IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: July 31, 2017

1. CWP No.18715 of 2016

Nagar Panchayat Lalru, District Ajitgarh (S.A.S.Nagar) through its Executive Officer

...Petitioner

Versus

Director, Local Self Government-cum-Second Appellate Authority, Punjab, Chandigarh & others

...Respondents

2. CWP No.18716 of 2016

Nagar Panchayat Lalru, District Ajitgarh (S.A.S.Nagar) through its Executive Officer

...Petitioner

Versus

Director, Local Self Government-cum-Second Appellate Authority, Punjab, Chandigarh & others

...Respondents

3. CWP No.18744 of 2016

Nagar Panchayat Lalru, District Ajitgarh (S.A.S.Nagar) through its Executive Officer

...Petitioner

Versus

Director, Local Self Government-cum-Second Appellate Authority, Punjab, Chandigarh & others

...Respondents

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

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Present: Mr.Sanjeev Soni, Advocate,
for the petitioner in all the three petitioners.

Mr.I.P.S.Doabia, Addl.A.G.Punjab,
for the State.

Mr.Aalok Jagga, Advocate,
for the caveator/respondent No.3.

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AMIT RAWAL, J.

1. This order shall dispose of three Civil Writ Petitions bearing No.18715, 18716 and 18744 of 2016 as according to the learned counsel for the parties, common questions of law and fact are involved. However, the facts are being taken from CWP No.18715 of 2016.

2. Nagar Panchayat, Lalru has approached this Court under Articles 226/227 of the Constitution of India with the following prayer:-

> "*Civil Writ Petition under Article 226/227 of the Constitution of India in the nature of certiorari for quashing the impugned order dated 09.12.2015 (P-13) passed by respondent No.1 i.e. Second Appellate Authority-Cum- Director, Local Government, Punjab, Chandigarh and order dated 14.10.2015 (P-12) passed by the Respondent No.2 i.e. Appellate Authority-cum-Regional Deputy Director, Local Bodies, Patiala.*
>
> *AND/OR*
>
> *It is further prayed that during the pendency of the present writ petition, the execution of the impugned order dated 09.12.2015 (P-13) passed by the Respondent No.1 i.e. Second Appellate Authority-Cum-Director, Local Government, Punjab, Chandigarh and order dated 14.10.2015 (P-12) passed by the Respondent No.2 i.e. Appellate Authority-cum-Regional Deputy Director, Local Bodies, Patiala.*
>
> *AND/OR*
>
> *Any other writ, order or direction which this Hon'ble Court may deem fit in the peculiar facts & circumstances may also be issued.*"

3. The aforementioned relief is based upon the facts that the Punjab Municipal (Second Amendment) Act, 2012 (for short "Punjab Act No.6 of 2013") was issued by way of notification dated 31.1.2013 (Annexure P-1), vide which the previous House Tax System was replaced by the Property Tax, wherein proper procedure for payment of the same,

was prescribed. Imposition of tax on building and lands was to be done keeping in view the situation of the locality, civic amenities, i.e., division of municipal areas into zones not exceeding eight in number.

4. A new amendment, i.e., Punjab Act No.39 of 2013 was notified and published in the official gazette vide Notification dated 22.11.2013 (Annexure P-2) replacing the previous zoning system for determining the annual value for different categories, i.e., tenants and owners. After the implementation of the Notification dated 22.11.2013, *ibid,* several municipalities faced the problem as the Collector under Rule 3-A of the Punjab Stamp (Dealing of Undervalued Instrument) Rules, 1983 (for short "1983 Rules") did not fix the rates for industrial lands. In this regard, the Government, issued, a Notification vide Circular dated 11.2.2014 (Annexure P-3), which was communicated to all the District Collector-cum-Deputy Commissioners for fixing the rates for the industrial lands under Rule 3-A, *ibid.*

5. Since there was an ambiguity, a fresh amendment was made vide Notification dated 21.8.2014 (Punjab Act No.18 of 2014) (Annexure P-4), which was made effective w.e.f. 1.4.2013 mandating that the minimum value of the land upon which industrial building is constructed or is likely to be constructed but not declared as industrial land by the Collector, the market value of the land would be 75% of the minimum value of the land fixed by the Collector for non-residential building.

6. Respondent No.3-Industry, which is situated within the limits of Nagar Panchayat, Lalru, submitted a Property Tax Return for the financial year 2013-14 vide Annexure P-5. The same was scrutinized and found to be not proper as there was deficiency in the amount of tax, for, the

assessee had taken into consideration the market value of the land at the rate fixed for agriculture land and ₹5.00 lacs per acre in addition to it and not as per the Notification effective from 1.4.2013.

7. Since no rates were fixed of industrial land as per the 1983 Rules, a reference was sent to the Deputy Commissioner, Mohali vide letter dated 14.10.2013. In response to the aforementioned request, Deputy Commissioner, vide letter dated 31.12.2014 (Annexure P-7) communicated the rates for commercial/industrial plots in various villages. On receipt of the reference, the amount was re-calculated and it was found that the assessee has paid less tax, amounting to ₹5,99,950/- and, accordingly, a notice bearing No.1143 dated 6.4.2015 (Annexure P-8) was issued to respondent No.3, affording opportunity of hearing and to deposit the aforementioned amount. The assessee did not respond to the said notice. Respondent No.3 was served with another notice dated 20.4.2015 (Annexure P-9), vide which 10% rebate granted in the previous notice was withdrawn owing to the faulty return.

8. Aggrieved from the aforementioned notice, respondent No.3 preferred an appeal before the Regional Deputy Director, Local Bodies-cum-Appellate Authority, Patiala. During the pendency of the appeal, respondent No.3 was directed to deposit the amount with petitioner Nagar Panchayat on account of the objection being raised by the petitioner regarding maintainability of the appeal as per the provisions of Section 84A (2) of the Punjab Municipal Act, 1911, which provided that no appeal could be entertained until and unless the amount of tax was deposited.

9. Respondent No.3-Industry submitted a representation dated 23.9.2015 (Annexure P-11) and deposited cheque bearing No.253691 dated

22.9.2015 amounting to ₹5,66,326/- by conducting unilateral calculation. The Appellate Authority, vide order dated 14.10.2015 (Annexure P-12) remanded the matter to the petitioner for re-assessment. Aggrieved by the said order, Nagar Panchayat-petitioner preferred an appeal before the Director, Local Self Government-cum-Second Appellate Authority, Punjab, Chandigarh-respondent No.1, which has been dismissed vide order dated 9.12.2015 (Annexure P-13).

10. Mr.Sanjeev Soni, learned counsel for the petitioners laying challenge to the aforementioned orders, has raised the following submissions:-

a) The Regional Deputy Director Local Bodies-cum-Appellate Authority, Patiala had not given an opportunity of filing the written statement, which was mandatory under the law;

b) Respondent Nos.1 and 2 failed to consider, that the rates of the industrial land were fixed by the Deputy Commissioner on 31.12.2014, which were applicable in the present matter;

c) Respondent Nos.1 and 2 failed to consider the Notification dated 21.8.2014 effective from 1.4.2013, where the minimum value of the land upon which the industrial building was constructed or likely to be constructed, the market value of the land had been fixed as 75% of the minimum value of the land fixed by the Collector for non-residential building;

d) The authorities have ignored the fact that in the relevant year, no rate for industrial land under Rule 3A of 1983 Rules had been fixed by the Collector;

e) Even if the rates fixed by the Deputy Commissioner were not applicable, the industry was fully covered under Notification dated 21.8.2014 effective from 1.4.2013 and, thus, urged this Court for setting-aside the orders under challenge.

11. Mr.Aalok Jagga, learned counsel appearing on behalf of respondent No.3 argued that during the pendency of the appeal, the amount deposited by it was as per the Notification dated 21.8.2014. Even otherwise, no prejudice has been caused to the petitioner as Nagar Panchayat has been given opportunity to re-assess the amount by taking into consideration various notifications and other provisions of the Act with further opportunity to issue notice in case nothing is found due.

12. We have heard the learned counsel for the parties and given due consideration to the arguments and after examining the record found that the impugned orders do not suffer from any illegality or perversity as respondent No.1, vide order dated 9.12.2015 (Annexure P-13) upheld the order dated 14.10.2015 (Annexure P-12) of the Appellate Authority-respondent No.2 remanding the matter to the Nagar Panchayat for re-assessment of the property tax. In our view, no prejudice has been caused to the petitioner-Nagar Panchayat. The entire focus should have been on the implementation of the order of the remand in order to avoid any further delay or payment of interest and to assess the house tax afresh as during this time things might have changed. Even similar orders had been passed by the authorities below, which were assailed by the petitioner-Nagar Panchayat, though the amount of property tax assessed was on a different account. For the sake of brevity, relevant portion of order Annexure P-12 reads thus:-

"*After hearing the arguments of counsel for both the parties* *and going through the documents submitted by the parties, it has come to my notice that the respondent has sent the revised notice to the appellant as per the collector rate fixed on 31.12.2014, but as per the notification No.50 dated 22.11.2013 issued by the Department and Legal and Legislative Affairs Punjab for the recovery of municipal/property tax. The clause 8-(aa) clearly states that:-*

> *"8(aa) "market value" means the minimum value of the land prevailing on the First January of the preceding financial year as fixed by the Collector under Rule 3-A of the Punjab Stamp (Dealing of Undervalued Instrument) Rule 1983."*

In this case the appellant has mentioned the provision of notification which is applicable for Municipal Corporation and not for Nagar Panchayats. I have also gone through the list of collector rate prevailing in the year 2012-13 in which rates for Industrial Land/Establishment have been specifically mentioned. Therefore, I am not inconsonance with the averment which the counsel for respondent has raised. Thus keeping in view the above said observation the revised notice issued by the Nagar Panchayat Lalru to the appellant is set aside and the case is remanded to the Executive Officer Nagar Lalru with the directions that the tax again be calculated, as per my above said findings as per act, rules and notification issued by the Govt. in this regard from time to time. Even then if any tax is still recoverable a fresh notice is to be issued to *appellant as per law."*

13. For the above reasons, the submissions of Mr.Soni, learned counsel for the petitioner, do not fall within the ambit of judicial review enabling this court to form a different opinion as the one as noticed above. There is no illegality and perversity in the impugned orders. The same are upheld. Resultantly, the writ petitions are dismissed.

14. Needless to say that the petitioners are at liberty to undertake the exercise as noticed by the Appellate Authority in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 31, 2017
ramesh

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**