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

CWP No.16346 of 2016 (O&M)
Date of Decision: 22.05.2018

Satish Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM:-HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Mr. Anurag Chopra, Advocate,
for the petitioner.

Mr. Pankaj Gupta, Additional A.G., Punjab.

Mr. Bhanu Pratap, Advocate,
for respondent Nos.2 and 3.

TEJINDER SINGH DHINDSA, J.

Present writ petition has been filed under Articles 226/227 of the Constitution of India impugning the action of Municipal Corporation, Ludhiana in levying property tax beyond the provisions of the Notification dated 31.12.2014 (Annexure P-1). Further prayer is for issuance of a writ of mandamus to treat the premises where the shop of the petitioner is situated to fall within the definition of "*commercial building*" as per policy dated 17.08.2004 (Annexure P-3) issued by the Department of Local Government, State of Punjab and to levy property tax accordingly.

Brief facts which would be relevant for the issue in hand may be set out.

Government of Punjab, Department of Local

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Government in exercise of powers conferred by sub-section (1) of Section 97 of the Punjab Municipal Corporation Act, 1976 issued Notification dated 31.12.2014 (Annexure P-1) levying tax on land and buildings w.e.f. 01.04.2014. For purpose of calculation and manner of levying of the tax, cities across the State were categorized as 'A' and 'B' Category. Further more each Municipal area of 'A' Category city was classified in 03 areas i.e. Area-1 which was to include the posh area; Area-2 to include less posh area/developed area and the balance area of the city in question was to be classified as Area-3.

A tabulation reflecting "USE" of the premises, rate of tax as per classification and category and remarks was furnished in the Notification dated 31.12.2014 itself and the relevant extract thereof is reproduced hereunder:

Use		Rate of tax as per classification and category (in rupees)			Remarks
		Area Classification	A category Towns	B category Towns	
1	2	3	4	5	6
Residential Houses	x	x	x	x	x
Flats	x	x	x	x	x

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Commercial buildings including Restaurants (except multiplexes, malls, marriage palaces	Having 100 square feet land or below	Area 1	4.00 per square foot	3.00 per square foot	These rates are for built up area of ground floor. For basement, first floor, other floors and vacant area, the rate will be fifty per cent of the rates specified in column No.4/5
		Area 2	2.00 per square foot	1.50 per square foot	
		Area 3	1.75 per square foot	-	
	Having 1000 square feet land or below but beyond 100 square feet land	Area 1	5.00 per square feet	4.00 per square foot	
		Area 2	3.00 per square foot	2.00 per square foot	
		Area 3	2.00 per square foot	-	
	Having beyond 1000 square feet land	Area 1	6.00 per square foot	5.00 per square foot	
		Area 2	4.00 per square foot	2.50 per square foot	
		Area 3	3.00 per square foot	-	
Multiplex, Malls etc.	-	For all areas	15.00 per square foot	10.00 per square foot	These rates are for whole built-up area having distinct roof and/or partition and for all floors.
Marriage palaces	-	For all areas	X	X	X
Hotels	X	X	X	X	X

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Industrial (manufacturing Unit), educational institutions, and godowns	Having 4000 square yards land or below	For all areas	5.00 per square yard	4.00 per square yard	These rates are for built up area of ground floor. For basement, first floor, other floors and vacant area, the rate will be fifty per cent of the rates specified in column Nos.4/5
	Having Beyond 4000 square yards land	For all areas	7.50 per square yard	6.00 per square yard	

Admitted case of the petitioner is that he is having a shop within the premises of Calibre Plaza (AC Market) in the city of Ludhiana which has been categorized as 'A' class city. It is also not in dispute that the premises in question fall in Area-1 in Ludhiana City.

The entire case set up on behalf of the petitioner is that the premises in which his shop is situated would fall within the nomenclature '*commercial building*' and as such ought to be levied property tax @ Rs.4 per sq. ft.

We may notice that similar issue had earlier been raised before this Court in CWP No.15980 of 2015 (Sudesh Rani Vs. State of Punjab and others) and other connected petitions and which were disposed of by a Division Bench of this Court vide order dated 15.02.2016 (Annexure P-6) in terms of granting liberty to the petitioner(s) in the connected petitions to file detailed and comprehensive representations along with documentary proof to substantiate their claim as regards premises to fall within the term '*commercial building'* and directions were issued for the authority concerned to pass a speaking order thereon after affording an opportunity of hearing to the petitioner(s).

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The instant writ petition was filed in the month of August, 2016 at a stage when the representation submitted by the petitioner as also other identically situated petitions had not been decided. It is during the pendency of the writ petition that an order dated 04.11.2016 came to be passed by the respondent authorities. On a previous date of hearing i.e. 12.01.2017, this Court noticed that the order dated 04.11.2016 did not deal with the submissions/contentions raised by the petitioner in the representations. Counsel representing the Municipal Corporation had taken a stand that the order dated 04.11.2016 be taken as nonest and liberty be granted to pass an order afresh after hearing the petitioner. Prayer made on behalf of the Municipal Corporation was accepted and directions were issued for a speaking order to be passed.

In purported compliance of the directions issued by this Court, an affidavit of Sh. Rishipal Singh, PCS, Additional Commissioner-cum-Zonal Commissioner, Zone-A, Municipal Corporation, Ludhiana on behalf of respondent Nos.2 and 3 was filed and appended along with the reply at Annexure R-2/2 is a copy of the speaking order dated 28.08.2017 and wherein a decision has been taken that the property in question is covered under the definition of 'Mall' and the Property Tax leviable is @ Rs.15 per sq. ft.

Having heard counsel for the parties at length, we are constrained to observe that the order dated 28.08.2017 passed by the Commissioner, Municipal Corporation, Ludhiana suffers from

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the vice of non-application of mind.

Property tax came to be levied on the strength of Notification dated 31.12.2014 (Annexure P-1). Apart from categorization of cities as also Municipal Areas, rate of tax was indicated as per "USE" of the premises. Different rates of tax were prescribed for '*commercial building*' including Restaurants and a higher rate of tax was prescribed for Multiplex, Malls etc. In the Notification dated 31.12.2014 issued by the Department of Local Government, the term 'Multiplex' as also 'Mall' has been defined. The definition of Mall as per Notification is as follows:-

> ***"Malls" means shopping complex/centre,having shops, commercial show rooms, Restaurants, Food Plazas, Health Club and Fitness Centre, Clubs, Call Centres, Corporate Offices, Convention Hall, Bank, Cyber cafe, Video Games, Parlours, Pubs, Bowling Allies and Recreational activities or any of these categories.***

Even though the rate of tax as per classification and category of a city has been stipulated even for '*commercial building*', yet the Notification dated 30.12.2014 does not define the term '*commercial building*'.

Under the Punjab Municipal Corporations/Councils Building Byelaws 2004, a '*commercial building*' has been defined as follows:-

> ***"Commercial building"***
>
> ***Shall mean a building other than industrial building used or constructed or adopted to be used wholly or partially for shops, private offices, banks, hotels,***

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restaurants, beauty parlours, boutiques, video parlors, cinemas and Auditorium or any other such building used for similar purpose engaged in trade and commerce, but shall not include Nursing home/Hospital, Marriage palaces and Multiplexes, which have been specifically defined in Chapter-VII, VIII and IX of these byelaws."

Categoric contention raised by learned counsel representing the petitioner that shop of the petitioner is situated in a premises which consists of other shops as well and confined to the cloth trade and such premises having no activities in the nature of Health Club, Fitness Centre, Restaurants, Food Plazas, Clubs, Call Centres, Corporate Office, Convention Hall, Bank, Cyber Cafe, Video Game, Parlours, Pubs, Bowling Allies and other Recreational Activities has not been rebutted by counsel representing the Municipal Corporation. Rather it has been conceded before us that the premises in question has a large number of shops and which are all engaged in the cloth trade.

In the order dated 28.08.2017 passed by the Commissioner, Municipal Corporation, Ludhiana containing a decision to treat the premises in question to fall within the definition of 'Mall', the reasoning furnished is as follows:-

"Whereas it is on record that the Caliber Plaza (A.C.Market) is a very big super market whole sale market,having its Municipal Corporation No.B-II-1389-situated near Bahadur House, Ludhiana and is a big commercial fully Air Conditioned complex, having total area of 6540 sq. yards. As per the office

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> ***report, there are approximate 700 shops. Apart from the basement this building is five stories having facilities of escalator and lift. Apart from this there is more than 150 vehicle's parking space on the top roof, which is operating with lift systems. It cannot be treated as ordinary commercial unit. As per the committee report para No.4 of the Government Notification No.2/4/2014-5LG3/379043/1 dated 31.12.2014 is very much clear that "Malls" means shopping Complex/Centres, having Shops, Commercial Show Rooms, Restaurants, Food Plazas, Health Club and Fitness Centre, Clubs, Call Centres, Corporate Offices, Convention Hall, Bank, Cyber Cafe, Video Games, Parlours, Pubs, Bowling Allies and Recreational activities or any of these categories." Hence this Market is fully facilitated with various amenities. This commercial unit is famous wholesale market and is known as hub of business. The Municipal Corporation Ludhiana providing all basic amenities i.e. Roads, Water and Sewer and street lights***."

We have no hesitation in holding that merely by observing that the market in question is air conditioned, having total area 6540 sq. yds., having facility of escalator and lift and 150 vehicles parking space on the top level would not be sufficient for the premises to fall within the definition of 'Mall' as per Notification dated 30.12.2014. In the order dated 28.08.2017, it has merely been observed that the premises in question cannot be treated as "***Ordinary Commercial Unit.***" This by itself would not transpose the premises in question to fall within the expression of "Mall".

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Apparently, prior to passing of the order dated 28.08.2017, a three members committee consisting of three Superintendents of Property Tax of Municipal Corporation, Ludhiana had been constituted to look into the matter and which in turn had submitted a report dated 23.08.2017.

The Commissioner, Municipal Corporation, Ludhiana while passing the order dated 28.08.2017 has blindly accepted the report dated 23.08.2017 furnished by a Committee consisting of officials of the rank of the Superintendents working in the Municipal Corporation, Ludhiana. The competent authority ought to have analyzed the definition of 'Mall' as contained in the Notification dated 30.12.2014 as also that of '*commercial building'* under the Punjab Municipal Corporation/Councils Building Byelaws 2004 and thereafter to have recorded a finding based on cogent and valid reasoning to reach a conclusion that the premises where the shop of the petitioner is situated falls within the definition of 'Mall'. Such consideration has not taken place while passing order dated 28.08.2017.

For the reasons recorded above and in exercise of our extra ordinary writ jurisdiction, we set aside the order dated 28.08.2017 passed by the Commissioner, Municipal Corporation, Ludhiana. Matter is remanded back to decide the issue afresh in the light of observations made by this Court and after affording an opportunity of hearing to the petitioner. Let such exercise of reconsideration and passing of a well reasoned order be finalized expeditiously and in any case within a period of 02 months from

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the date of receipt of a certified copy of this order.

It has been brought to our notice that vide interim order dated 20.03.2018 passed by this Court, the petitioner had been directed to pay the amount of property tax as demanded but without prejudice to his rights and contentions in the writ petition.

Accordingly, the issue of refund or adjustment of the amount already deposited by the petitioner would be subject to the outcome of final order that has been directed to be passed.

Writ petition disposed of.

(AJAY KUMAR MITTAL) **(TEJINDER SINGH DHINDSA)**
ACTING CHIEF JUSTICE **JUDGE**

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Whether speaking/reasoned Yes
Whether Reportable No

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