**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.23751 of 2013 (O&M)
Date of decision:08.02.2017

M/s Luxmi Palace Bhupindra Road ... Petitioner

Vs.

State of Punjab and others ... Respondents

CWP No.4914 of 2012 (O&M)

Municipal Corporation, Patiala ... Petitioner

Vs.

Divisional Commissioner, Patiala and another ... Respondents

CWP No.4874 of 2012 (O&M)

Municipal Corporation, Patiala ... Petitioner

Vs.

Divisional Commissioner, Patiala and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.L.Sarin, Senior Advocate with
Mr. Vijay Sharma, Advocate
for the petitioner (in CWP No.23751 of 2013)
for respondent No.2 (in CWP No.4874 and 4914 of 2012).

Mr. H.S.Brar, Advocate
for the petitioner (in CWP No.4874 and 4914 of 2012).

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. Sarvesh Malik, Advocate
for respondent No.3 (in CWP No.23751 of 2013).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of three writ petitions bearing Nos.23751 of 2013, 4874 and 4914 of 2012. Two writ petitions bearing Nos.4874 and 4914 of 2012 are at the instance of Municipal Corporation and one writ petition bearing No.23751 of 2013 is filed by the petitioner -M/s Luxmi Palace Bhupindra Road Patiala, who according to Mr. Vijay Sharma, Advocate is identically situated *vis-a-vis* the private respondents in the earlier first two writ petitions as all three are running marriage palaces.

Mr. H.S.Brar, learned counsel appearing on behalf of the petitioner - Municipal Corporation submits that on 04.02.2000 for assessment of the property of the private respondent in question, notice was issued by invoking the provisions of Section 103(f) of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as "1976 Act"), in essence, by taking the assessment of the capital value of the property as ₹6,54,50,000/- in CWP No.4874 of 2012 and ₹6,57,70,000/- in CWP No.4914 of 2012, for the year 1999-2000 and accordingly in CWP No.4914 of 2012, the annual rental value was assessed as ₹32,88,500/- by giving 10% discount. The total annual tax was came out with ₹4,43,948/- and in CWP No.4874 of 2012, annual rental value was assessed as Rs.32,72,500/- by giving 10% discount and total annual tax was Rs.4,41,788/-. The respondents in pursuance to the aforementioned notice filed the objections (Annexure P-2) raising all the possible objections. However, the objections were rejected and vide order dated 24.3.2000, by taking into consideration the total plot area, annual rental value per unit was increased @ 5%, came out ₹25,05,250/- and the annual tax @ 15%, came out with ₹3,75,788/- (in CWP No.4914 of 2012) and in CWP No.4874 of 2012 – annual rent- ₹2476256 and annual tax - ₹371, 438.

The aforementioned order was challenged in this regard by various persons vide CWP No.15213 of 2000 but the same was remanded back on the premise that the assessee had alternative remedy. The remedy was availed by filing an appeal before the Commissioner, Patiala which was allowed on 17.03.2005. The review petition filed on behalf of the Municipal Corporation was dismissed on 29.09.2005 (Annexure R-2/2 in CWP No.4914 of 2012). The Municipal Corporation came to this Court in CWP No.5311 of 2006 and the matter was remanded back on the premise that assessee had not deposited the statutory amount, in essence, the appeal entertained by the Commissioner was without jurisdiction. In pursuance to the remand, assessee deposited the statutory amount for entertaining the appeal and the delay was condoned but the Commissioner found the amount to be deficient and dismissed the appeal. The assessee again approached this Court by filing CWP No.16476 of 2008 and this Court vide order dated 11.02.2009 (Annexure R-2/5) remanded the matter back to decide the appeal on the deposit already made. However, the same did not yield any result and the appeal was again dismissed.

It is in this rigmarole, the petitioner again approached this Court and this Court, vide order dated 11.02.2011 remanded the matter back to the Commissioner with a specific direction to decide the appeal on merits by not taking into consideration the objection of delay. The impugned order dated 26.05.2011 (Annexure P-5) of the Commissioner, has been challenged as the Commissioner has not taken into consideration the provisions of 1976 Act and completely swayed away the provisions of Section 68 of 1976 Act. The assessment was done on the basis of the annual capital value and assessing the annual rental value and therefore, the Commissioner has not taken into consideration the fact that the tax assessed was totally in consonance with the provisions of law, for, the Municipal Corporation was established in the year 1997 and the assessment has been done after 05 years by taking into consideration the provisions of 1976 Act, in essence, if at all the provisions of repealed Act have to be taken care of, even then the assessment cannot be said to be without jurisdiction or bad in law and thus, urges this Court for setting aside the orders under challenge by allowing the writ petitions.

He further submits that though the writ petitioner in CWP No.23751 of 2013 had not availed the remedy of writ petition in this Court, whereby, this Court on 11.02.2011 had remanded the matter back, in essence, the order of Commissioner dismissing the appeal on account of deficient deposited amount remained intact. Since the other similar situated persons had been given the benefit, yet he was swayed away in order to get the same relief.

Mr. M.L.Sarin, learned Senior Counsel assisted by Mr. Vijay Sharma, Advocate appearing on behalf of the petitioner in CWP No.23751 of 2013 and respondent No.2 in CWP Nos.4914 and 4874 of 2012 submits that issuance of notice was suffering from inherent defect, much less infirmity as neither of the ingredients specify that the same has been complied with.

Mr. Sarin has drawn the attention of this Court to the provisions of Section 103(f) of 1976 Act. For the sake of brevity, the same reads as under:-

> *"(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident";*

The notice, Annexure P-1 does not reveal that whether the assessment was done on account of mistake or fraud. If at all the Municipal Corporation was to assess the house tax, it could have undertaken the exercise strictly as per the law by assessing the annual capital value taking the aid of the market rate and as well as the collector rate but not in the manner and mode as indicated above. All these aspects were not taken into consideration by the concerned officer while assessing the house tax and dismissed the objections.

I have heard learned counsel for the parties and appraised the paper book.

In my view, the order of the Commissioner is perfectly legal and justified as the house tax has been burgeoned between 164% to 184%. The Municipal Corporation being welfare arm of state is not to indulge in profiteering in the manner and mode indicated above, but has to charge the reasonable tax. Even the house tax has been converted into property tax. Since, the notice was suffering from infirmities noticed above, yet the argument of Mr. Brar in supporting the same is totally un-tenable and misplaced. The order of the Commissioner, in my view, does not suffer from any illegality and perversity.

No ground is made out for interference in the impugned orders in CWP No.4914 and 4874 of 2012. Accordingly, the writ petitions are dismissed.

CWP No.23751 of 2012 is allowed.

(AMIT RAWAL)
JUDGE

February 08, 2017
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No