IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11987 of 1998 (O&M)
Date of decision: 05.7.2017

Municipal Council Ahmedgarh through its Executive Officer Municipal Council.

……Petitioner

Vs.

Sub Divisional Magistrate Dhuri, District Sangrur and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Punia, Senior Advocate with Ms. Harveen Kaur, Advocate for the petitioner.

Mr. M.K. Garg, Advocate for respondent No.2.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ of certiorari for quashing the order dated 27.03.1998, Annexure P.1, whereby appeal filed by respondent No.2 against the order dated 31.03.1997 passed by Municipal Committee, Ahmedgarh imposing house tax, has been allowed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. On 27.03.1995 notification under Sub section (1) of Section 5 of the Punjab Municipal Act, 1911 (in short, "the Act") was issued whereby limits of Municipal Council, Ahmedgarh were extended and premises of respondent No.2 came within the limits of the said Municipal Council. On 06.11.1995, notice under Section 65/67 of the Act was issued to respondent No.2-

Shanti Tara Memorial Education and Medical Trust calling upon it to file the objection, if any, to the proposed tax. Respondent No.2 filed reply to the effect that house tax could not be levied as it was running a charitable institution. The petitioner-Municipal Corporation, Ahmedgarh issued notice to respondent No.2 dated 21.12.1995 that its objection will be considered in Sub Committee's meeting dated 28.12.1995. In the said meeting, it was decided to seek clarification from Director, Local Government Punjab, as to whether house tax was leviable on respondent No.2. Vide communication dated 13.06.1996, the Director, Local Government, Punjab intimated that case of respondent No.2 be decided as per Notification of the Government of Punjab dated 17.08.1993. Thereafter, the petitioner wrote letter dated 08.07.1996 to respondent No.2 to supply the charitable certificate. Respondent No.2 filed reply dated 15.07.1996 and attached letter from Commissioner of Income Tax, Jalandhar, Memorandum and Articles of Association. Respondent No.2 was called for meeting of Sub Committee dated 02.09.1996 in which some time was sought for approaching the Local Government, Punjab. Again in the meeting dated 20.12.1996, respondent No.2 sought time and finally on 31.03.1997, order Annexure P.2 was passed imposing house tax on respondent No.2. Respondent No.2 filed appeal against the order dated 31.03.1997 before respondent No.1 which was allowed vide order dated 27.3.1998. According to the petitioner, respondent No.1 had no jurisdiction to entertain the appeal unless the conditions provided in Sub Section (2) of Section 85 of the Act regarding deposit of all Municipal Taxes due to the Committee were paid. It has been further stated that respondent No.2 is not enjoying any aid from the State and thus its case does not fall in exemption clause of the above mentioned notification, Annexure P.6. Hence the instant writ petition by the petitioner.

3. A written statement has been filed on behalf of respondent No.2 wherein it has been inter alia stated that as per memorandum of association of Shanti Tara Charitable Trust, it is a charitable entity which carries out its aims and objectives for the benefit of community at large. It is being run for charitable purposes with a view to provide higher education at affordable cost to the children of rural backward area of District Sangrur. It has been further stated that the Registrar of Firms and Societies, Government of Punjab, has also acknowledged that Shanti Tara Charitable Trust is a charitable entity and the same has been notified in the Official Gazette. Respondent No.2 claimed exemption from payment of property tax for the financial year 2013-14 by filing property tax return. Exemption was allowed as claimed by the competent Authority.

4. We have heard learned counsel for the parties.

5. It would be advantageous to reproduce the relevant part of the notification dated 17.08.1993, Annexure P.6 which reads thus:-

> "NOTIFICATION
>
> The 17th August, 1993.
>
> No. TA-DCFA-DIG-93/27150- In supersession of Government of Punjab, Department of Local Government Housing and Urban Development Notification No.1385-6C III-75/41530, dated 3rd December, 1975 No. 491-A/DSL GII-83/5304, dated 15th March, 1983 and No. 491-A-DSLGII-83/6309, dated 3rd May, 1984 and in exercise of

powers conferred by Sub-section (I) of Section 71 of the Punjab Municipal Act, 1911 (Punjab Act No.3 of 1911) and other powers enabling him in this behalf, the Governor of Punjab is pleased to exempt the following from the payment of leviable under clause (a) Sub section (1) of Section 61 of the Punjab Municipal Act, 1911 with immediate effect:-

(i) xxxxxxx

(ii) xxxxxxx

(iii) building and land portion thereof used exclusively for educational purposes by Government Colleges and Schools as also Colleges and Schools those enjoying 95% aid from the State and boarding housing, hostels and libraries attached with such institutions.

(iv) All mosques, temples, churches, dharamshalas, gurudwaras, purely charitable hospitals dispensaries, orphanages (duly registered) muslims and hindus grave yards and properties attached to State and registered charitable educational and religious institutions, dispensaries, orphanages and grave yards and used for the purpose of their up keep only."

6. A perusal of the above clause (iv) shows that registered charitable and religious institutions are exempt from payment of tax under clause (a) Sub section (1) of Section 61 of the Act. The case of the respondent No.2 being a charitable institution is covered by the above clause. Further a perusal of order dated 27.03.1998, Annexure P.1 passed by the Sub Divisional Magistrate Dhuri shows that as per Punjab Government Notification dated 17.08.1993, clause (iv), registered Charitable Educational and Religious Institution are exempt from house tax and as per clause III, thereof, Schools and colleges are also exempted from tax. A perusal of Annexure R.2/1-certificate issued by Registrar,

Firms and Societies, Punjab shows that respondent No.2 as per Memorandum of Association is charitable entity which carries out its aims and objectives for the benefit of community at large. The said society is registered under the Societies Registration Act, 1860 vide certificate No.1443 of 1993-94 with them. Thus, it has been rightly concluded by respondent No.1 that Municipal Committee, Ahmedgarh should have taken into the consideration the exemption given for house tax as per Punjab Government Notification dated 17.08.1993. The relevant part of the order dated 27.03.1998, Annexure P.1, passed by the respondent No.1 reads thus:-

> "I have heard arguments of counsel of both the parties and have perused the record on the file. According to Punjab Government Notification No.A.A.D.C. F.A. DLG-93/27150 dated 17.08.1993 para 4, registered charitable Educational and religious institutions are exempted from House Tax and according to Para III School/Colleges are also exempted from Tax. I have perused AIR 1990 SC 816 in which for imposing tax on property used for charitable purposes case was remanded for fresh decision. So I conclude that Municipal Committee Ahemadgarh should have taken into consideration the exemption given for House Tax according to Punjab Government Notification and according to decision of Supreme Court. In AIR 1990 SC 816 Punjab Government Notification No. T.A. D.C. F.A. D.L.G. 93/27150 dated 17.08.1993. The imposition of House Tax by Sub Committee of Nagar Council Ahmedgarh on Shanti Tara Memorial Education Trust is not proper and according to Letter No. J.U.D.L./Trust dated nil by Commissioner of Income Tax Jalandhar person giving the donation to this institute is entitled to rebate. So far the reasons, appeal of the appellant is accepted and decision of House Tax Sub Committee Nagar Council dated 31.03.1997 is set aside.

File be consigned to record room after compliance. Order pronounced dated 27.03.1998."

7. Learned counsel for the petitioner has not been able to produce any material on record to substantiate the claim made in the petition or to controvert the findings recorded by the respondent No.1. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 05, 2017 **(Amit Rawal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**