

**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision:14.12.2016

1. CWP No.3365 of 2010

Punjab Alkalies & Chemicals Ltd.Petitioner
Vs.

The Municipal Council, Nangal & anr.Respondents

2. CWP No.20391 of 2011

Punjab Alkalies & Chemicals Ltd.Petitioner
Vs.

The Municipal Council, Nangal & anr.Respondents

3. CWP No.12240 of 2011

Punjab Alkalies & Chemicals Ltd.Petitioner
Vs.

The Municipal Council, Nangal & anr.Respondents

4. CWP No.3891 of 2013

Punjab Alkalies & Chemicals Ltd.Petitioner
Vs.

The Municipal Council, Nangal & anr.Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Arun Nehra, Advocate for the petitioner.

Mr. Vishal Garg, Advocate for the respondents
(in CWP Nos.3365 of 2010 and 12240 of 2011).

Mr. Namit Kumar, Advocate for the respondents
(in CWP Nos.20391 of 2011 and 3891 of 2013).

RAKESH KUMAR JAIN, J.(Oral)

This order shall dispose of a batch of four writ petitions bearing CWP Nos.3365 of 2010, 20391 of 2011, 12240 of 2011 and 3891 of 2013 as the basic issue involved in all these four cases is same. However, for the sake of convenience, facts are being extracted from CWP No.3365 of 2010.

The petitioner is the Limited Company, assailing the order of assessment, for the period 1995-96 to 2007-08, passed by the Municipal council (respondent No.1) along with Bills (196 Nos.) dated 16.7.2008 (Annexure P.10) by which respondent No.1 has re-assessed the Annual Letting Value and House Tax on the Residential Units in the Housing Colony of the petitioner- Company by order dated 8.7.2008, upheld vide order of the Appellate Authority dated 25.8.2009.

The facts given to me in Court, while dictating the order, are that the petitioner has a manufacturing unit at Naya Nangal. It has a housing colony for the purpose of residence of its employees posted at its manufacturing unit. The residential units comprises different categories for its workers/ officers, namely, quarters for workers, HIG Type Houses and Executive Houses. The respondents earlier assessed the house tax on the said residential units on the basis of capital cost of the said houses taken on block basis for different types of houses and levied the house tax for Worker Houses (72 Nos. - Rs.22,722.45), HIG Type Houses (72 Nos. - Rs.27,291.45) and Executive Houses (6 Nos. - Rs.13,210.35). The petitioner has been paying the house tax on the aforesaid residential units as per the above-mentioned rate for the year 1999-2000 but at the same time,

challenged the determination of Annual Rental Value and house tax of the said residential units by filing appeals every year. The appeals upto the years 1998-99 were adjourned sine die by the Courts because the question as to whether the assessment of the residential quarters situated in a row/block has to be done by treating the building as one building or separate buildings was pending for consideration of the Apex Court in CA Nos.3830-34 of 1990 (Notified Area Committee, Nangal Township Vs. Bhakra Beas Management Board). The Supreme Court settled the matter regarding assessment of house tax on houses in a row constructed by an employer and occupied by its employees holding that the word 'building' as applicable in respect of residential quarters would mean each individual house situated in a row of quarters or block and the Assessing Authority can not club all the quarters/ bungalows in the block together and term that as a building for the purpose of levying house tax under the Punjab Municipal Act, 1911 (for short, 'the Act'). The appeal filed by the petitioner against the levy of house tax for the year 1999-2000 came up for hearing before Additional Deputy Commissioner, Ropar in December, 2000, who vide his order dated 30.1.2001, allowed the said appeals, regarding assessment of House Tax for the year 1999-2000 and quashed the assessment made by the Municipal Council and directed the Municipal Council to re-assess the annual rental value of the residential quarters and make fresh assessment of house tax in light of the said judgment of the Supreme Court. For the subsequent years 2000-01 and onwards, respondent No.1 made the assessment of house tax in the light of the said judgment of the Supreme

Court for the individual property. The petitioner filed the appeal before the Appellate Authority in respect of the years prior to 1999-2000 which were adjourned sine die but the Appellate Authority vide its order dated 30.3.2006 directed the Municipal Council to re-assess the house tax. Respondent No.1 vide notice dated 17.8.2006, issued under Section 173 of the Act, asked the details of the quarters, rent being charged and HRA deducted from the employees to whom quarters were allotted. The petitioner vide its letter dated 25.8.2006 provided the details of houses/ quarters allotted to its employees and amount deducted as license fee from them. Respondent No.1 issued identical 196 notices on 6.11.2007 under Section 67(3) of the Act proposing re-assessment of the House Tax for the period 1995-96 to 2007-08 and invited objections. The petitioner submitted their objections on 4.12.2007. Thereafter, the Assessing Authority passed the impugned order on 8.7.2008 holding that the relationship between the petitioner and the employees was of landlord and tenant as the petitioner itself has alleged that they have been deducting 10% as house rent from the basic pay of the employees and thus assessed the annual rental value of Rs.1,75,338/- under Section 67(3) of the Act on 6.11.2007 for the years 1995-96 and 2007-08. Aggrieved against this order, the petitioner preferred the statutory appeal under Section 84 of the Act before the Additional Deputy Commissioner, exercising power of the Deputy Commissioner, Rupnagar. All the 196 appeals were disposed of by the impugned order dated 25.8.2009 and as a result thereof, the present petitions have been filed in which all the 196 notices have been challenged.

Shri Arun Nehra, learned counsel for the petitioner has submitted that the accommodation provided by the Company to its employees, while charging a paltry sum of money would not tantamount to creation of a tenancy but the petitioner had the relationship with his employees, who were accommodated within the factory premises, of a licensor and licensee. He has further submitted that annual rental value can be charged as defined under Section 3(1)(a) in respect of a building area, land, which is in occupation of a tenant whereas the quarters/ bungalows in occupation of the employees of the petitioner were in possession of the petitioner through their licensees. In this regard, he has relied upon a Division Bench judgment of Delhi High Court rendered in the case of Late Sh. Puran Singh (Dead) through his LRs v. D.C.M. Limited, 1998(2) R.C.R. (Rent) 497 and a Single Bench judgment of this Court in S.S. Bedi v. Punjab Public School and another, 1981(2) RentLR 571. It is also further submitted that Section 67(3) of the Act cannot operate retrospectively because as per Section 58 of the Act, the assessment can only be made from 1st April of the year in which notice has been given but not for the previous year. In this regard, he has referred to Section 67(3) of the Act which is also reproduced as under:-

“(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 reducing 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.”

He has further submitted that at the most, the petitioner can be assessed for the house tax of the property in question in terms of Section 3 (1)(b) of the Act from 1.4.2001 as the notice was issued from 6.11.2007. On the other hand, Shri Vishal Garg, counsel appearing for the respondents has submitted that firstly the writ petition is not maintainable as the petitioner has the statutory remedy of filing revision petition and has referred to Sections 236 and 237 of the Act which are reproduced as under:-

“236. Power to [state] government and its officers over committees. (1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules inforce under any enactment for the time being, applicable to Punjab generally or the area over which the committee have authority.

⁷ (2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annual or modify and

proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the ⁸Deputy Commissioner under Section 232.

(3) The⁹ Deputy Commissioner may within ¹⁰[his] jurisdiction for the same purpose exercise such powers as may be conferred upon ¹¹[him] by rule made in this behalf by the State Government.

237. General powers of state government over officers. Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying the order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason in expedient, and generally for carrying out the purposes of this Act the State Government shall exercise over its officers ¹³all powers of superintendence, direction and control.”

He has further submitted that the petitioner cannot be allowed to blow hot and cold in view of letter dated 10.1.1990 written to the Executive Officer of the Municipal Council in which it is alleged that the houses in question have been let out to the employees of the Company for charging rent from them at the rate of 10% of their basic pay. It is also submitted that there is no retrospectivity involved in this case as the re-assessment has been made in view of an order passed by the Supreme Court as earlier the annual rental value of the property in question was assessed by taking the entire building in a row which has been declared to be a wrong approach in another case by the Supreme Court in which it has been held

that it cannot be clubbed together and has to be individually assessed. In the end, it is submitted by the respondents that even in the impugned order Annexure P.15 passed by the Deputy Commissioner, the petitioner has been asked to furnish records so that the dispute between the parties may be settled once for all but instead of settling the dispute, the petitioner rushed to this Court and filed these petitions. It is also submitted that as far as the licence fee is concerned, the petitioner has not taken the stand either in the writ petition nor in the replication or in the subsequent writ petition.

In rebuttal, counsel for the petitioner has submitted that the writ petition is very much maintainable de-hors the alternative remedy as suggested by the respondent provided under Section 236 of the Act and has referred to a decision of the Supreme Court in the case of L. Hirday Narain v. Income Tax Officer, Bareilly, 1971 AIR (SC) 33. In respect of the letter dated 10.1.1990, it is submitted that though it is mentioned in this letter that for the houses of the employees of the Company, they are charging rent at the rate of 10% of their basic pay but no relationship of landlord- tenant has been established and that it is a loose expression in referring to the relationship of employer and the employee because as soon as the employee retires from the petitioner- Company, the accommodation occupied by him is vacated. Rather it is submitted that the accommodation is provided only during the time when the employee is in the employment of the petitioner- Company.

I have heard both learned counsel for the parties and perused the available record with their able assistance. From the resume of the facts

referred hereinabove, the following questions would arise for the purpose of adjudication, namely, (i) As to whether the manufacturing unit of the Company in which quarters/ residential accommodation is provided to the employees creates the relationship of landlord and tenant or the licensor and licensee? , (ii) Whether the assessment initiated under Section 67(3) of the Act can be retrospective? And (iii) whether the writ petition is maintainable despite availability of alternative remedy under Sections 236 and 237 of the Act?

To begin with, I will deal with the third question as it relates to the very maintainability of the writ petition in the presence of the alleged remedy of revision. Shri Nehra, learned counsel appearing for the petitioner has not denied that the State Government does not have the power to set aside the orders passed by the Deputy Commissioner under Section 232 of the Act, i.e. resolution passed by the Municipal Council but it is submitted that once the writ petition has been admitted, then, it would not be in the interest of justice that the parties are relegated to their alternative remedies.

There is no dispute that the writ petition pertains to the year 2011 and was admitted after hearing both the parties on 9.11.2012 finding it to be a fit case for a regular hearing and a detailed discussion. At the time of admission, it is needless to mention that though it is not reflected from the admission order that the arguments raised by the respondent about the maintainability of the writ petition were dealt with or not as it is only a one word order “Admitted” but in the case of L. Hirday Narain (supra), the Supreme Court has held that if the High Court has entertained the writ

petition and heard on merits, then it would not be justified in dismissing on the ground that it is not maintainable because of availability of alternative remedy. Similarly, there is a Division Bench judgment of this Court in the case of Kali Ram v. State of Haryana, 1984 PLR 504 in which this Court has held that if the petition is admitted after considering objections raised in written statement then it would not be right to throw away the writ petition at the time of final hearing on ground of non-availing of alternative remedy. Thus in view thereof, the third question, framed at the asking of the respondent about the maintainability of the writ petition is decided against the respondent and it is held that the writ petition in its present form is maintainable.

Now I would advert to the first question.

There is no dispute that the petitioner has a manufacturing unit at Nangal and has constructed number of residential accommodations i.e. houses/quarters/bungalows for various types of his employees ranging from the workmen to the Manager. The petitioner has placed on record a chart indicating the code of the employee with his/her name, designation, type of quarter allotted and the amount of licence fee charged from them.

Since the accommodation is provided to the employee and not the outsider, therefore, in the case of Late Shri Puran Singh (Dead) through his LRs (supra), the Delhi High Court has held that if the Company has allotted the property/ quarters to its employees then there would be a relationship of licensor and licensee and not of the landlord and tenant. In that case, the appellant therein had expired. He joined the Company on

2.2.1942 and retired on 30.10.1985. He was allotted residential quarter by the Company within its premises at a monthly rent of ₹10/- which was later on increased as well. The said amount was used to be deducted from his salary. After his retirement, the Company served a notice upon him calling upon him to vacate and hand over the vacant possession and also to pay damages for its use and occupation. The Company had to file a suit in this regard which was decreed and the said judgment and decree of the Sub-Judge was challenged before the Delhi High Court. In the backdrop of these facts, the following observations have been made by the Court which is reproduced as under:-

“12. The respondent also submitted that the controversy involved in this suit is no longer res-integra. It is submitted that the respondent company had 1200 quarters and these quarters were allotted to their employees on licence basis and after their superannuation these quarters had to revert to the company. For allotment of the quarter a small licence fee used to be charged by the respondent company. This court in a number of exactly similar suits and appeals had occasions to examine the same controversy. This Court unanimously in a large number of proceedings came to a categorical conclusion that the quarters in question were allotted to the employees as long as they were in service and after their superannuation, the quarters had to revert to the company. It is submitted by the learned counsel for the respondent that except for the appellant's legal

heirs/representatives all other quarters have been vacated.

13. The issue whether the quarter allotted to the appellant was on a lease or a licence basis, has also been examined in a number of cases of the respondent company (concerning its various employees at various stages). Single Benches, Division Benches, and Full Benches of this Court and even the Hon'ble Supreme Court also on various occasions had examined this very issue concerning the similarly placed other former employees of the respondent company in a number of cases. It may be pertinent to reproduce the findings which were arrived at by the various courts.”

In the case of S.S. Bedi (supra), there were teachers in Punjab Public School, Nabha, who were allotted 'A' type quarters. They were given residential accommodation. The service of the teachers was terminated and they were asked to vacate quarters allotted to them but they refused to do so resulting into litigation. This Court while interpreting Section 52 of the Easement Act, observed as under:-

“10. As is clear from the appointment letter, the appellants were provided a facility of free and partly furnished accommodation. In the appointment letter there is no mention of any house rent allowance. This is provided by Rule 8 of the Rules framed by the School By no stretch of imagination it can be said that the house rent allowance, which was being paid to the appellants, will become the rent of the quarters allotted to them. After the

allotment of the quarters the appellants did not admittedly pay any rent to the School. It is true that after that date no house rent allowance was paid to the appellants. However, that was being paid because the appellants had not been allotted free accommodation. As soon as the accommodation was made available to them, this allowance was not paid to them. The appellants cannot be said to have entered into lease of the demised premises. The rights in the property had not been transferred to them. They were not paying any price for the use and occupation of the premises. Nor they had promised to do so. They cannot be said to be tenant also as defined in Section 2 (1) of the East Punjab Rent Restriction Act. A tenant is liable to pay rent for the use and occupation of the premises.”

No judgment to the contrary is cited by the respondents to the effect that if the residential accommodation is provided by the Company within its premises and is not let out to any outsider and is let out only to its employees, during its pleasure, i.e. while they are in employment of the employer then even if the employer is charging a paltry sum as a licence fee or as stated by the respondent as rent, the relationship of employer and employee does not mature into the relationship of landlord and tenant so as to give the so-called tenant the protection of the Rent Act. Although this is not the issue before me as it was the issue before the aforesaid two cases in which orders were being sought from the Court for seeking eviction or vacation of the premises in question therein from the possession of the ex-

employees who had either retired or were terminated from service but the fact remains that the relationship of such an employer and employee insofar as the accommodation is concerned, was of a licensor and licensee because in case the relationship of landlord and tenant is established then the said employee even after his termination of service or retirement would continue to occupy the said premises for all times to come unless and until, he is dispossessed in accordance with law because the maxim says that “Once a tenant always a tenant until and unless dispossessed in accordance with law”. The first question is thus also decided in favour of the petitioner and it is held that the expression used by the petitioner in para No.3 of the letter dated 10.1.1990 was a loose expression otherwise there was no intention of the petitioner of having a relationship with its employees of landlord and tenant and in this regard a chart has already been produced on record as Annexure P.4 about which I have already made a mention in earlier part of the judgment. Now the last questions would be question No.2 which is raised by Mr. Nehra to the effect that as per Section 67(3) read with Section 58 of the Act, the proceedings could have been initiated prospectively and not for the previous assessment years. In this regard, the argument raised by counsel for the respondent is categorical that the proceedings have already been taken but the notices have been issued because of the remand of the case. The argument raised by counsel for the respondent in this regard appears to be justified and hence in the peculiar facts and circumstances of the case, I would hold that the proceedings initiated by the respondent in respect of the previous notices because of its remand by the earlier order of

the competent authority, the proceedings initiated under Section 67(3) shall be maintainable. After having decided all the three questions, the Court has to decide as to what is the total effect on the impugned orders which have been passed. In my considered opinion, the Assessing Authority has not looked into the objections raised by the petitioner in its true perspective as the objections are very categorical but the Assessing Authority has not dealt with objections separately. Similar is the treatment of the appeal by the Appellate Authority as there is no reference to the various issues raised which have been decided just now. Consequently, I find it proper to set aside the impugned orders and remand the matter back to the Assessing Authority to pass a fresh order after taking into consideration the observations made by this Court and pass a speaking and well reasoned order after associating the parties. The parties are directed to appear before the Assessing Authority on 20.1.2017.

December 14, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes