugned order Annexure P-2, which has been found to be based on true facts of the case as well as legally justified.

18. The relevant part of the impugned order dated 27.3.1991 (Annexure P-2) reads as under: -

It was further stated by the representative of the Ware House Tapa orally that they are charging 50 to 54 paise per bag per month from the depositor of the goods. The Warehouse also within this amount provide facility for storage of stocks and its preservation of the kind spraying of insecticides, crates polythene etc. and spends about 30 paise per bag on the up-keep and safety of the goods per bag per month. In this town Tapa Cooperative Marketing Society have also constructed godowns and have rented out the same to Markfed at the rate of 20 paise per bag. That the godowns of the Warehouse are comparatively on better footing scientifically and are maintained in a superior manner as compare to the Godown rented out to the markfed by the Tapa Cooperative Marketing Society. In the town nearby Barnala town warehouse is, charging 20 paise per bag per month for storing. However, the representative of the Ware House has not given any separate detail in the form of documentary evidence nor argued how the notice of the Municipal Committee is not in accordance with the provision of the Municipal Act. From the above stated facts, It is held concluded that the assessment of the covered godown of this unit is 20 paise per bag per month, and for open plinth 8 paise per month per bag, and for office of Chowkidar quarter 300 per month, in this way the total assessment of the godown per year is an average (covered godown and open plinths) 75% and 10% expenditure on repair thus after deducting the said expenditure the amount comes to Rs. 3,75,840 to + Rs. 3240/- totaling Rs. 3,79,080 is assessed at that figures. Order accordingly.

19. During the course of hearing, learned counsel for the petitioner failed to put into service any substantive argument and also could not point out any patent illegality or perversity in either of the impugned orders. Once, it is the undisputed position on record that the respondent Municipal Committee was

competent to increase the rental value on the basis of re-assessment thereof, for the purpose of House Tax, technicalities. would not and must not be allowed to stand in the way of the Court, while doing substantial justice between the parties. Above all, no prejudice has been shown to have been caused to the petitioner while passing the impugned orders, which deserve to be upheld.

20. No other argument was raised.

21. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that the present writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Resultantly, with the observation made above, the instant writ petition stands dismissed, however, with no order as to costs.

