IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 28797 of 2017
Date of decision: 13.9.2018

Sigma Freudenberg Nok Pvt. Limited

……Petitioner

Vs.

State of Punjab and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate with Mr. Aashutosh Jerath, Advocate and Ms. Eesha Khanna, Advocate for the petitioners (in CWP Nos. 28797 and 26007 of 2017).

Mr. Mukesh Mehar, Advocate for the petitioner (in CWP No. 22367 of 2014)

Mr. Ramandeep Singh Pandher, Advocate for the petitioner (in CWP No. 9667 of 2015)

Mr. Shahbaaz Inder Singh, Advocate for Mr. Gagan Pradeep Singh Bal, Advocate for the petitioner (in CWP No. 643 of 2018)

None for the petitioner(s) (in CWP No. 433 of 2016)

Mr. Atul Nanda, A.G. Punjab with Mr. Harsimran Singh Sethi, Addl. A.G. Punjab, Dr. Malvika, A.A.G. Punjab and Ms. Ishneet Kaur, A.A.G. Punjab.

Mr. S.C. Pathela, Advocate for respondent No. 3 (M.C. Mohali) in CWP No.9667 of 2015.
Mr. Manbir Singh Batth, Advocate for respondent No. 3 (in CWP No. 28797 and 26007 of 2017)

Ajay Kumar Mittal,J.

1. This order shall dispose of a bunch of six petitions i.e. CWP No. 28797, 26007 of 2017, 433 of 2016, 9667 of 2015, 22367 of 2014 and 643 of 2018 as according to the learned counsel for the parties, the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No.28797 of 2017.

2. The petitioner through the instant petition filed under Articles 226/227 of the Constitution of India prays for a writ in the nature of certiorari striking down Section 97 of the Punjab Municipal Corporation Act, 1976 (in short, "the 1976 Act"), as substituted by the Punjab Municipal Corporation (Second Amendment) Ordinance 2014 and Section 93 of the 1976 Act as amended vide Punjab Municipal Corporation (Second Amendment) Act, 2013 being violative of Articles 14 and 246 of the Constitution of India. Further prayer has been made for quashing the notification dated 31.12.2014, Annexure P.4 vide which the rates at which tax on land and building is to be calculated have been provided, the same being violative of Articles 14 and 246 of the Constitution of India. Direction has also been sought to respondent No.3 – Municipal Corporation not to initiate any coercive action as contained in Sections 99, 112A and 138 of the 1976 Act.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.28797 of 2017 may be noticed. The petitioner is a private limited company duly incorporated under the Companies Act, 1956 having its registered office at New Delhi. It is engaged in the business of manufacturing, fabricating, processing, importing, exporting, trading and dealing in all kinds of seals and goods made of rubber, metals, plastic, real aluminium, alloy lamination in its own forms and compounds thereof. The petitioner is a lessee of Plot No.B-70, Industrial Area, Phase VII, Mohali under Mrs. Ranjit Kaur and Mrs. Gurmit

Kaur. It is in possession of such property since 2001. The lease is constantly being renewed. Respondent No.2 is a Municipal Corporation set up under the provisions of the 1976 Act. Under Chapter VIII of the 1976 Act, the Municipal Corporation can impose taxes which are collected by the Government under Section 90 of 1976 Act which includes taxes on lands and buildings as well. Section 91 of the 1976 Act provides for the components and rates of taxes on lands and buildings, situated within the jurisdiction of a particular Municipal Corporation. According to Section 91(c) of the 1976 Act, a municipal Corporation is empowered to impose a general tax of not more than 15% of the rateable value of lands and buildings within the city. Section 93 of the 1976 Act postulates for determination of rateable value of lands and buildings assessable to taxes. Section 97 of the 1976 Act deals with incidence of taxes on lands and buildings. Section 99 relates to recovery of taxes. Section 138 of the 1976 Act stipulates the manner of recovering tax. Section 90(3A) of the 1976 Act as substituted by Punjab Act No.40 of 2013 is a charging section in respect of tax payable on land and building. According to this provision, the liability to pay the tax is to be calculated as per the provisions of Section 97 and the liability thereof is upon the owner of the land and building. However, an exception has been carved out whereunder if the land and building is occupied by tenants in perpetuity, the tax is to be paid by such tenants. Section 112A of the 1976 Act provides for self assessment of tax on land and building which states that every owner or occupier shall calculate the tax on land and building himself in accordance with the provisions of sub-section 3A of Section 90 in the form as may be specified by the Government and shall file the same by 31st December of the relevant financial year. Thereafter, the State of Punjab sought to amend the 1976 Act vide Punjab Municipal Corporation (Second Amendment) Ordinance, 2014. The said ordinance was notified by the State of Punjab vide notification dated 16.12.2014. Vide said notification, the Government sought to substitute Section 90

(3A) whereby certain exemptions and rebates with regard to payment of tax were granted to different categories of persons. In the light of the amended provisions of Section 97, the Government of Punjab issued notification dated 31.12.2014 vide which the rates were specified for calculation of tax on land and building with effect from the first day of April 2014. However, by the said notification, it was also specified that the rate of tax on a non residential building under occupation of tenant shall be seven and half percent of the annual rent of the said property. Furthermore, the rates of tax to be calculated were also mentioned. According to the petitioner, from the perusal of substituted Section 93 of the 1976 Act, an unjustified classification has been made between the building or land which is in occupation of a tenant and the building or land which is occupied by the owner. In the case of the former, the rateable value is assessed at the gross annual rent at which the land or building has actually been let whereas in the case of latter, the same is assessed as ₹5 per square yard for units having land measuring 4000 square yards or below and ₹7.5 per square yard for units having beyond 4000 square yards land. Therefore, there is not only differentiation in the manner of calculating rateable value for the self occupied buildings and buildings under the occupation of tenant but there is differentiation in the rate of taxes also. The petitioner asserts that the rate of tax imposed on the owner occupying an industrial unit is ₹58,775/- and if the same is occupied by the tenant, the said calculation amounts to exorbitant amount of ₹22,66,012/- which clearly shows the arbitrariness of the respondent authorities in order to collect taxes from the petitioner. According to the petitioner, Section 90(3A) of the 1976 Act as amended nowhere talks about the amount of tax on the land and building to be paid by a tenant other than the tenants in perpetuity. The only exception provided by way of insertion of the proviso to Section 90(3A) of the 1976 Act is that of the tenants in perpetuity who have occupied the land and building. There is no provision regarding the imposition of tax on land and building to be paid by tenants like the petitioner who holds a short term lease which is renewed from time to time with the consent of the owner. Hence in such cases, the liability to pay tax lies upon the owner of the land and building under whom the person like the petitioner has got a lease executed. The petitioner asserts that the liability to pay tax under the 1976 Act lies upon the owner and the tenants in perpetuity. Sections 90, 93 and 97 of the 1976 Act will not apply to the persons like the petitioner who hold a short term lease and are not tenants in perpetuity. The action of respondent No.2 in levying tax at exorbitant rate in respect of the property occupied by the petitioner which is a multi national company and is assessed to various other taxes, the difference of property tax levied on a tenant and that levied on owner of a property cannot be so huge. The petitioner filed CWP No.6260 of 2015 challenging the vires of Section 97 of the 1976 Act. An application for amendment was also filed by the petitioner to place on record certain subsequent events as also certain amendments in the said writ petition. Vide order dated 5.9.2017, liberty was granted to the petitioner to withdraw the writ petition and to file fresh writ petition on the same cause of action. Hence the instant writ petitions before this Court.

4. A short reply by way of affidavit on behalf of respondent No.3 has been filed wherein it has been inter alia stated that no malafide can be attributed as the legislature has provided two different modes of determination of rateable value in respect of buildings which are self occupied and those which are in occupation of the tenants. The State legislature is competent to levy the taxes on the land and the buildings which are in the territory of the State. In the notification dated 31.12.2014, the rates were specified for the calculation of the tax on the land and buildings w.e.f. 1.4.2014. The building under the occupation of the tenant has to pay 7.5% as property tax of the annual rent of the said property. Further, the State legislature has exclusive power to make laws for the benefits of the State as

enumerated in List II in Seventh Schedule of the Constitution of India. The imposition of property tax is legal and valid and thus deserves to be sustained for the development of the town. On these premises, prayer for dismissal of the petitions has been made.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner submitted that only the Parliament has exclusive powers to make laws with respect to matters enumerated in List I in the Seventh Schedule. Entry 82 of List 1 provides for levying of taxes on income other than agricultural income. Though the State has power to impose tax on lands and buildings as they find mention at Entry No.49 in the List II of the Seventh Schedule, yet the State has no domain to impose taxes on the income arising out of the said land and building. In the present case, vide Section 97 read with Section 93 of the 1976 Act, the State Government is levying tax on the rental income arising out of a particular land or building which is not permissible. Learned counsel further submitted that the rate of tax for a self occupied building is lesser than the rate of tax for an identically situated building which is under the occupation of tenants.

7. On the other hand, learned counsel for the respondents supported the provisions of the 1976 Act.

8. Before adjudicating the controversy involved, it would be expedient to reproduce the relevant statutory provisions which read thus:-

> "**2. Definitions** – In this Act, unless the context otherwise requires –
>
> **"32. "occupier"** includes -
>
> **(a)** any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;

(b) an owner in occupation of, or otherwise using his land or building;

(c) a rent free tenant of any land or building;

(d) a licensee in occupation of any land or building; and

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;

90. Taxes to be imposed by Corporation under this Act and arrangement of certain taxes collected by Government:-

(1) The Corporation shall, for the purposes of the Act, levy the following taxes:

(a) taxes on lands and buildings;

(b) omitted

(c) a tax on vehicles and animals ;

(d) omitted;

(e) a tax on buildings payable along with the application for sanction of the building plan; and Punjab Municipal Corporation Act, 1976, Section 88, 49

(f) a development tax on the increase in urban land values caused by the execution of any development or improvement work.

(2) Subject to the prior approval of the Government the Corporation may, for the purposes of this Act, in addition to the taxes specified in sub- section (1), levy,-

(a) a tax on professions, trades, callings and employments; and

(b) any other tax which the State Legislature has power to impose under the Constitution :

Provided that no tax shall be imposed under this sub-section unless an opportunity has been given in the prescribed manner to the residents of the City to file objections and the objections, if any, thus received have been considered.

(3) The taxes specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.

(3-A) (i) Notwithstanding anything contained in this Act and subject to any general or special orders which the Government may make in this behalf, and to the rules, a Corporation may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the City a tax payable by the owner of a land or building at such rate as may be specified under section 97:

Provided that in the case of land or building occupied by tenants in perpetuity, the tax shall be payable by such tenants.
(ii) Notwithstanding anything contained in clause (i),-

(A) no tax shall be leviable on vacant land, and land and/or building ,-

I. exclusively used for,-

(i) religious purposes, religious rites, religious ceremonies, religious festivals;

(ii) cremation grounds, burial grounds;

(iii) gaushalas, stray animal care centres;

(iv) historical and heritage buildings, so notified by the State Government, Central Government or United Nations Educational, Scientific and Cultural Organization;

(v) old age homes, homes for disabled, homes for orphans and homes for destitute;

(vi) the land or building owned and used by the Corporation;
(vii) the land or building used for Schools and Colleges owned or aided by the State Government;

(viii) the land or building of Hospitals or Dispensaries owned by the State Government;

(ix) parking space (only in respect of multi-storey flats or buildings); and

(x) land used for agricultural or horticultural purposes; and

(xi) purchase centres, sub yards, principal yards, kissan sarais, office buildings and other properties owned and used by the Punjab State Agricultural Marketing Board and the Market Committees established under the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No.23 of 1961).

II. belonging to units or projects covered under the 'Fiscal Incentives for Industrial Promotion-2013' as notified by the Government of Punjab, Department of Industries and Commerce, vide No. CC/FIIP/2013/5343, dated the 5th December, 2013, the exemption shall be available to such Units or Projects subject to the terms and conditions set and to the extent indicated therein, on production of a certificate from the nodal agency specified in the said Notification;

III. pertaining to residential houses (without any condition of storeys) measuring 50 square yards or below or single storey residential houses (inclusive of mumti and water tanks) measuring 125 square yards or below or residential flats having super covered area measuring 500 square feet or below;
IV. in the area including in a Corporation on or after the first day of April, 2014, for a period of three years to be reckoned from the date of such inclusion;

V. in the area which was including in a Corporation within the period of three years prior to the first day of April, 2014 but had not completed three years on this date, for a period of three years to be reckoned from the said date;

VI. owned by the following categories of persons:-

(i) Freedom Fighters, who are receiving pension as such from the Central Government or the State Government or both, as the case may be;

(ii) Persons living below poverty line who possess requisite card, issued in support thereof; and

(iii) Persons, who had served, or are serving, in any rank, whether as a combatant or a non-combatant, in the Naval, Military or Air Forces of the Union of India;

Explanation.–The expression 'vacant land' shall construe the land comprising any plot which does not contain any structure, may be pucca or kacha.

(B) the land and/or building owned by the following categories of persons shall be exempted from the payment of tax of five thousand rupees per financial year:–

(i) Widows; and

(ii) Handicapped persons, who are as if being assesses entitled for the time being to the benefits of deduction under section 80 U of the Income Tax Act, 1961;

(C) the land and/or building of all educational institutions, other than Governmental and Government aided, shall be exempted from the payment of fifty percent of the tax assessed for a financial year:

Provided that if it appears to the State Government to be expedient and necessary, at any time, it may review the exemptions so granted, by an order to be published in the Official Gazette.".

(4) The Government may, by special or general order, direct a Corporation to impose any tax falling under sub-section (1) or sub-section (2) not already imposed, within such period as may be specified and the Corporation shall thereupon act accordingly.

(5) If the Corporation fails to carry out any order passed under sub-section (4), the Government may by a suitable order notified in the Official Gazette impose the tax and the order so passed shall operate as if the tax had been duly imposed by the Corporation under sub-section (1) or sub-section (2), as the case may be.

(6) After the close of each year the Government may pay to the Corporation the whole or such part as it may determine of the Tax collected by it -

(a) under the Indian Stamp Act,1899 on account of stamp duty on transfer of property situated within the local area of the City;

(b) under the Punjab Motor Vehicles Taxation Act, 1924, from every person keeping a motor vehicle within the local area of the City;

(c) under the Punjab Electricity (Duty) Act, 1958, on the energy supplied
within the local area of the City;

(d) under the Punjab Entertainment Duty Act, 1955 from every person admitted to an entertainment within the local area of the City;

(e) under the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954, from the proprietor of the premises where a public cinematograph exhibition is held within the local area of the City.."

91. Components and rates of taxes on lands and buildings. -
(1) Save as otherwise provided in this Act, Taxes on lands and buildings in the City shall consist of the following, namely :-

> **(a)** a water tax of such percentage of the rateable value of lands and buildings as the Governments may deem reasonable for providing water- supply in the City;
>
> **(b)** a fire tax on such percentage of the rateable value of lands and buildings as the Government may deem reasonable for the expense necessary for the 50 Punjab Municipal Corporation Act, 1976, Section 91 conduct and management of the Fire Service and for the protection of life and property in the case of the fire;

(c) a general tax on building and lands payable under sub section (3-A) of section 90.

(2) omitted.

Section 93. Determination of rateable value of lands and buildings assessable to taxes - Subject to the rules, if any, made by the State Government in this behalf, the rateable value of any land or building assessable to taxes specified in section 90 shall be –

(a) in the case of building or land 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 rateable value shall include the corresponding increase in rent as well;

Provided further that where the building or land has been let by the owner to any of his relations, and the competent authority 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 rateable value shall be determined in accordance with the principles contained in sub-clause (b);

(b) in the case of building or land which is occupied by the owner, the rateable value shall be –

(i) five per cent of the present market value of the land; and

(ii) five per cent of the cost of erecting the building less ten percent depreciation:

Provided further that the calculation of market value in the case of multi storey buildings, group housing buildings or such like other buildings shall be made in the manner, as may be prescribed.

Explanation: for the purposes of clause (b), ‘cost of erecting the building’ shall, for the time being, be calculated at the following rates:-

(i) five hundred rupees per square feet in respect of Pucca (cemented bricks walled and load bearing roof) structure;

(ii) three hundred rupees per square feet in respect of Semi Pucca (cemented bricks walled or non cemented bricks walled but non-load bearing roof) structure; and

(iii) One hundred rupees per square feet in respect of Kacha (non cemented or non brick walled and non load bearing roof) structure;

Provided that the rates of calculation of cost of erecting the building as referred to above, shall be subject to revision by the Government from time to time;

Provided further that the Government may revise and fix such rates differently for the same category or class of building keeping in view the kind of the construction thereof.

(c) any land on which no building has been erected but on which a building can be erected and any land on which a building is in the process of erection, the rateable value shall be fixed at five percent of the market value of such land.”

97. Incidence of taxes on land and buildings. - **(1)** The tax payable on land and buildings shall be levied at such rate and shall be calculated in such manner as the State Government may specify, by notification published in the Official Gazette:

Provided that the owner or the occupier, as the case may be, shall be at liberty to pay the tax on land and/or building for the year 2014-15 as per the calculations to be made in accordance with the provisions either of the principal Act, as amended by the Punjab Municipal Corporation (Amendment) Act, 2014

(Punjab Act No.19 of 2014), or of the Punjab Municipal Corporation (Second Amendment) Act, 2014, as he thinks appropriate.

(2) for the building and land, which were not subject to tax prior to the commencement of the Punjab Municipal Corporation (Second Amendment Act, 2012 (Punjab Act No.7 of 2013), if the tax for the period from 15th day of November, 2012, to the date of commencement of the Punjab Municipal Corporation (Second Amendment) Act, 2013, has not been paid, the same shall not be recovered.

Provided that if such tax has been paid, the same shall be adjusted in the assessment of tax for the year 2013-14."

138. Manner of recovering tax. - Any sum due on account of tax payable under this Act may be recovered, together with costs of recovery, through the following processes by the competent authority:-

(a) by service of writ of demand on the defaulter;

(b) by distraint and sale of a defaulter's movable property ;

(c) by the sealing or/and attachment and sale of defaulter's immovable property ;

(d) in the case of octroi and toll, by the seizure and sale of goods and vehicles; and

(e) in the case of taxes on lands and buildings by the attachment of rent due in respect of the property or any other property owned by the defaulter."

246. Prohibition of structures, fixtures or deposit of things in streets. –

(1) No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street or upon or over any open channel, drain well or tank in any street so as to form an obstruction to, or projection over, or to occupy any portion of such street, channel, drain, well or tank.

(2) No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street, or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto.

(3) Nothing in sub-section (1) shall apply to any erection or thing to which clause (c) of sub-section (1) of Section 251 applies and nothing in sub- section (2) shall apply to building materials.

Section 246-A. Prohibition of encroachment upon land, premises or public place. –

(1) No person shall, in way encroach upon any land, premises or public place, not being private property, whether such land, premises or public place belongs to or vests in a Corporation or not, by raising a temporary or permanent structure thereon or by occupation thereon, in any manner.

Explanation. - Parking of Rehri temporarily or setting up steps for providing passage to the houses and shops in a street or a drain, channel, well or tank passing through or by the side of land, premises or public place shall not be construed encroachment within the meaning of this section.

(2) The Commissioner or any officer authorised by him in this behalf shall have power to remove any encroachment within the meaning of sub-section (1), and the expenses of such removal shall be paid by the person who has caused the said encroachment.

(3) Notwithstanding anything contained in the foregoing provisions of this section the Commissioner or the officer authorised by him in this behalf shall, in addition to any other action which may be taken under this section, also have power to seize or attach any property found on the land, premises or public place referred to in this section, or as the case may be, attached to or permanently fastened to anything attached to such land, premises or public place.

(4) Where any property is seized or attached in terms of sub-section (3) by an officer authorised by the Commissioner, he shall immediately make a report of such seizure or attachment to the Commissioner.

(5) The Commissioner may make such orders as he may think fit for the proper custody of the property seized or attached, pending the conclusion of confiscation Punjab Municipal Corporation Act, 1976, Section 246 101 1. Added vide Punjab Act No. 7 of 1995. Proceedings and if, the property is subject to speedy and natural decay, or it is otherwise expedient so to do, the Commissioner may order it to be sold or otherwise disposed of.

(6) Where any such property is sold as aforesaid, the sale proceeds thereof after deduction of the expenses of any such sale or other incidental expenses relating thereto, shall –

(a) Where no order of confiscation is passed by the Corporation under subsection (7); or

(b) Where an order passed in appeal under sub-section (11) so requires, be paid to the owner thereof or the person from whom it is seized.

(7) Where any property is seized or attached under sub section (3), the Corporation may, subject to the provisions of sub-section (8), order confiscation of such property.

(8) No order for confiscating property under sub-section (7) shall be made unless the owner of such property or the person from whom it is seized or attached is give,-

(i) a notice, in writing, informing him of the grounds on which it is proposed to confiscate the property;

(ii) an opportunity of making a representation, in writing, within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter.

(9) The order of any confiscation made under sub-section (7) shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

(10) Any person aggrieved by such confiscation order may, within one month from the date of the communication to him of such order, appeal against it to the District Judge of the District in which such property is seized or attached.

(11) On such appeal, the District Judge may, after giving an opportunity to the appellant and the respondent to be heard direct the order to be stayed pending disposal of the appeal, or may modify, alter or annual the order and make any further order that he may think proper in the matter.

(12) Subject to the provisions of sub-section (5), whenever any property is seized or attached pending confiscation under sub-section (7), the Corporation or the District Judge shall have, and notwithstanding anything to contrary contained in any other law for the time being in force, and any other court, tribunal or other authority shall not have jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such property.

(13) Where a person is prosecuted of an offence for the contravention of the provisions of sub-section (1) under this Act, the burden of proving that he has not committed the said offence shall be on such person.

(14) An employee of the Corporation shall not permit anybody to encroach upon or abet to encroach upon any property specified in sub-section (1)

(15) No court shall take cognizance of an offence of the contravention of the 102 Punjab Municipal Corporation Act, 1976, Section 246-A provisions of sub-section (14) except with the previous sanction of the Corporation.

(16) No investigation of an offence for contravention of the provisions of subsection (1) or sub section (14), as the case may be, shall be made by an officer below the rank of a Deputy Superintendent of Police.

10. Under the provisions of the 1976 Act, the Municipal Corporation has to exercise its functions as provided in Sections 43, 44 and 45 of the Act. Under Chapter VIII of 1976 Act, the Municipal Corporation can impose taxes, which are collected by the Government under Section 90 of the 1976 Act which includes taxes on lands and buildings as well. Section 91 of the 1976 Act provides for the components and rates of taxes on lands and buildings situated within the jurisdiction of a particular Municipal Corporation. As per Section 91(c) of the 1976 Act, a Municipal Corporation is empowered to impose general tax of not more than 15% of the rateable value of lands and buildings within the city. Section 93 of the 1976 Act provides for determination of rateable value of lands and buildings assessable to taxes. Section 97 of the 1976 Act deals with incidence of taxes on lands and buildings. Under Section 99 of the Act, the recovery of taxes has been dealt with. Section 138 of the 1976 Act stipulates the manner of recovering tax. On 22.11.2013, the State of Punjab amended 1976 Act vide Punjab Municipal Corporation (Second Amendment) Act, 2013 vide which Sections 93, 97 and 138 of the Act were substituted. The 2013 Amendment Act was notified vide notification dated 22.11.2013. On 16.12.2014, the State of Punjab sought to amend the 1976 Act vide Punjab Municipal Corporation (Second Amendment)

Ordinary 2014. Section 90,97, 122 and 400 were substituted. The 2014 ordinance was notified by the state of Punjab vide notification dated 16.12.2014. In the light of the amended provisions of Section 97, the Government of Punjab issued notification dated 31.12.2014 vide which the rates were specified for calculation of tax on land and building w.e.f . 1.4.2014. However, by the said notification, the rates of tax on a non residential building under occupation of tenant have been fixed at seven and half percent of the annual rent of the said property.

11. The grievance of the petitioners is that an unjustified classification has been made between the building or land which is in the occupation of a tenant and the building or land which is occupied by the owner. There is not only differentiation in the manner of calculating rateable value of the self occupied buildings and the buildings under the occupation of the tenant but there is differentiation in the rate of taxes also.

12. Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. The power to tax is an incidence of sovereignty. The power conferred on the legislature to levy tax must be widely construed. The rule of interpretation requires that an entry in either of the Lists in Seventh Schedule should not be read in a narrow or pedantic sense but it should be allocated fullest meaning and the widest amplitude so as to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them.

13. It is well settled law that a statute enacted by Parliament or legislature can only be struck down by Courts on two counts which are viz; (a) lack of legislative competence; and (b) violation of any of the fundamental rights granted in Part III of the Constitution of India or any other Constitutional provision. It is equally well recognized that no enactment can be struck down by merely saying

that it is arbitrary, unreasonable or unjust. It was pronounced by the Apex Court in ***State of Andhra Pradesh vs. McDowell & Co.*** AIR 1996 SC 1627 as under:-

> "No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground...."
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> In other words, a provision, statute or law shall not be declared to be unconstitutional and void solely on the ground of unjust and harsh provisions or it violates some natural, social, political or economic rights of citizen, unless it is established that such injustice infact is prohibited or violates the rights guaranteed or protected by the Constitution of India."

14. Similar kind of issue relating to constitutional validity of the provisions came up for consideration before the Supreme Court in ***Municipal Committee, Patiala vs. Model Town Residents Association and others,*** (2007) 8 SCC 669. The question therein was whether Section 3(1)(b) and Section 3(8aa) of the Punjab Municipal Act, 1911 as amended was violative of the rule of equality in the matter of determination of annual value as basis for imposition of house tax. After considering the relevant statutory provisions and the case law on the point, it was inter alia observed by the Apex Court that the basis of the tax was the annual value of the land or building on which it is imposed. The annual value is arrived at

by three ways namely (i) actual rent fetched by the land or building where it is actually let, (ii) where it is not let, rent based on hypothetical tenancy particularly in the case of buildings and where either of these methods is not available, by valuation based on capital value from which annual value has to be derived by applying a suitable percentage which may not be the same for lands and buildings. Reference was made to the judgment in ***Patel Gordhandas Hargovindas vs. Municipal Commissioner, Ahmedabad***, (1964) 2 SCR 608, wherein the method based on capital value of the premises was held to be valid. It was further held that there cannot be a straight jacket formula for determination of the annual value. The State is always entitled to raise resources by way of imposition of tax. Thus, the classification made between the premises occupied by the tenants on one hand and those occupied by the owner himself was held to be wholly reasonable and had direct nexus with the object sought to be achieved. It was further observed that the properties occupied by the tenants and which are self occupied constitute two separate classes. Thus, the validity of Sections 3(1)(b) and 3(8aa) of the 1911 Act was upheld. The relevant observations read thus:-

> "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 recognized 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.

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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 aforestated 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."

15. In the present case, the State legislature has provided two different modes of determination of rateable value in respect of buildings which are self occupied and those which are in the occupation of the tenants. The mode of assessment of the property tax has been provided by the State legislature. The State legislature is competent to levy the taxes on the land and the buildings which are in the territory of the State. As per Chapter VIII of the 1976 Act, the powers have been vested in the Municipal Corporation to impose taxes. Under Section 90 of the 1976 Act, taxes can be imposed on the land and building. A provision based on permissible classification fulfils the guarantee of equal protection of the laws and is valid whereas if any provision is based on impermissible classification, the same is void. In the notification dated 31.12.2014 issued by the Government, the rates were specified for the calculation of the tax on the land and buildings w.e.f. 1.4.2014. It has also been specified in the notification that the building under the occupation of the tenant, 7.5% would be levied as property tax of the annual rent of the said property. The State legislature being competent has framed the policy decision with regard to levy of tax in the State territory keeping in view the overall interest of the State and by making reasonable classification between the land and buildings occupied by tenant and the owner. Learned counsel for the petitioner has not been able to show any material on record to substantiate that the classification is arbitrary, discriminatory or unreasonable. Once there exists legislative competence in the State legislature to enact a provision, in the absence of the learned counsel for the petitioner to demonstrate that the same is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, it cannot be

declared to be unconstitutional. The classification is reasonable and has nexus with the object of the Act sought to be achieved.

16. In view of the above, in our opinion, the provisions of the Act to which an attempt has been made to assail as ultra vires, cannot be held to be beyond the legislative competence of the State legislature or that they had exceeded its law making power or contravened any of the provisions of the Constitution of India on the basis of which it could be declared to be unconstitutional. The validity of the same is upheld.

17. Learned counsel for the petitioner next submitted that under Proviso to Section 90(3A) of the 1976 Act where the land or building which is in occupation of a tenant in perpetuity, such occupiers have been held liable to pay property tax as tenants. It was urged that in the present case, the petitioner has occupancy rights and is not a tenant in perpetuity, therefore, no liability on account of property tax can be fastened on the petitioner.

18. Equally, we do not find any merit in the said contention. A perusal of registered lease deed dated 25.04.2016 annexed as Annexure P/1 (collectively) reveals that the land and building in question have been leased for further five years on renewal of earlier registered lease deed dated 27.05.2013 which was for three years and two months. Under Article 3(1) of the said registered lease deed dated 25.04.2016, the petitioner who is a lessee is liable to pay the property tax. The relevant portion thereof reads thus:-

> "The lessor shall lease the Lease Object to Lessee during the initial term at a leasing rate of ₹ 30,13,017/- (Rupee Thirty Lakh Thirteen Thousand Seventeen Only) per month, exclusive of all taxes, payable in advance on or before the 5th of each month with annual increase as stipulated in Article 3(3) infra (see Annexure 1). Service tax, **Property tax**, any new tax imposed subsequently by Central/State

Government Statutory dues or any agency/authority and other such taxes shall be **borne by the lessee**. Applicable TDS shall be deducted at source.

The leasing rate shall be inclusive of all costs related to or charges on the Lease Object except as otherwise specifically mentioned in this agreement at Article 3(2).” (Emphasis Supplied)

19. Consequently, the writ petitions are dismissed.

(Ajay Kumar Mittal)
Judge

September 13, 2018 **(Avneesh Jhingan)**
‘gs’ **Judge**

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