CWP Nos.15051 to 15054 of 1994

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 28.01.2015

1. CWP No. 15051-1994

Municipal Council, Dhuri

... Petitioner(s)

Versus

Rajinder Mohan and another

... Respondent(s)

2. CWP No. 15052-1994

Municipal Council, Dhuri

... Petitioner(s)

Versus

Rajinder Mohan and another

... Respondent(s)

3. CWP No. 15053-1994

Municipal Council, Dhuri

... Petitioner(s)

Versus

Rajinder Mohan and another

... Respondent(s)

4. CWP No. 15054-1994

Municipal Council, Dhuri

... Petitioner(s)

Versus

Surjit Singh and another

... Respondent(s)

CWP Nos.15051 to 15054 of 1994

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?.
2) To be referred to the Reporters or not ?.
3) Whether the judgment should be reported in the Digest ?

Present: Mr. R.L.Gupta, Advocate,
for the petitioners in all petitions.

Ms. Punita Sethi, Advocate,
for respondent no.1 in all petitions.

Dr. Deepa Singh, Addl. A. G. Punjab.

Paramjeet Singh, J.

This order shall dispose of CWP Nos.15051 to 15054 of 1994 as common questions of fact and law are involved in all the petitions.

Before proceeding further, a brief reference to the facts is necessary which are being extracted from CWP-15051-1994.

CWP-15051-1994 has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 12.08.1994 (Annexure P-2) passed by respondent no.2-S.D.O. Civil, Malerkotla exercising the powers of Deputy Commissioner under Section 84 of the Punjab Municipal Act, 1911 whereby appeal filed by respondent no.1-Rajinder Mohan has been accpeted and house tax imposed by the Municipal Committee with retrospective effect has been declared illegal.

It is the case of petitioner that the building situated on Dhuri Pind Road, Dhuri was given on rent to State Bank of Patiala, Branch Dhuri by the six owners including respondent no.1. The Executive Officer, Dhuri issued notice under Sections 65 and 67 of the Punjab Municipal Act, 1911 (in short, 'the 1911 Act') on 11.10.1993 to Surinder

Kumar, respondent no.1-Rajinder Mohan and Vinod Kumar for the assessment of house-tax of the building for the year 1993-94. Respondent no.1 contested the assessment of house-tax on his own behalf as well as on behalf of Surinder Kumar and Vinod Kumar. The Executive Officer, Municipal Committee, Dhuri levied house tax for the year 1993-94 amounting to Rs.31, 716.36 and issued tax bill dated 21.03.1994. Against that, respondent no.1 preferred an appeal before the Sub Divisional Officer (Civil), Malerkotla, exercising the powers of Deputy Commissioner which has been accepted vide impugned order dated 12.08.1994 (Annexure P-2). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that respondent no.1 is liable to pay the house-tax as the same was rightly assessed by the house-tax sub committee. The impugned order (Annexure P-2) passed by respondent no.2 suffers from illegality. Even if, it is presumed that house-tax cannot be imposed retrospectively, respondent no.1 is still bound to pay house-tax as per existing assessment for those years. Learned counsel further contended that the Municipal Council was fully competent to include the building in the assessment list of house-tax. The Municipal Committee duly followed the provisions laid down in Section 67 of the 1911 Act. Learned counsel further contended that the Municipal Committee is fully competent to amend the assessment for the purposes of house-tax.

Per contra, learned counsel for respondent no.1 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order (Annexure P-2). Learned counsel contended that the Municipal Committee cannot impose the house tax with retrospective effect. The building in question is owned by six persons and the alleged rent is being deposited in the name of six persons whereas notices were issued to respondent no.1, Surinder Singh and Vinod Kumar only. Learned counsel further contended that no fair rent of the building was fixed. The rental value as assessed by the Executive Officer is beyond imagination as Dhuri is a small town.

I have considered the rival contentions of learned counsel for the parties.

Before proceeding further, it would be apposite to reproduce relevant provisions. Sections 67, 68 and 68-A of the 1911 Act existing at the relevant time read as under:

> *"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 ought to have been or ought to be inserted, or by altering the assessment on 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.

(3) Notwithstanding anything contained in this Act, the Committee may with a view to give effect to the annual value as modified by the Punjab Municipal (Amendment) Act 11, 1994 amend the assessment list of the year commencing on the first day of April of the relevant year for increasing or reduced annual value of any property and of the assessment thereupon after giving notice at any time to any person affected by the amendment of a period not less than one month from the date of service at which the amendment is to be made and the Committee shall consider any objection made in this regard by any such person and the amended assessment list shall come into force with effect from the first day of April of the year in which notice was given to the person affected.

68. (1) ***Preparation of new assessment list****. – Where the assessment of land or building has been made on the basis of the annual value as specified in clause (i) of section 3, the assessment list will be valid for a period of five years and after the expiry of the period of five years, the annual value may be determined at the option of the owner either in accordance with the method specified in sub-clause (b) of clause (i) of section 3 or by increasing it by ten per cent of the annual value already fixed.*

(2) In the case of land or building which is occupied by the tenant, the annual value may be revised when revision

in the rent is made:

Provided that where no revision in rent is made and a period of five years has elapsed since the date of the previous assessment, the annual value may be enhanced for reasons to be recorded in writing and after hearing the landlord.

68-A. ***Power to amend assessment list in certain cases****.- (1) Notwithstanding anything contained in this Chapter, where the prescribed authority is satisfied that any property has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, it may, after giving to the assessee an opportunity of being heard and after making such enquiry as it may deem fit pass an order amending the assessment already made and fixing the amount of tax payable for that property and on the issue of such an order the assessment list then in force shall, subject to the order, if any, passed in appeal, be deemed to have been amended accordingly with effect from first day of January, or first day of April, or first day of July, or first day of October, next following the month in which the order is passed.*

(2) Any person aggrieved by an order of the prescribed authority may, within a period of thirty days of the date of communication to him of the order, file an appeal to State Government which shall decide the appeal after giving to the appellant an opportunity of being heard."

The assessment list for the year 1993-94 (01.04.1993 to 31.03.1994) was to be settled by 31.03.1993 i.e. the last day of financial year 1992-93. However, Section 67(1) of the 1911 Act specifically provides that amendment in assessment list can be made "at any time". It was not necessary that amendment list should have been made by 31.03.1993. The house-tax assessed by the Municipal Committee is permissible even after 31.03.1993, otherwise, the expression "at any time" would have no meaning. Section 66 of the 1911 Act provides that a list finalized after Ist January or Ist April is liable to be amended thereafter in view of Section 67 of the 1911 Act. The petitioner is competent to put any building in the assessment list of the house tax which has escaped the assessment for the reasons mentioned in Section 67 of the 1911 Act. The assessee let out the building on 07.01.1991 and the petitioner did not inadvertently enter this building in the assessment list of house tax and under Section 67 of the Act, the petitioner is fully competent to enter this building in the assessment list of house tax. The house tax sub committee has rightly included the building in the assessment list.

In ***Punjab National Bank vs. New Delhi Municipal Committee*** AIR 1973 Supreme Court 674, the Hon'ble Supreme Court has held as under:

> *"10. We think that the conclusion of the majority is correct. The assessment list for the year commencing from April 1, 1959, had to be settled by March 31, 1959 at the latest; this list was liable to be amended under S. 67 even after March 31, 1959, on any of the grounds mentioned in that section. Section 66 does not say that the amendment of the assessment list*

should have been made before March 31, 1959. The expression "subject to such amendment as may thereafter be duly made" in s. 66 would indicate that the amendment 'of the list could be made even after March 31, 1959, as s. 67 provides for amendment of the list "at any time". And when the list was so amended, it shall be deemed to have been in force for the year which commenced from April 1, 1959, an(ended on March 31, 1960, and the tax assessed therein shall be deemed to be the tax for the financial year commencing from April 1, 1959. In other words, it was not necessary that the assessment list should have been amended before March 31, 1959, in order that the municipal committee may impose house tax on the building for the period from April 1, 1959 to March 31, 1960. An amendment of the list under s. 67 was permissible on any of the grounds mentioned in the section even after March 31, 1959, as otherwise, the expression "at any time" would have no meaning. The words "subject to such amendments as may thereafter be duly made" in s. 66 postulate that a list finalized before 1st January or 1st April is Liable to be amended thereafter under s. 67. The building was certainly liable to be included in the assessment list which was finalized on March 31. 1959, but by some mistake it was not so included. The list was, therefore, liable to be amended under s. 67. That was done. When the list was amended, the tax assessed for the building shall be deemed to be the tax for it in the year which commenced from April 1, 1959, and ended on March 31, 1960."

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In view of law laid down in ***Punjab National Bank (supra),*** all the four petitions are allowed, impugned orders are set aside. The matter is remanded to respondent no.2 to decide the matter afresh.

No order as to costs.

Parties through their counsel are directed to appear before respondent no.2 on 23.02.2015.

28.01.2015 **(Paramjeet Singh)**
parveen kumar **Judge**