(105) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5517 of 2017 (O&M)
Date of decision: 12.10.2018

Municipal Corporation, Rohtak

.... Appellant

Versus

Magan Singh and another

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Rishabh Gupta, Advocate for the appellant.

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B.S. WALIA, J. (ORAL)

[1] Learned counsel has produced certified copy of Haryana Government Gazette (Extra) Notification (Hindi) dated 29.11.2007 (Ex.P2) as well as copy of the forwarding letter dated 04.01.2008 (Ex.P1) as well as copy of the Notification published in the Haryana Government Gazette (Extra), dated 29.11.2007 Hindi as well as English version in Court today. The same are taken on record.

[2] Learned counsel for the appellant contended that the judgment of the learned Civil Judge (Jr. Division), Rohtak dated 26.10.2016 decreeing the suit filed by respondent No.1/plaintiff as well as judgment and decree dated 04.03.2017 passed by the learned Additional District Judge, Rohtak upholding the judgment and decree passed by the learned Civil Judge (Jr. Division), Rohtak are legally unsustainable since the Courts below failed to take into account non-compliance with the requirements stipulated in the Haryana Government Gazette (Extra) Notification [No.9/32/2001-5CI],

dated 29.11.2007 (Ex.P2) (hereinafter referred to as 'Notification Ex.P2') of production of 'No-Dues Certificate' to claim exemption from payment of house tax.

[3] Learned Civil Judge (Jr. Division), Rohtak considered Notification Ex.P2 providing for exemption from payment of house tax as also the note appended to the same providing that exemption from payment of house tax was applicable subject to production of 'No-Dues Certificate' of house tax till 31.03.2008 by observing that the Notification Ex.P2 did not provide for production of 'No-Dues Certificate' and that the requirement to produce 'No Dues Certificate' was typed out on the Notification Ex.P2 below the signatures of the Authority issuing the said Notification, therefore, the requirement of production of 'No-Dues Certificate' was not a part of the Notification.

[4] I have examined Notification Ex.P2 certified copy of which has been produced by the learned counsel for the appellant as well as copy of the forwarding letter dated 04.01.2008 (Ex.P1). I have also obtained copy of the notification as published in the Haryana Government Gazette (Extra-ordinary), dated 29.11.2007 Hindi as well as English version from the Gazettee and am satisfied that the typed portion below the Notification Ex.P2 is not only unsigned as held by the learned Civil Judge (Jr. Division), Rohtak but also that it is not part of the Notification as published in the Haryana Government Gazette (Extra-ordinary), dated 29.11.2007 nor has any reference in respect of the condition been mentioned in the forwarding letter (Ex.P1) nor has learned counsel for the appellant been able to refer to any record showing the authority under which the typing requiring production of 'No-Dues Certificate' was made and the provision of law relatable in respect thereto. Learned Civil Judge (Jr. Division), Rohtak

accordingly held that it was clear that respondent No.1/plaintiff had not been informed about any condition with regard to production of 'No-Dues certificate' nor was it ever made a part of the actual Notification and that no evidence in respect thereto had been led.

[5] The Notification (Ex.P2) was withdrawn vide notification (Ex.DX) dated 22.04.2010. The learned Civil Judge further observed that even DW-1 had admitted that there was no mention in Ex.DX that arrears were required to be paid, that the respondent/plaintiff had paid house tax vide Ex.P7 for the years 2011-2014 and at that time also no objection had been raised by the department regarding earlier arrears, therefore, it was beyond comprehension as to how come it had been charged in the year 2015 by way of house tax bill dated 20.07.2015 (Ex.P3). Accordingly, the suit was decreed.

[6] The learned Lower Appellate Court held that it was not in dispute that respondent No.1/plaintiff was occupying the house qua which arrears of house-tax were demanded by the appellant but the appellant had not placed on record any certified copy of the notification issued by the Government of Haryana showing that production of 'No-Dues Certificate' of house-tax was a pre-condition for seeking such exemption and even otherwise, the record relating to the house-tax remained in the custody of the appellant and the appellant was the best person to see whether the respondent No.1/plaintiff was in arrears of house-tax. In the aforementioned background, the learned First Appellate Court held that the learned Civil Judge (Jr. Division), Rohtak had rightly observed that respondent No.1/ plaintiff could not be denied the benefit of exemption from house-tax as per the Notification Ex.P2. No other point has been argued.

[7] I have considered the submissions of learned counsel for the appellant and am of the view that the appeal is bereft of merit, therefore, is liable to be dismissed for the reasons as are recorded hereunder.

[8] Admittedly, Notification Ex.P2 was issued granting exemption to owners of self-occupied residential houses from payment of house-tax w.e.f 01.04.2008. Notification Ex.P2 issued by the Commissioner and Secretary to Government of Haryana, Urban Local Bodies Department was forwarded by the Director, Town and Country Planning, Haryana vide letter dated 04.01.2008 (Ex.P1). Letter (Ex.P1) did not contain any mention of the requirement of the persons entitled to exemption from payment of house-tax being required to submit 'No-Dues Certificate'. Besides, the notification in Hindi as produced by the department before the learned Civil Judge contains typing in English requiring production of 'No-Dues Certificate' in order to claim exemption from payment of house-tax. The same is unsigned and is below the seal of the issuing Authority.

[9] Perusal of Notification Ex.P2 as well as Notification published in the Haryana Government Gazette (Extra), dated 29.11.2007 Hindi as well as English version reveals that the same does not contain any typing as has been reflected and as is contained in Ex.P2 nor has learned counsel for the appellant been able to give any explanation with regard to the basis on which the typing has been given on Notification Ex.P2 requiring production of 'No-Dues certificate' nor been able to disclose the Authority who made or authorized that typing nor has learned counsel been able to disclose the provision of law making requirement of submission of 'No-Dues certificate' as a essential pre-requisite to the entitlement to get exemption from payment of house-tax in respect of self-occupied residential building situated in Municipal Council/Committees.

[10] In the circumstances, I find no error whatsoever in the judgments passed by the learned Civil Judge (Jr. Division), Rohtak as upheld by the learned Addl. District Judge, Rohtak. No substantial question of law arises for consideration in this appeal. The same is bereft of merit.

[11] Accordingly, the Regular Second Appeal is dismissed in limine.

(B.S. Walia)
Judge

12.10.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No