In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 6277 of 2016
Date of Decision: April 11, 2016

Surinder Mittal ... *Petitioner*

Versus

State of Punjab and others ... *Respondents*

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

Present: Mr. Ashu Kaushik, Advocate,
for the petitioner.

***Paramjeet Singh Dhaliwal, J.* (Oral)**

Instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondent – Municipal Corporation, Phagwara to de-seal/open business premises of the petitioner, which was sealed on 08.03.2016.

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

Perusal of the file shows that the building in question has been assessed to house tax and recovery is being effected by sealing the said building. Section 138 of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the "Act") reads as under:-

> *"138. Manner of recovering tax – Any sum due on account of tax payable under this Act may be recovered, together with costs of recovery, through the following processes by the Competent Authority -*
>
> *(a) by service of writ of demand on the defaulter;*
>
> *(b) by distraint and sale of a defaulter's movable property;*

(c) by the attachment and sale of defaulter's immovable property;

(d) in the case of octroi and toll, by the seizure and sale of goods and vehicles; and

(e) in the case of taxes on land and buildings, by the attachment of rent due in respect of the property or any other property owned by the defaulter."

Section 80-A of the Punjab Municipal Act, 1911 reads as under:-

"80-A. Entitlement of occupier to recover the tax paid – If any tax or sum leviable under this Act from the owner, is recovered from the occupier, such occupier shall, in the absence of any contract to the contrary, be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner."

The petitioner is claiming to be the occupier/tenant of one of the shops and recovery is being made under Section 138 of the Act by way of attachment. In this manner, if the petitioner is aggrieved against that order, he is bound to pay the house tax and can deduct the same from the rent payable to the owner. Perusal of Section 138 of the Act reveals that any part of the property or even other property of the defaulter can be attached for the purpose of recovery.

In view of above, no ground of interference is made out.

Dismissed. However, the petitioner will be at liberty to deposit the tax amount and thereafter, deduct the same from the rent being paid by him.

April 11, 2016 **[Paramjeet Singh Dhaliwal]**
vkd **Judge**