

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 25098 of 2016

Date of Decision: 28.03.2019

RAVINDER SINGH AND OTHERS

....Petitioners

VS.

STATE OF PUNJAB AND OTHERS

....Respondents

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**
 HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Akshay Bhan, Senior Advocate
 with Mr. Gurinder Singh, Advocate,
 for the petitioners.

 Mr. Avinit Avasthi, AAG, Punjab.

 Ms. Kavita Arora, Advocate,
 for respondents No. 3 and 4.

(Rakesh Kumar Jain, J.)

Although, the petitioners have challenged the vires of the Punjab Municipal (Amendment) Act, 2013 (Punjab Act No. 39 of 2013), the Punjab Municipal (Amendment), 2014 (Punjab Act No. 18 of 2014) and the Punjab Municipal (Second Amendment) Act, 2014 (Punjab Act No. 2 of 2015) issued vide notifications dated 22.11.2013, 21.08.2014 and 27.01.2015 respectively and also Section 61(1)(a) of Punjab Municipal Act, 1911 (for short “the Act”), as amended, by notifications attached as Annexures P-4 to P-6 but at the time of arguments, prayer was made for the issuance of a writ in the nature of *Certiorari* for quashing the impugned notices dated 14.05.2015 and 26.05.2015 (Annexure P-9 and P-10) and the impugned order dated 29.08.2016 (Annexure P-16), *inter alia*, on the ground that the provisions of Section 61(1)(a)(i) read with Section 62 of the Act has not been followed rather, protection has been sought by the respondents in terms of Section 62-A of the Act without referring to Section 62-A(1) of the Act.

In brief, the petitioners are the owners in possession as co-sharers of a piece of land situated at Sunam-A, Tehsil Sunam, District Sangrur. They have entered into an agreement dated 22.05.2011 with each other and decided to construct godown as per the specifications of the Food Corporation of India. Although, the Act was amended by the Punjab Municipal (Second Amendment) Act, 2012 (Punjab Act No. 6 of 2013) but as per the Punjab Municipal (Amendment) Act, 2013 (Punjab Act No. 39 of 2013) it was again amended and the tax on building and land was ordered to be assessed on the basis of the annual value of the building and land. Section 3(1) of the Act, after the amendment of 2013 provides for the assessment of annual value by two different modes i.e. on the basis of occupation of building or land by tenant or owner i.e. Section 3(1)(a) in case of building or land is in occupation by the tenant and Section 3(1)(b) in case the building or land is occupied by the owner.

The Punjab Municipal (Amendment), 2014 (Punjab Act No. 18 of 2014) was further amended w.e.f. 01.04.2014 regarding exemptions from paying tax and rate of tax to be levied on building and land. The amendment of 2014 further empowered the Executive Officer to seal the immovable property for the recovery of the tax due. Thereafter, the Punjab Municipal (Second Amendment) Act, 2014 (Punjab Act No. 2 of 2015), the amendments were made in Section 61(1) w.e.f. 01.04.2014. Section 61(1)(a)(ii), after the amendment of 2015 gave power to the State Government to fix the rate of such tax on land and buildings to be levied and the manner of calculation by way of notification in the official gazette.

Accordingly, impugned notification dated 31.12.2014 was issued by the Government of Punjab, Department of Local Government for the imposition of tax on building and land w.e.f. 01.04.2014 by categorizing the Municipalities and determining the rates. This notification was followed by another notification dated 24.04.2015 by which changes were brought on the table, provided in Clause 4 of the notification dated 31.12.2014 pertaining to the rates of tax.

The petitioners opted to pay property tax on the basis of unit value for the land and building owned by them and requested the respondents to determine the unit value but respondent No. 3 failed to determine the same, on the other hand, petitioners received impugned notice dated 14.05.2015 from the office of respondent No. 4 whereby they were asked to pay property tax, as calculated by respondent No. 4, in view of the amendment by Punjab Act No. 39 of 2013 and Punjab Act No. 2 of 2015, alleging therein that the petitioners have not paid the tax in time and also liable to pay the penalty. The petitioners also received the attachment order dated 26.05.2015 purported to have been issued by respondent No. 4. The petitioners replied to the said notices on 16.06.2015, alleging that the respondent No. 3 has failed to determine the unit value, therefore, the petitioners were not in a position to assess the property tax. Thereafter, respondent No. 4 had communicated to the petitioners that they are directed to pay the property tax either as per Punjab Act No. 6 of 2013 or as per Punjab Act No. 39 of 2013. The petitioners again requested respondent No. 4 to determine the unit value and convey the same to them. However, the Government directed respondent No. 4 to take necessary action in terms of provisions of the Act and the Deputy Director, Local Government, Patiala

passed the impugned order dated 29.08.2016 whereby respondent No. 4 directed the Deputy Manager, PUNGRAIN to pay the property tax on behalf of the petitioners and deduct the same from the rent payable by the PUNGRAIN. Aggrieved against the aforesaid proceedings, the present petition has been preferred.

At the outset, learned senior counsel appearing on behalf of the petitioners has submitted that he would focus his arguments only in regard to the non-compliance of Section 61(1)(a) read with Section 62 of the Act and would challenge the authority of the State to invoke the provision of Section 62-A(3) of the Act straightaway.

Learned counsel for the petitioners have submitted that the impugned notification dated 31.12.2014 (Annexure P-7) has been issued while exercising the powers under Section 61(1)(a)(ii) of the Act by which the manner in which the tax is to be calculated on the land and building w.e.f. 01.04.2014 has been provided in which there is an amendment vide notification dated 24.04.2015 in regard to its table provided in Clause 4. It is submitted by the petitioners that Section 61(1)(a)(ii) provides that the tax payable under clause (i) shall be levied at such rates and shall be calculated in such manner as the State Government may specify, by notification, to be published in the official gazette, but for the purposes of imposition of said tax, the power has been conferred upon the Municipalities in terms of Section 61(1) of the Act and the procedure for the same is provided under Section 62(1) of the act which says that a committee may, at a special meeting would pass a resolution to propose the imposition of any tax under Section 61.

It is further submitted that a categoric averment has been made in Para 19 (m) of the writ petition to the effect that respondent No. 3 has not

passed any resolution for imposition of tax on building and land as it has been required in view of the provisions of Section 61 of the Act and in the absence of the non-compliance of the requirements of Section 62 of the Act, respondent No. 3 is not justified in levying tax and therefore, the notices issued by respondent No. 4 are illegal. Respondents No. 3 and 4 have replied that the resolution as stated for the imposition of taxes is not mandatory in view of the provisions of Section 62-A of the Act whereby the State Government by a special or general order has notified to the Municipal Council to impose taxes under Section 61 of the Act. Thus, the Council is empowered under the Act by the State Government to impose taxes.

While filing replication to the written statement filed by respondents No. 3 and 4 specially in regard to Para 19 (m), the petitioners have made a reference to a letter dated 06.06.2017 by which information has been derived under the Right to Information Act, 2005 from the Municipal Council, Sunam in which they have specifically provided that in the resolution No. 417 that for the purpose of implementing the tax as per the new Act procedure of Section 62 has to be followed. It is, thus, submitted on behalf of the petitioners that the State Government though has power under Section 61(1)(a)(ii) to provide the rate and the calculation by way of notification published in the official gazette in regard to the tax payable under Clause (i) of the 61(1)(a) by the owner of the land and building but the decision in this regard has to be taken by the Committee as to whether the said tax has to be imposed in whole or in part of the municipal area after following procedure which is prescribed under Section 62 of the Act.

It is further submitted that the State Government cannot exercise the power under section 62-A(3) straightaway until and unless there is a

failure on the part of the Committee in exercising its powers under Section 62-A(1) of the Act. In this regard, he has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***State of Punjab Vs. Naranjan Dass Doomra Rice and General Mills; 1998(1)RCR(Civil)275.***

Learned counsel for the respondents have submitted that the State Government has rightly exercised its jurisdiction in terms of Section 61(1)(a)(ii) read with Section 62-A(3). It is also sought to be argued that the petitioners were obliged to follow the provisions of Section 68 of the Act for the purpose of self assessment of tax on building and land. It is submitted that the entire action has been taken against the petitioners following due procedure of law but there was no denial that the resolution of the Committee is still conspicuous by its absence for the purpose of imposition of tax at the rates provided by the State Government by way of the impugned notifications (Annexures P-7 and P-8)

We have heard learned counsel for the parties and perused the record.

In order to appreciate the rival contentions of the parties, it would be just and expedient to refer to all the relevant provisions of the Act: -

61. Taxes which may be imposed:- *(1) Subject to any general or special orders which the 5 [State] Government may make in this behalf, and to the rules, any committee 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 municipality any of the following taxes, namely :*

"(a) (i) A tax payable by the owner of building and land:

Provided that in the case of building and land occupied by tenants in perpetuity, the tax shall be payable by such tenants;

(ii) The tax payable under clause (i) shall be levied at such rate and shall be calculated in such manner as the State Government may specify, by notification to be 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 building and/or land as per the calculations to be made in accordance with the provisions of either the principal Act, as amended by the Punjab Municipal (Amendment) Act, 2014 (Punjab Act No. 18 of 2014), or the Punjab Municipal (Second Amendment) Act, 2014, as he thinks appropriate.

(aa) Notwithstanding anything contained in clauses (i) and (ii) of clause (a),— (A) no tax shall be leviable on vacant land, and building and/or land,— I. exclusively used for,—

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

(ii) cremation grounds, burial grounds;

(iii) gaushalas, stray animal care centers;

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

(viii) the building or land 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;

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 falling within a newly constituted Municipal Council or Nagar Panchayat on or after the first day of April, 2014, for a period of three years to be reckoned from the date of such constitution;

V. in the area falling within a Municipal Council or Nagar Panchayat, constituted 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. in the area included in a Municipal Council or Nagar Panchayat on or after the first day of April, 2014, for a period of three years to be reckoned from the date of such inclusion;

VII. in the area which was included in a Municipal Council or Nagar Panchayat 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;

VIII. 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 building and land 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 building and/or land of all educational institutions, other than Governmental and Government aided, shall be exempted from the payment of fifty per cent 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 granted, by an order to be published in the Official Gazette."

(aaa) 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) Ordinance, 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."

(b) a tax on persons practicing any profession or art or carrying on any trade or calling in the municipality;

(c) a tax payable by the owner, on all or any vehicles [other than motor vehicles] animals used for riding, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the municipality;

(d) a tax, payable by the employer, on menial domestic servants;

(e) a tax payable by the occupier of any buildings in respect of which the committee has, in exercise of the powers conferred by sections 159 to 165 of this Act, undertaken the house scavenging.

(ee) in addition to the tax imposed under clause (a), scavenging tax, payable by the occupier, on buildings and lands of such percentage of the annual value thereof as the State Government may, by notification,

declare to be reasonable for providing for the collection, removal and disposal by the committee of all filth and polluted and obnoxious matter from latrines, urinals, cess-pools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such filth or polluted and obnoxious matters :

(f) a tax payable by persons presenting building applications to the committee:

Provided that a committee shall not impose any tax without the previous sanction of the 11 [State] Government when-

(i) it consists of members less than three-fourths of whom have been elected; or

(ii) its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs.20,000 or one-tenth of the income accrued in the previous financial year whichever amount shall be less.

(2) Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which 1 [State Legislature] has power to impose in the State under the 2 [Constitution].

(2-A) Notwithstanding anything contained in this Act, on and with effect from the commencement of the Punjab Municipal (Amendment) Act, 2006, no octroi shall be levied, except on electricity, petrol and diesel :

Provided that the additional excise duty, levied in lieu of octroi on liquor under any other provision of law, shall continue to be levied.

Provided further than on and with effect from the commencement of the Punjab Municipal (Amendment) Act, 2012, no octroi shall be levied on petrol and diesel.

Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the 6 [State] under the [Constitution]:

Provided that a committee which immediately before the commencement of [Constitution] was lawfully levying any such tax

under this section as then in force, may continue to levy that tax until provision to the contrary is made by [Parliament]

[Explanation :- In this section "tax" includes any duty, cess or fee.]

62. Procedure to impose taxes: - (1) A committee may, at a special meeting pass a resolution to propose the imposition of any tax under Section 61.

(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax, may within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.

(4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals along with a notice indicating that they are modification of those previously published for objection.

(5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).

(6) When the committee has finally settled its proposals it shall, if the proposed tax falls under clauses (b) to (f) of sub-section (1) of section 61 direct that the tax be imposed, and shall forward a copy of its order to the effect through the 2 [Deputy Commissioner], to the State Government and if the proposed tax falls under any other provision it shall submit its proposals together with the objection if any made in connection therewith to the 3 [Deputy Commissioner.]

(7) If the proposed tax falls under clause (a) sub-section (1) of Section 61, the 4 [Deputy Commissioner], after considering the objections received under sections (3) and (5) may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the 5 [State] Government a copy of the proposals and his order of sanction; and if the tax falls under sub-section (2) 6 [--] of section 61, 7 [Deputy Commissioner] shall submit the proposals and objections with his recommendations to the State Government.

(8) The State Government on receiving proposals for taxation under sub-section (2) 8 [--] may sanction or refuse to sanction the same or return them to the committee for further consideration.

(9) [--]

(10) (a) When a copy of order under sub-sections (6) and (7) has been received, or

b) when a proposal has been sanctioned under sub-section (8) 10[-] the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than [one month] from the date of notification, on which the tax shall come into force.

(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July, or on the first day of October in any year and if it comes into force on any other than the first day of the year by which it is leviable shall the leviable by the quarter till the first day of such year then next ensuing.

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

62-A. Power of Government in taxation: *(1) The State Government may, by special or general order notified in the official Gazette, require a Committee to impose any tax mentioned in section 61, not already imposed are such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.*

(2) The State Government may require a Committee to modify the rate of any tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct.

(3) If the Committee fails to carry out any order passed under sub-section (1) or (2) the State Government may by a suitable order notified in the official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee as if the proposal was sanctioned in accordance with the procedure contained in section 62.”

There is no denial to the effect that the State Government has the jurisdiction, much less, the competence to levy the rates and the manner in which the same shall be calculated on the tax payable under Clause (i) of the

Section 61(1)(a). But section 61(1) provides that for the purpose of tax to be paid by the owner of the land and buildings under Section 61(1)(a)(i), the Committee has to impose the said tax in the whole or part of the municipal area in the manner which is prescribed by the Act and in Section 62(1) which says that the Committee, at a special meeting, would pass a resolution to propose the imposition of any tax under Section 61. Meaning thereby a resolution of the Committee for the purpose of imposition of tax by the State Government is a *sine qua non*. Section 62 of the Act further provides that whenever the Committee, at a special meeting, passes such resolution for imposition of any tax in terms of Section 61 of the Act then it would publish notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted to which objections can be filed by the inhabitant within the period of 30 days from the date of publication of the said notice and the said objections has to be dealt with by the Committee in its special meeting. In case the Committee decides to amend its proposal then it would publish the amended proposal alongwith a notice and again opportunity is provided under the Act to the inhabitants to raise objection to the amended proposal which has to be dealt with by the Committee in the same manner in which the first objection was dealt with and when the Committee finally settles the proposal, it would direct that the tax be imposed and forward its order to the State Government through Deputy Commissioner and then sanction has to be granted by the State Government to the said proposal.

However, if the State Government, may by its special or general order, notifies in the official Gazette, require a Committee to impose any tax in terms of Section 61 which is not already imposed, at such rate and within

such period after the Committee has to act thereupon. The State Government may require a Committee to modify the rate of any tax already imposed and the Committee shall modify the tax as required within such period as the State Government may direct. But in case the Committee fails to carry out the orders passed under Section 62-A(2) then it has the power under Section 62-A(3) to pass as suitable order notifying in the official gazette the imposition of modification of the tax and such order shall operate as if it were a resolution duly passed by the Committee as if the proposal was sanctioned in accordance with the procedure contained in Section 62.

Thus, from the reading of the aforesaid provisions of the Act, it is amply clear that at the first instance, the Committee has to take the call for the purposes of complying with the provisions of Section 61(1) of the Act by following the procedure provided under Section 62 and in case the Committee fails to do so then ultimate power can be exercised by the State Government in terms of Section 62-A(3) of the Act.

Reverting back to the facts of this case, there is a specific averment in Para 19(m) of the writ petition about the absence of any resolution in terms of Section 61(1) read with Section 62 which is not denied in the reply filed by respondents No. 3 and 4 who have rather alleged that the resolution is not mandatory in view of Section 62-A of the Act as the State Government has the power to impose taxes by its special order.

In view of the aforesaid discussion, much less, on the provisions of Sections 61, 62 and 62-A of the Act, coupled with the admission of the respondents that resolution has not been passed by the Committee in terms of Section 61(1), the imposition of tax in terms of Section 61(1)(a)(i) upon the petitioners and subsequent proceedings initiated in terms of issuance of

impugned notices Annexures P-9 and P-10 and the impugned order Annexure P-16 are patently illegal, therefore, the same are hereby set aside.

No other point is raised.

In view of the above, present petition is allowed.

[RAKESH KUMAR JAIN]
JUDGE

March 28, 2019
Ess Kay

[HARNARESH SINGH GILL]
JUDGE

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