IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15980 of 2015

Date of Decision: 15.2.2016

Sudesh Rani

....Petitioner.

Versus

State of Punjab and others

...Respondents.

1. Whether the 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?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Anurag Chopra, Advocate for the petitioner.

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

Mr. Samrath Sagar, Advocate for respondent No.2.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 16 petitions bearing CWP Nos. 15405, 15829, 15980, 16106, 16320, 16520, 16570, 16603, 16609, 16730, 16796, 16971, 17003, 17393, 17579 and 18302 of 2015 as according to learned counsel for the parties, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 15980 of 2015.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus against the action of respondents No.2 and 3 in

levying property tax beyond the provisions of the notification dated 31.12.2014 (Annexure P-1). Further, prayer has been made directing respondents No.2 and 3 to decide the representation dated 1.7.2015 (Annexure P-10) moved by the petitioner seeking clarification on the status of premises and the property tax charged therein and not to charge excessive property tax. Also, a prayer has been made restraining respondents No.2 and 3 from taking any coercive measures in levying and recovering excessive property tax in pursuance to the recovery notice dated 26.6.2015 (Annexure P-9) other than provided in the notification and building bye-laws.

3. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. Respondent No.1 vide notification dated 31.12.2014 (Annexure P-1) ordered for levying of tax on land and building w.e.f. 1.4.2014. The said notification laid down the rate of tax as per classification and category which could be levied from various individuals owning various properties. Further, to the said notification, the City of Ludhiana is governed by the Ludhiana Building Byelaws dated 24.10.2011 (Annexure P-2) which categorically define the type of building premises and categorizes the same. The categories of building have been divided into various categories viz. residential, commercial, industrial, public building, mixed land use building. In pursuance to the said notification, Annexure P-1, the petitioner along with others being shop owners had used the online portal facility provided by the Municipal Corporation, Ludhiana to deposit the property tax for the years 2013-14, 2014-15 and 2015-16. The calculation had been duly made by the Municipal Corporation regarding the type of building to be charged with property tax and the area owned by the

respective shopkeepers while determining the rate of tax to be deposited and the petitioner along with others deposited the tax as calculated and assessed by the Municipal Corporation as per property tax return assessment report dated 15.7.2015 (Annexures P-3 and P-4, respectively) for the years 2014-15 and 2015-16. Vide property tax return assessment reports dated 30.10.2013 (Annexure P-5 Colly), dated 13.2.2015 (Annexure P-6) and dated 31.3.2015 (Annexure P-7) few other shopkeepers had deposited their requisite property tax for the assessment years 2013-14 and 2014-15. The petitioner along with others had been duly acknowledging the said tax and depositing the same through computer generated receipts issued by respondents No.2 and 3 to the surprise of the petitioner along with other shopkeeper owners were taken aback when one of the shopkeeper owners, i.e. owner of shop No. 1389/E-100, situated at Calibre Plaza, AC Market was levied an additional property tax including penalty over and above the prescribed property tax in order to issue a No Objection Certificate/T.S.-1 from respondent No.3 at the time of selling of the said shop. The said shopkeeper was charged the difference of property tax amounting to ₹ 3645/- for the year 2015-16 vide receipts dated 28.5.2015 (Annexure P-8 Colly). Respondents No.2 and 3 vide notice dated 26.6.2015 (Annexure P-9) have made illegal recovery of the excess property tax from the petitioner without any explanation even though the petitioner had duly deposited the said property tax for the years 2013-16. The petitioner made a representation dated 1.7.2015 (Annexure P-10) to respondents No.2 and 3 for clarification on the imposition of property tax levied by the Municipal Corporation, Ludhiana and the status of Calibre Plaza as a commercial building, but no response has been received till date. Hence, the present writ petitions.

4. Notice of motion was issued wherein reply by way of affidavit of Shri P.S. Ghuman, Joint Commissioner-cum-Zonal Commissioner, Municipal Corporation, Ludhiana-respondent No.3 was filed to justify their action pleading that it falls within the definition of "Mall" and was not a commercial building.

5. After hearing learned counsel for the parties, we find that vide notice dated 26.6.2015 (Annexure P-9), the petitioner was given an opportunity to present her case for showing that the property tax has been deposited at the office of Municipal Corporation, Ludhiana. The said notice, Annexure P-9, further provided that the authorities even would consider sealing of the property as punishment, if found liable. The petitioner moved a representation dated 1.7.2015 (Annexure P-10) to respondents No.2 and 3 for clarification on the imposition of property tax levied by the Municipal Corporation, Ludhiana and the status of Calibre Plaza as a commercial building. Thereafter, the petitioner(s) approached this Court and the representation dated 1.7.2015 remained pending as no final decision was taken thereon.

6. Learned counsel for the petitioner(s) prayed that liberty be granted to the petitioner(s) to file a detailed and comprehensive reply to the recovery notice dated 26.6.2015 (Annexure P-9) along with documentary proof to substantiate their claim that it is a commercial property and not a "Mall". On the other hand, learned counsel for the respondents agreed that if any detailed reply is filed by the petitioner(s), fresh orders shall be passed thereon in accordance with law.

7. In view of the above, the present writ petitions are disposed of with a direction that in case any such detailed and comprehensive

reply along with documentary proof is filed by the petitioner(s) within one month from the date of receipt of certified copy of this order, the same shall be decided by the competent authority within a period of next two months thereof in accordance with law. Since no material has been produced or placed on record to substantiate their claim, it shall be open to the petitioner(s) to produce the entire material before the authority concerned who shall pass a speaking order thereon after affording an opportunity of hearing to the petitioner(s). Needless to say that nothing observed hereinbefore shall be taken as an expression of opinion on the merits of the controversy and the concerned authority shall pass the orders without being influenced by the written statement filed by them or any observations made by this Court.

(AJAY KUMAR MITTAL)
JUDGE

February 15, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**