(2010) 08 P&H CK 0378

In the Punjab And Haryana At Chandigarh

Rajiv APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:
Punjab Municipal Corporation Act, 1976 — Section 141, 142, 143

Citation : (2011) 2 RCR(Civil) 85

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.

Civil Misc. No. 7276 of 2010

1. Civil Misc. Application is allowed.

2. Written statement, filed on behalf of respondent No. 2, is taken on record.

Civil Misc. No. 11732 of 2010

3. Civil Misc. Application is allowed.

4. Replication to the written statement, filed on behalf of respondent No. 2, is taken on record.

Civil Writ Petition No. 2941 of 2009

5. In the present writ petition, a prayer has been made that the respondent/ Municipal Corporation, Patiala, should not levy the tax on the premises owned by the petitioner as the same was vacated by the tenant and notice to this effect, in compliance with Section 143 of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as "1976 Act") was served upon the Municipal Corporation.

6. Brief facts, as pleaded in the writ petition, are that the petitioner is owner of

the property bearing No. 12485/5-111, situated in New Leela Bhawan, Patiala. The second floor of the property was given on rent to one Vipin Sharma for running a School of Science w.e.f. 1.1.2007. It is stated that the premises were vacated by Vipin Sharma on 30.3.2007 and since then the premises are lying vacant.

7. There is a provision in the 1976 Act for seeking refund or remission of the house tax, on vacation of the premises by the tenant.

8. Mr. R.S. Bains, Advocate, appearing for the petitioner, today, has confined his prayer to the remission of house tax from the date the premises became vacant. Section 141 of the 1976 Act reads as under:

141. Remission or refund of tax:

(i) If any building together with land appurtenant thereto has remained vacant and unproductive of rent for sixty or more consecutive days, the commissioner shall remit or refund, as the case may be, two-thirds of such portion of the fire tax and the general tax assessed on the ratable value thereof as may be proportionate to the number of days during which the said building together with the land appurtenant thereto has remained vacant and unproductive of rent.

(ii) If any land, not being land appurtenant to a building, has remained vacant and unproductive of rent for sixty or more consecutive days, the Commissioner shall remit or refund, as the case may be, one-half of such portion of the fire tax and the general tax assessed on the ratable value thereof, as may be proportionate to the number of days which the said land has remained vacant and unproductive of rent.

(iii) If any land whether appurtenant to a building or not or any building has remained vacant and unproductive of rent for sixty or more consecutive days, the Commissioner shall remit or refund, as the case may be, such portion of the water tax assessed on the ratable value thereof as may be proportionate to the number of days during which the said land or building has remained vacant and unproductive of rent.

Provided that no remission or refund of the water tax shall be allowed unless an application in such form as may be prescribed by bye-laws in this behalf has been made to the Commissioner to stop the supply of water to such land or building or unless the Commissioner is satisfied that having regard to the circumstances of any case such remission or refund should be allowed.

9. A bare perusal of Section 141 of the 1976 Act, reveals that if the premises remained vacant for sixty or more consecutive days, the petitioner is entitled to remission of house tax, as envisaged in the section, from the day the building became vacant.

10. As to what is the date when the building was vacated, for the purpose of house tax, has been provided in the 1976 Act. Section 143 of the 1976 Act reads

as under:

143. Notice to be given of circumstances in which remission or refund is claimed:- No remission nor refund u/s 141 of Section 142 shall be made unless notice in writing of the fact that the land, building or tenement has become vacant and unproductive of rent has been given to the Commissioner and no remission or refund shall take effect in respect of any period commencing more than fifteen days before delivery of such notice.

11. As per the provisions of Section 143 of the 1976 Act, 15 days, before the delivery of the notice, shall be reckoned as the first date for considering grant of remission to the levy of the house tax. Therefore, a building may have been vacated six months prior to vacation of the premises by the tenant. But the Municipal Corporation shall take 15 days before the delivery of the notice as the day, for grant of remission.

12. It is pleaded in the present writ petition that the petitioner has served notice dated 24.4.2007 (Annexure P5) to the Commissioner, Municipal Corporation, Patiala, in consonance with Section 143 of the 1976 Act. This notice was diarized in the office of the Commissioner, Municipal Corporation, Patiala, at No. 4080 dated 25.4.2007. This notice has not been considered and no order has been passed thereupon simply on the ground that the notice was time barred. A perusal of Sections 141 and 143 of the 1976 Act reveals that such limitation cannot be prescribed, as the Act states in itself that it is 15 days, before the receipt of the notice, shall be considered as a day from which the remission is to be granted. Hence, the plea raised by the Municipal Corporation that notice is barred by limitation is untenable.

13. The Municipal Corporation, Patiala, is directed to take a conscious decision on the notice (Annexure P5) within a period of two months, from the date of receipt of a certified copy of this order.

14. With the observations made above, the present writ petition is disposed of.

