IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5506 of 2018
Decided on : 25.10.2018

Municipal Corporation, Chandigarh

...... Petitioner

Versus

Kashmiri Sahayak Sabha Charitable Trust (Regd.) and another

...... Respondents

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

Present : Ms. Deepali Puri, Advocate
for the petitioner.

Mr.Vijay Saraf, respondent No.1 in person.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 06.09.2017 (Annexure P-7) passed by the Divisional Commissioner (Chairman, Chandigarh Housing Board), Appellate Authority, vide which the appeal of respondent No.1 has been allowed.

2. Municipal Corporation, Chandigarh is the petitioner. Kashmiri Sahayak Sabha Charitable Trust (Regd.) is arrayed as respondent No.1 and Divisional Commissioner-cum-Appellate Authority, Chairman Housing Board, Chandigarh, has been made as proforma respondent in the present writ petition.

3. Respondent No.1 is running Kashmir Bhawan on the land allotted vide letter dated 29.07.1986. The said property was assessed to property tax under the provisions of Punjab Municipal Corporation Act, 1976 as extended to U.T.Chandigarh by Punjab Municipal Corporation Law (Extension of Chandigarh) Act, 1994 (for brevity, 'the Act').

4. The petitioner sent regular bills of property tax to respondent No.1. Respondent No.1 made part payment and filed representations seeking waiver of property tax. The representations were rejected vide letters dated 26.02.2007, 26.05.2007, 23.10.2007, 17.03.2008, and 30.06.2008.

5. The bills were issued pertaining to property tax payable from the year 2004 onwards and amount of ₹3,79,829/- was demanded vide notice dated 20.11.2015.

6. Aggrieved of the demand, respondent No.1 filed a statutory appeal seeking waiver of the property tax, arrears and interest. The Appellate Authority vide order dated 06.09.2017 allowed the appeal by granting exemption to respondent No.1 from the payment of property tax. Aggrieved of the said order, the present writ petition has been filed.

7. Learned counsel for the petitioner argued that the Appellate Authority erred in granting exemption to respondent No.1. The order passed is without jurisdiction.

8. Respondent No.1 argued that the property tax is not being disputed but the grievance is that the petitioner was not vigilant enough to recover the same and hence respondent No.1 has been burdened with the interest.

9. The contention of learned counsel for the petitioner deserves acceptance as the order passed by the Appellate Authority dated 06.09.2017 (Annexure P-7) cannot be sustained in law.

10. The operational part of the order is quoted below:-

> *"The undersigned has heard both the parties and perused the records. It is a known fact that the Kashmiri Pandit Community has suffered,*

> *displacement from their homes due to terrorism and militancy in the State. Therefore, keeping in view the above fact and circumstances, a lenient view is taken in the present matter and the appellant is exempted from the payment of the property tax."*

11. The Appellate Authority exercises power to decide an appeal and is not empowered under the statute to grant exemption from property tax that has been levied as per the provisions of the Act. The power to exempt has been dealt with under Section 156 and 157 of the Act. The same are reproduced below :-

> *"156.* ***Power of exemption. -*** *(1) The Corporation may, by resolution passed in this behalf, exempt either wholly or in part from the payment of any tax levied under this Act, any class of persons or any class of property or goods.*
>
> *(2) The Corporation may also exempt, in whole or in part for any period not exceeding one year from the payment of any tax, any person who by reason of poverty may in its opinion, be unable to pay the same, and may renew such exemption as often may be necessary.*
>
> *157.* ***Powers of Government in regard to taxes. -*** *The Government may by order exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property.*
>
> *(2) If at any time it appears to the Government on complaint made or otherwise, that any tax imposed under the foregoing sections is unfair in its incidence or that the levy thereof or of any part*

> *thereof is injurious to the interests of the general public, it may require the Corporation to take within a specified period measures to remove the objection, and, if within that period the requirement is not complied with to the satisfaction of the Government, the Government may by notification suspend the levy of the tax or of such part thereof until the objection has been removed."*

12. From the perusal of the above provisions, it is clear that the corporation by passing a resolution, can exempt from payment of any tax levied under Section 156 of the Act. Under Section 157 the Government is empowered to exempt any person or class of persons or any property or description of property. This power cannot be exercised by the Appellate Authority.

13. The Appellate Authority erred in passing the order in appeal granting exemption to respondent No.1 by stating that a lenient view is required to be taken in the matter. Appellate Authority is established by law. The said power has not been bestowed by the Act on the Appellate Authority. Accordingly, the impugned order is quashed and the writ petition is allowed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 25, 2018
anju

Whether speaking/reasoned: Yes
Whether reportable : Yes