
(2008) 08 P&H CK 0140
In the Punjab And Haryana At Chandigarh

Shama Tourist Complex	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 152 PLR 94 : (2008) 4 RCR(Civil) 647

Hon'ble Judges : Satish Kumar Mittal, J;Daya Chaudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner-Shama Tourist Complex, has filed this petition under Articles 226/227 of the Constitution of India for setting aside the order dated 19.3.2008 passed by the Financial Commissioner, whereby the revision filed by the Municipal Council, Gurgaon has been allowed and the order dated 22.4.2003 passed by the Deputy Commissioner, Gurgaon in favour of the petitioner was set aside.

2. In this case, house tax was imposed by the Municipal Council, Gurgaon on the petitioner and house tax bill amounting to Rs. 51,802/- was issued under the provisions of Haryana Municipal Act, 1973 (hereinafter referred to as "the Act") for the year 2001-02. Feeling aggrieved against the imposition of house tax by the respondent-Municipal Council, the petitioner filed an appeal before the Deputy Commissioner, Gurgaon contending that as per notification dated 3.12.1986 (Annexure P-3) issued by the Haryana Government, the petitioner was declared as an Industry, therefore, as per the notification dated 13.12.2001 (Annexure P-4) issued under the Act, the petitioner Complex is not liable to be assessed for house tax. The Deputy Commissioner, Gurgaon vide order dated 22.4.2003 allowed the said appeal while observing that vide notification dated 3.12.1986, the tourism was declared as an industry, therefore, the house tax assessment has to be made after deciding the question whether the petitioner is an industry or not. Accordingly, the matter was remanded to the Municipal

Council to raise the house tax bill by treating the petitioner Complex as an industry.

3. Against the aforesaid order, the Municipal Council filed a revision before the Financial Commissioner u/s 10-A of the Act which was allowed and the order of the Deputy Commissioner was set aside while observing as under:

After hearing both the parties at length, I am of the view that the instructions dated 4.4.2003, have been completely ignored by the Deputy Commissioner, Gurgaon while passing the order dated 22.4.2003. Moreover, the notification dated 3.12.86 is of the Tourism Department and the same is not for the purpose of assessment of house tax. Thus the same is not binding on the revisionist Municipal Council, Gurgaon while making the assessment of house tax of the Respondent Tourist Complex. Further more as per instructions dated 4.4.2003 the procedure and guidelines have been given for assessment of house tax on Tourist Complex by treating them as Commercial units. The only exemption of the open vacant land has been granted to the Tourist Complex having total area of land more than 3 acres which the present Respondent Shama Tourist Complex do not have. From the nature of business activities being conducted by the Respondent Tourist Complex, it is quite apparent that the tourist complex in question is definitely is a commercial unit. Contrary to it, the Counsel for the Respondent could not substantiate in any manner that the Tourist Complex are industry.

4. Against that order, the instant petition has been filed by the petitioner.

5. The sole contention of the learned Counsel for the petitioner is that vide notification dated 3.12.1986 the State of Haryana has declared tourism as an industry, therefore, in view of Clause 8 of the notification dated 13.12.2001 issued by the Commissioner & Secretary to Government, Haryana, Urban Development Department u/s 69 read with Sub-section (1) of Section 84 of the Act "in the case of industrial and institutional units/buildings, the value of the vacant portion of land, which has not been constructed upon shall not be counted for assessment of the tax." Learned Counsel submitted that in spite of the said notification, the Municipal Council, while relying upon the Memo dated 4.4.2003 issued by the Commissioner & Secretary to Govt. Haryana, Urban Development Department regarding fixation of house tax on the buildings and land of the tourist places, has assessed the house tax with regard to vacant land of the petitioner by taking that their vacant land is less than three acres. Learned Counsel submitted that the Financial Commissioner while totally overlooking the aforesaid facts and wrongly interpreting the notification dated 3.12.1986 to the effect that the same has been issued by the tourism department and, thus, is not for the purpose of assessment of house tax and also while taking into account the fact that the total area of the land of the petitioner is less than three acres, has set aside the order of the Deputy Commissioner and upheld the action of the Municipal Council.

6. After hearing the learned Counsel for the petitioner and perusing the impugned order as well as the notifications dated 3.12.1986, 13.12.2001 and 4.4.2003, we do not find any merit in the contention raised by the counsel for the petitioner. From the reading of the notification the tourism was declared as an industry to enable all those eligible units engaged in tourism to avail certain incentives mentioned in the said notification. By the said notification, certain incentives regarding Central Capital Subsidy, State Capital Subsidy, Exemption from Electricity Duty, Exemption from Octroi, certain incentives on loans provided by the H.F.C., Subsidy for purchase of Diesel Generating Set, Subsidy for preparation of Feasibility Report etc. were given. In the said notification, no incentive or exemption from payment of house tax was given. This fact has been noticed by the Financial Commissioner in the impugned order, and thereafter, it has been observed that no incentive or exemption with regard to house tax was given to the tourism or tourist complex by the said notification.

7. As far as notification dated 13.12.2001 issued by the State Government u/s 69 read with Sub-section (1) of Section 84 of the Act is concerned, the said notification exempts certain buildings and lands from the payment of house tax. Clause 8 of the said notification provides that "in the case of Industrial and Institutional units/buildings, the value of the vacant portion of land, which has not been constructed upon shall not be counted for assessment of the tax. In the said notification, it has not been stated that the vacant portion of the land of tourist complex which has not been constructed shall be exempted for the assessment of house tax. The Commissioner and Secretary to Govt. Haryana, Urban Development Department vide Memo dated 4.4.2003 has issued guidelines regarding fixation of house tax on the buildings and land of the tourist places. By these guidelines, it has been observed that the State Government after considering the facts have taken a decision that those tourist complexes having more than three acres land, their vacant land of the building will be left out at the time of calculating the house tax. Since the vacant land of the tourist complex of the petitioner is less than three acres, therefore, the petitioner complex is not entitled for the benefit given to big tourist complexes by the said notification. This aspect, in our opinion, has also rightly been considered by the Financial Commissioner. Thus, we do not find any illegality in the impugned order.

Dismissed.