IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23181-2013
Date of Decision: 14.09.2015

Ramesh Kumar Ahuja

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

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.C.Setia, Sr. Advocate with
Mr. Vishal Ranjan, Advocate,
for the petitioner.

Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Mr. Tarunvir S. Lehl, Advocate,
for respondent No.2.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the orders dated 19.05.2011 (Annexure P-4) passed by House Tax Sub Committee, Municipal Council, Abohar, dated 10.09.2013 (Annexure P-8) passed by District Collector, Fazilka and demand notice dated 13.09.2013/14.10.2013 (Annexure P-9) issued by the Municipal Council, Fazilka.

Brief facts of the case are to the effect that the petitioner is the owner of the property bearing Municipal No.B1/1291, situated at

Circular Road Street No.6, Abohar Mandi. A part of the said property has been given to various tenants since long and a part of it is under self-occupation of the petitioner. The property is assessed for the purpose of house tax by the Municipal Council, Abohar and the petitioner has been making the payment of house tax since long. The Municipal Council, Abohar issued notice dated 28.02.2008 (Annexure P-1) under Section 67 of the Punjab Municipal Act, 1911 (in short, 'the 1911 Act') with a purpose to amend the house tax already levied, on the grounds of change of tenancy and raising of new construction in the disputed property. The notice (Annexure P-1) was received by the petitioner on 03.03.2008 to which he filed reply dated 25.03.2008 (Annexure P-2). After many years, hearing was fixed before the House Tax Sub Committee, Municipal Council, Abohar on 19.05.2011 at 10.00 A.M. The House Tax Sub Committee assessed the house tax and passed the following order:

> *"Today on 19.05.2011, the meeting of the House Tax Sub-Committee, M.C.Abohar was held, in which deliberations were made for the assessment of House Tax on the property of the owner Sh. Ramesh Kumar Ahuja etc. s/o Sh. Pirthi Raj, situated at Circular Road. The assessment was made u/S 3(1) (b) of the Punjab Municipal Act, 1911. The assessment was made keeping in view the self occupation of the owner as well as the tenancy. The owner of the property Sh. Ramesh Kumar has come present before the Sub-Committee and has made oral objection on the purposed assessment. After due consideration, the Sub-Committee has decided to*

> *reduce the House-Tax assessed from Rs.493332/- to Rs.426132/-. On this, house tax comes to Rs.57528/- on which the owner has appended his signatures as token of acceptance. The decision is pronounced. Since from the year 2011-12, the tenant Max New York Life Insurance has vacated the premises, therefore, it is decided and ordered to reduce the tax assessment by Rs.5700/- per month."*

Against the impugned order dated 19.05.2011 (Annexure P-4), the petitioner preferred appeal before the District Collector-cum-Deputy Commissioner, Fazilka which has been dismissed vide impugned order dated 10.09.2013 (Annexure P-8) and ultimately impugned demand notice dated 13.09.2013/14.10.2013 (Annexure P-9) has been issued to the petitioner for depositing the house-tax . Hence, this writ petition.

In pursuance of the notice of motion, respondents put in appearance and filed reply with the averments that assessment has been made by the House Tax Sub Committee in the presence of the petitioner as new tenant M/s Max New York Life Insurance has been inducted and the rent of Punjab & Sind Bank has been increased from Rs.29,757/- per month to Rs.41,202/- per month. Even the Sub Committee reduced the house tax for the assessment year 2011-12 to the tune of Rs.5,700/- because the Max Yew York Life Insurance had left the premises. The assessment has been correctly made in accordance with law. The petitioner was given notice prior to the assessment and he defended his case before the House Tax Sub Committee and the Appellate Authority.

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

Learned counsel for the petitioner vehemently contended that the impugned orders have been passed without complying with the provisions of the 1911 Act. The assessment order dated 19.05.2011 (Annexure P-4) has been passed without recording any reason and there is complete violation of provisions of law while assessing the modified house tax. Similarly, appeal of the petitioner has been dismissed vide impugned order dated 10.09.2013 (Annexure P-8) without adverting to the settled proposition of law.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and contended that the Municipal Council issued re-assessment notice under Section 67(3) of the 1911 Act, as amended in 1994. As per amended Section 67(3) of the 1911 Act, the Municipal Council is empowered to alter/amend the assessment list. In the present case, even new tenants, which are organizations, have occupied the property in question and are paying the rent to the petitioner. The petitioner was given ample opportunity of hearing and no undue haste was done in re-assessment of house-tax.

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

It would be appropriate to reproduce Section 3 (1) of the 1911 Act as amended upto the date i.e. assessment period from 2008-09 to 2010-12 which reads as under:

> *"3. Definitions- In this Act, unless there is something repugnant in the subject or context.-*
>
> *(1) (a) "annual unit value" the value of the building and lands calculated at the following rates:-*
>
> *(i) five per cent of total unit value in the case of residential building.*
>
> *(ii) twenty per cent of total unit value in the case of Malls and Hotels with five stars and above; and*
>
> *(iii) fifteen per cent of total value for others;*
>
> *(b) "commercial building" means a building, which is not a residential building.*
>
> *(c) "residential building" means any building which is not being used for the purposes of business, profession or trade;*
>
> *(d) "total unit value" means the value of the building and lands calculated after multiplying the unit value with factors, applicable to such building and lands, given in Schedule IV;*
>
> *(e) "unit value" means the value per square meter of the area of the building and lands in a zone as determined by the Unit Valuation Committee under Section 66-A.*
>
> *(f) "zone" means a zone as determined by the Zoning Committing under Section 66".*

It is also pertinent to mention here that definition of "market value" was added in the 1991 Act by the Punjab Amendment Act 11 of 1994 as (8a) and renumbered as (8aa) by Act 6 of 1995. Section 3(8aa) of the 1911 Act reads as under:

> *"(8aa) "market value" means the market value of the land or the building which is determined in accordance with the principles contained in section 23 of the Land Acquisition Act, 1894, or as determined in accordance with the provisions of the Registration Act, 1908."*

Earlier the land and building of the petitioner was assessed to house-tax and the petitioner continued to pay the house-tax. Thereafter, notice dated 28.02.2008 (Annexure P-1) for amendment of the earlier house tax w.e.f. 01.04.2007 was given and assessment has been revised in view of change of tenancy under the provisions of the 1911 Act. The definition of "annual value" was substituted by way of amendment in 1994. Admittedly, "annual value" is the basis for assessment of house tax leviable by the Municipal Committee. Plainly speaking, "annual value" is the gross annual rent of land or the building. However, if building is let out to any relations and rent fixed under the agreement does not represent true rent, the rent fixed under the agreement of lease shall not be taken into consideration and "annual value" shall be assessed five per cent on the sum obtained by adding the present market value of the land and estimated cost of erecting the building less ten per cent depreciation. It is also pertinent to mention here that market value of the land or the building is to be determined in accordance with the provisions of the Land Acquisition Act, 1894 or the Registration Act, 1908 i.e. the average collector rate.

Perusal of unamended definition of "annual value" reveals that in case of any house or building, gross annual rent is to be determined on the amount at which it may reasonably be expected to let from year to year subject to certain deductions. It has been settled in catena of judgments that it is the fair rent which is reasonably expected at a place where rent law is applicable and restricts the amount of rent to fair rent.

Perusal of definitions of "annual value" reveals that it does not make any distinction between occupied land, house or building and tenanted land, house or building for the purpose of determination of annual value for levy of house tax. The amended definition of "annual value" w.e.f. 01.04.2013 provides a distinction. It provides two different categories for determination of annual value of land or building depending upon the facts of its occupation by the tenant or the owner. It provides that in case of the land or building, which is in occupation of the tenant, the annual value is to be determined on the basis of gross annual value on which the same was actually let out with a provision that in the event of increase in rent, the Municipal Committee may make corresponding increase in the annual value. In case of land or building occupied by the owner, annual value is 5 per cent on the sum obtained by adding the present market value of the land and estimated cost of erecting the building minus 10% deduction. Proviso to Section 3(1) (b) of the 1911 Act lays down that the calculation of the annual value of any land or building should be made without considering furniture or machinery thereon. The market value of land or building is to be determined in accordance with Section 23 of the Land Acquisition Act, 1894 or Registration Act, 1908.

It needs to be noticed that definition of "annual value" and other provisions have been amended in the year 2013, however, in the present case, value is to be assessed in view of the provisions existing in the years 2008-09 and 2009-10 as dispute is with regard to the assessment of house-tax of those years and onwards. The house tax is to be assessed keeping in view the provisions as applicable at that point of time, not on the basis of actual rent. Admittedly, no details have been mentioned in the assessment order and in determining the annual value, complete details are to be furnished while passing the order. The house tax assessment authority is required to pass a speaking order mentioning the basis on which annual value has been assessed and consequential house tax.

Section 3(1) is an exhaustive section which mentions about determination of the annual value of the property and building therein. The method adopted for determining the annual value by the House Tax Assessment Sub Committee as well as the Appellate Authority is against the amended provisions of the 1911 Act, as applicable at that point of time. The Municipal Council has failed to explain in the impugned orders as to how annual value of the property and building thereon has been assessed. The assessment apparently appears to be in violation of the provisions of the 1911 Act.

In view of above discussion, the impugned orders dated 19.05.2011 (Annexure P-4) passed by House Tax Sub Committee, Municipal Council, Abohar, dated 10.09.2013 (Annexure P-8) passed by District Collector, Fazilka and demand notice dated 13.09.2013/14.10.2013 (Annexure P-9) issued by the Municipal Council, Fazilka are set aside and matter is remanded to the House Tax Sub Committee, Municipal Council, Abohar with a direction to re-assess the house tax after giving complete details and the basis on which annual value has been fixed and consequential house tax payable. It is made clear that the provisions of the Municipal Act as amended upto the assessment year will be applicable for the assessment of the house tax during the years 2008-09 to 2011-12.

The present writ petition reveals a very sorry state of affairs. Notice under Section 67 of the 1911 Act to amend house tax was issued to the petitioner on 28.02.2008, to which the petitioner filed reply on 25.03.2008. The House Tax Sub Committee, Municipal Council, Abohar held meeting on 19.05.2011 to decide the objections. The Municipal Council took three years to decide the objections to the house tax amendment notice. It is the Municipal Council which has suffered loss of revenue because of its inefficiency. Thereafter, the assessee has been asked to pay entire amount of house tax in respect of these years in lump sum. Section 84-A(1) of the 1911 Act provides the right to appeal to the aggrieved party, however, Section 84(2) of the 1911 Act provides that no appeal shall be entertained under Sub-section (1) unless the amount of tax is paid. From the above, it is clear that the Municipal Council is suffering the revenue loss and creating the apprehension in the minds of assessee. I would like to advise the Municipal Council that it must take appropriate steps to expedite the assessment proceedings which generally takes many years. Parties through their counsel are directed to appear before the House Tax Sub Committee, Municipal Council, Abohar on 19.10.2015. It is hoped that the Municipal Council shall dispose of the matter in hand at the earliest preferably within two months.

Disposed of in the above terms.

14.09.2015 **(Paramjeet Singh)**
parveen kumar **Judge**