IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2883 of 2013
Date of decision: 04.07.2017

Veeran Wali

……Petitioner

Vs.

The Municipal Corporation, Patiala

…..Respondent

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

Present: Mr. Bhavyadeep Walia, Advocate for the petitioner.
Mr. K.V.S. Kang, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition filed under Article 226 of the Constitution of India, prays for quashing assessment notice dated 2.11.2012, Annexure P.4, notice dated 29.11.2012, Annexure P.5, imposing house tax of ₹ 2,56,301/-on her house upto the year 2011-12 without issuing any notice to her and notice dated 31.01.2013, Annexure P.8, recovering house tax so assessed by selling the property by open auction.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is owner of House No.6 Vasant Vihar, Sirhind Road, Patiala. As per the Municipal record, the said house has been allotted Unit No.14435/5T. Since 01.08.1996, the petitioner had given the said house on rent to the department of land records, State of Punjab. The said department vacated

the house on 31.07.1996, Annexure P.1/T and had issued a letter dated 31.07.1996 to the petitioner at the time of vacating and surrendering the possession of her house and had duly informed the erstwhile Municipal Committee, Patiala vide communication dated 06.08.1996, Annexure P.2/T. She had informed the respondent Municipal Corporation that since 1.08.1996, the house was in her possession for her own use and requested for exemption from house tax. Thereafter, the petitioner had never paid the house tax as the State of Punjab had granted exemption from payment of house tax to the residential houses which were being used by the owners for their own residential purpose. Still, the respondent corporation issued notice to the petitioner in the year 2009 for imposition of house tax. The petitioner submitted her reply dated 26.08.2009 stating that she had already informed the respondent that the house was earlier on rent with the department of land records, State of Punjab which was vacated on 31.07.1996 and that she had duly informed the respondent in this regard. The petitioner had also attached her affidavit with her reply to the effect that the house was being used by her personally since the year 1996. After considering the reply, the respondent corporation dropped the proceedings for recovery of house tax. To the utter surprise of the petitioner, the respondent Corporation again issued notice dated 2.11.2012, Annexure P.4/T and notice dated 29.11.2012, Annexure P.5/T to her to pay the assessed amount of ₹ 2,76,634/- as house tax including interest of ₹ 1,40,633/-. Further the property had been ordered to put to auction on 5.12.2012 straight away without giving any opportunity of hearing to the petitioner. The petitioner again submitted her reply dated 4.12.2012, Annexure P.6, to the respondent corporation explaining the factual position. According to the petitioner, the respondent corporation without considering the reply submitted by her issued impugned notice dated 31.01.2013, Annexure P.8 to her to pay the entire house tax upto 8.2.2013 and the property had been ordered to put to sale for 11.2.2013 by open auction. Aggrieved thereby, the petitioner is before this Court through the instant writ petition.

3. A short reply has been filed by Joint Commissioner, Municipal Corporation, Patiala on behalf of the respondent, wherein it has only been stated that the petitioner has not submitted any proof with reference to intimation vide her notice Annexure P.2, as no receipt thereof had been mentioned anywhere in the petition. It has also been stated that the petitioner is entitled for exemption from house tax after 25.08.2009 the date when she submitted her reply Annexure P.3. The petitioner is, thus, liable to make the payment of house tax up to 25.08.2009 with interest thereon.

4. We have heard learned counsel for the parties.

5. According to the petitioner, she gave her residential house on rent to the department of land records, State of Punjab in January 1996. The said house was vacated by the department of the State of Punjab on 31.07.1996. A communication dated 31.07.1996 in this regard was duly issued by the State of Punjab informing the petitioner about the vacation and surrender of the house to her. The petitioner duly took the possession of her house and informed the Municipal Committee in this regard vide notice dated 06.08.1996. The petitioner even requested for exemption from house tax with effect from 01.08.1996. The petitioner never paid the house tax as the State of Punjab had granted exemption from payment of house tax to the residential houses which were being used by their owners for

their residential purpose. Even then in the year 2009, a notice was sent to the petitioner for imposition of house tax. When the petitioner through her reply submitted the factual position, no further proceedings were taken by the respondent. Thereafter, in the year 2012 again, notices dated 2.11.2012 and 29.11.2012 were issued to the petitioner to pay the amount of ₹ 2,76,634/- as house tax and ₹ 1,40,633/- as interest. Further, the property had been ordered to be put to auction. It was urged by learned counsel for the petitioner that the impugned notices for recovery and auction were issued without giving any opportunity of hearing or to file any reply. We find merit in the submissions made by the petitioner. Fresh order is required to be passed after hearing the petitioner

6. In view of the above, the impugned notice dated 2.11.2012, Annexure P.4, notice dated 29.11.2012, Annexure P.5 and notice dated 31.01.2013, Annexure P.8 are set aside and liberty is granted to the respondent to pass a fresh speaking order after hearing the petitioner in accordance with law within a period of three months from the date of receipt of certified copy of this order. Needless to say anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy. The petition stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

July 4, 2017 **(Amit Rawal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**