

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16794 of 2000 (O&M)

Date of Decision: 08.10.2018

The Punjab State Warehousing Corporation

.....Petitioner

Versus

The House Tax Committee Municipal Council Barnala, Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAL, JUDGE

Present: Mr. Jastej Singh, Advocate
for the petitioner.

AVNEESH JHINGAL, J.

The present petition has been filed challenging the vires of Section 3 (1) of The Punjab Municipal Act, 1911 (for brevity 'the Act') as amended by Act 11 of 1994 being violative of Article 14 of the Constitution of India. Further prayer is for quashing of bill and orders dated 31.8.1999, 17.08.2000 and 22.02.2000 Annexures-P4, P5 and P7 respectively.

2. The Punjab State Warehousing Corporation is the petitioner. The House Tax Committee Municipal Council Barnala, Punjab; District Collector (ADC) Sangrur, Punjab and Municipal Council Barnala, have been arrayed as respondents No. 1 to 3 respectively in the writ petition.

3. The petitioner had godowns situated in the municipal limits of Barnala. The property in question was assessed to house tax. The relevant assessment year involved is 1998-99. Respondent No.3 issued a notice under Section 67(3) of the Act proposing the annual value of the property as Rs.7,68,000/- and house tax payable of Rs.1,15,200/-. The petitioner filed

objections to the said notice on 15.04.1999. Respondent No.1 dismissed the objections vide order dated 17.08.1999. The committee considered that there were 10 godowns built on Sangrur Bypass road, total area of the godowns was 25560.44 square yards. As per the earlier record, there were 4 godowns and capacity of these godowns were 6800 metric ton (MT) whereas in the year in question there were 10 godowns having capacity of 14280 MT. The committee accepted the costs of construction of godowns as provided by the petitioner. The annual rental value of the property was fixed as Rs.6,12,108/-. Aggrieved of the order dated 17.08.1999, the petitioner preferred an appeal. The appeal was dismissed vide order dated 22.02.2000.

4. In the present writ petition vires of Section 3(1) has been challenged as amended by Act No.11 of 1994 and the same is reproduced as under:

"3. Definitions. - In this Act, unless there is something repugnant in the subject or context.-

(1) 'annual value' means-

(a) in the case of land or building which is in the occupation of a tenant, the gross annual rent at which the land or building has actually been let:

Provided that in the event of increase in the rent, the Committee may make corresponding increase in the annual value;

Provided further that where the land or building has been let by the owner to any of his relations, and the Committee is of the opinion that the rent fixed does not represent the true rent, the rent fixed under the agreement of lease shall not be taken into consideration and the annual value shall be determined in accordance with the principles contained in Clause (b);

(b) in the case of land or building which is occupied by the owner, the annual value shall be five per cent on the sum obtained by adding the present market value of the land and estimated cost of erecting the building less ten per cent depreciation:

Provided that in the calculation of annual value of any land and building, no account shall be taken of the furniture or machinery thereon;

(c) in the case of any land on which no building has been erected but on which a building can be erected, and on any land on which a building is in the process of erection, the annual value shall be fixed at five per cent of the estimated market value of such land;

(d) in the case of any land on which no building has been erected but on which a building can be erected, or which is partially built and is being used by erecting tenants, temporary structures for the purpose of accommodating marriage parties, circus shows or for any entertainment purposes or such other purpose as may be specified in this behalf by the committee with the previous sanction of the state Government the annual value shall be twenty per cent of the estimated market value of such land;

...(emphasis supplied)

5. The provisions of Section 3(1) of the Act was struck down by this Court in ***Model Town Residents Association, Patiala, and others Versus State of Punjab***, 2002(4) RCR(Civil) 248. The said decision was reversed and the Supreme Court upheld the vires of Section 3(1) of the Act in the case of ***Municipal Committee, Patiala Vs. Model Town Residents Association***, 2007(8) SCC 669.

Relevant part of the judgment of Supreme Court is reproduced below:

"15. In our view, the classification made between premises occupied by tenants on one hand and those occupied by the owner himself is wholly reasonable and has direct nexus with the object sought to be achieved. In our view, properties occupied by the tenants and properties which are self occupied constitute two separate classes. The amount of tax on the capital value has been recognised valid by this Court in the judgment of Patel Gordhandas (supra). Even according to the municipality the rent actually paid by the tenant does form the basis for assessment of house tax, however, the necessity to amend the Act arose with the growing demand of citizens for modern basic amenities. The data indicates that the increase in the house tax every five year was negligible. The commercial properties earned higher returns. Therefore, it was decided to amend the law by taking into account the present market value of the land and the initial investment made by the owner when he constructed the house. Moreover, under Section 68 of the Act, once the annual value is decided in terms of the amended definition then the same shall be valid for five years and on expiry of five years, the annual value is required to be decided as per the wishes of the owner, who may either opt for the method indicated in Section 3(1)(b) or by increasing it by 10% of the annual value already fixed. On the other hand, in cases where

premises are in occupation of the tenant then as per Section 68 of the Act, the formula to revise the annual value has a direct nexus with the rent revision, if any. In the circumstances, the High Court had erred in holding that the amended Section 3(1)(b) made an invidious discrimination/distinction between premises in occupation of the tenant and premises which are self occupied.

16. In the present case, the High Court has further held that Section 3(8aa) was *ultra vires* and unconstitutional for want of guidelines which gives wide powers to the officers in the matter of fixing annual value. This finding of the High Court is equally erroneous. Under the amended Section 3(1)(b), as stated above, a formula has been evolved by which in the case of self occupied premises the tax has to be imposed on annual value calculated on the basis of the present market value of the land plus the cost of construction minus 10% deduction on account of depreciation. Section 3(8aa) states that while estimating the present market value of the land the Assessing Officer ("A.O.") will keep in mind the principles mentioned in the Land Acquisition Act, 1894 whereas under the above formula, the A.O. will keep the registered sale instances of buildings before him in order to compare the cost of construction of houses in the same locality, area etc. When it comes to land, the A.O. will gather the market value dependant on the sale instances in the surrounding areas. He will keep in mind the principles of Land Acquisition Act, 1894 for arriving at the market value of the land. On the other hand, under the above formula, which is the composite formula, the A.O. has to take into account the cost of construction. This is because the building might have been constructed ten years ago. In such cases, the A.O. shall keep in mind the cost of construction prevailing in the area when the house was constructed. For such an exercise, the A.O. has to refer to the instances mentioned to properties registered under the Registration Act. As stated above, there is no straight-jacket formula in matters of valuation. Therefore, leeway has to be given to the A.O. for arriving at the market value of the land and the cost of construction by applying apposite principles under the Land Acquisition Act qua the land and by proceeding to arrive at the cost of construction of the houses by invoking the instances of registration on transfer of houses under the Registration Act. Therefore, in our view, the High Court had erred in striking down Section 3(8aa).

17. The central test for permissible classification has to satisfy two conditions. It must be founded on an intelligible differentia which distinguishes persons or premises that are grouped together from others left out of the groups and the differentia must have a rational relation to the object sought to be achieved by the Act in question. A law based on a permissible classification fulfils the guarantee of the equal protection of the laws and is valid whereas a law based on an impermissible classification violates the guarantee and is void. Equality is violated by treating persons similarly situated differently. In the present case, as stated above, that is not the case. If a law deals equally with members of a well defined class, it is

not open to challenge such a law on the ground of denial of equal protection. In order to sustain the presumption of constitutionality, the court can take into consideration matters of common knowledge and, at the same time, the court must presume that the Legislature understands and correctly appreciates the need of its own people. In the present case, the Legislature seems to have taken cognizance of the fact that the land prices have been increasing which remains excluded from the composite valuation of an asset, namely, land or building which is self occupied and for which there is no measurable, identifiable and quantifiable data of actual or hypothetical rent.

18. For the aforesaid reasons, we uphold the validity of the aforesaid impugned Section 3(1)(b) and Section 3(8aa) of the Punjab Municipal Act, 1911, as amended."

6. Learned counsel for the petitioner argued that for the year 1996-97 the house tax on the property in question was assessed at Rs. 26,173/-, there was no reason with the respondent to enhance the property tax.

7. The contention raised by learned counsel for the petitioner deserves rejection. Respondent No.1 decided the objections filed by the petitioner after affording an opportunity of hearing. The finding of fact was recorded that number of godowns had increased from 4 to 10 and the storage capacity of godowns was enhanced to 14280 MT from 6800 MT. Sh. D.P. Singla, Manager of the petitioner-corporation in his statement dated 17.08.1999 agreed that 10 covered godowns have been constructed and the costs of construction is Rs. 1,11,38,400/-. Costs of construction as submitted by the petitioner was accepted as it is.

8. Reliance by learned counsel for the petitioner on the fact that the property in question was assessed to a lower amount of tax in the year 1996-97 does not enhance his case. There is nothing on record to substantiate that the property in question was assessed to property tax of Rs.26,173/- in the year 1996-97. Apart from that, the fact that earlier there were 4 godowns and in the relevant assessment year the number of godowns had been increased to 10, has not been disputed.

9. The vires of provisions of Section 3(1) of the Act has been upheld by the Supreme Court. Orders passed by the authorities below call for no interference by exercising writ jurisdiction under Article 226 of the Constitution of India.
10. The writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

08.10.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No