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

**CWP-4564-2019 (O&M)
Reserved on:22.11.2022
Date of Decision: 22.12.2022**

Caliber Plaza, Shopkeepers Welfare Society
...Petitioner
Vs.
State of Punjab and others
...Respondent

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE SANJIV BERRY**

Present: Mr. Anurag Chopra Advocate and
Ms. Meghna Garg, Advocate
for the petitioner.

Mr. Deepanjay Sharma, DAG Punjab.

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

TEJINDER SINGH DHINDSA, J. ***(Oral)***

Challenge in the instant writ petition is to the order dated 28.01.2019 (Annexure P-10) passed by the 2nd respondent i.e. Commissioner Municipal Corporation, Ludhiana treating "Caliber Plaza (A.C. Market)" situated in the City of Ludhiana as a "Mall" for the purposes of levy of property tax. A writ of mandamus is prayed for treating the aforementioned Plaza as a "Commercial Building" instead and to be levied property tax in terms of State Government notification dated 31.12.2014, accordingly.

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

Government of Punjab, Department of Local 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 building 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', 'B' and 'C' category. Furthermore, each municipal area in category 'A' was classified in 3 areas i.e. 'Area I' 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 classified as 'Area 3'.

A tabulation reflecting 'USE' of the premises, rates of tax as per classification, notification and category and remarks was furnished in the notification dated 31.12.2014 itself and the relevant extract thereof is reproduced herein:

<table>
<tr><td rowspan="2">USE</td><td rowspan="2"></td><td colspan="3">Rate of tax as per classification and category
(in rupees)</td><td rowspan="2"></td></tr>
<tr><td>Area classification</td><td>A category towns</td><td>B category towns</td></tr>
<tr><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td></tr>
<tr><td>Residential Houses</td><td>X</td><td>X</td><td>X</td><td>X</td><td>X</td></tr>
<tr><td>Flats</td><td>X</td><td>X</td><td>X</td><td>X</td><td>X</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td rowspan="7">Commercial buildings including restaurants (except multiplexes, malls, marriage palaces)</td><td rowspan="3">Having 100 square feet land or below</td><td>Area 1</td><td>4.00 per square foot</td><td>3.00 per square foot</td><td rowspan="7">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.</td></tr>
<tr><td>Area 2</td><td>2.00 per square foot</td><td>1.50 per square foot</td></tr>
<tr><td>Area 3</td><td>1.75 per square foot</td><td>-</td></tr>
<tr><td rowspan="4">Having 1000 square feet land or below but beyond 100 square feet land</td><td>Area 1</td><td>5.00 per square foot</td><td>4.00 per square foot</td></tr>
<tr><td>Area 2</td><td>3.00 per square foot</td><td>2.00 per square foot</td></tr>
<tr><td>Area 3</td><td>2.00 per square foot</td><td>-</td></tr>
<tr><td>Area 1</td><td>6.00 per</td><td>5.00 per</td></tr>
</table>

			square foot	square foot	
	Having beyond 1000 square fee land	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.
Hotesl	X	X	X	X	X
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. 4/8.
	Having beyond 4000 square yards land	For all areas	7.50 per square yard	6.00 per square yard	

As per averments made in the petition, there are shops within the premises of "Caliber Plaza (A.C. Market)" situated in the City of Ludhiana which has been categorized as 'A' class city. It has been pleaded that the premises in question fall in 'Area 1' in Ludhiana City.

Learned counsel for the petitioner would submit that the shops in the "Caliber Plaza (A.C. Market)" are confined only to one trade i.e. selling cloth. It is argued that the impugned order has been passed without adhering to the notification dated 31.12.2014 (Annexure P-1) and as such by not differentiating between the definition of a "Mall" as opposed to "commercial building". It is urged that the shops in "Caliber Plaza (A.C. Market)" carry out a single trade of selling cloth and the premises would be covered under the term "commercial building". In this regard, it is submitted that there are no facilities in the nature of restaurants, food plaza, health club, pubs etc. available within "Caliber Plaza (A.C. Market)" and hence the same cannot be construed as a "Mall" as per the definition under the notification dated 31.12.2014. Learned counsel during the course of hearing, even invited our attention to certain photographs appended as Annexure P-11 to stress the true import of the meaning of the word "Mall". In the same breath certain photographs appended as Annexure P-11 were also adverted to emphasize that "Caliber Plaza (A.C. Market)" could at best fall within the term "commercial building" for purposes of levy of property tax under the notification dated 31.12.2014.

Per contra, learned State counsel as also counsel representing Municipal Corporation, Ludhiana have justified the passing of the impugned order by stating that "Caliber Plaza (A.C. Market)" is a large shopping area comprising of around 700 shops in a five storey building having an escalator, lift as also parking facilities and as such would fall within the definition of "Mall" and not a "commercial building" for the purposes of levy of property tax.

In the reply filed by the Joint Secretary to Government of Punjab, Department of Local Government-respondent No.1, an earlier 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" stands reproduced 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 report, there are approximate 700 shops. Apart from the basement this building is five stories having facilities of Accelerator and lift. Apart from this there is more than 150 vehicles'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 Govt. notification No: 2/4/2014-5LG3/379043/1 dated 31.12.2014 is very much clear that "Malls" means shopping Complex/Centers, having Shops, Commercial Show Rooms, Restaurants, Food Plaza, Health Club and Fitness Centre, Clubs, Call Centers, 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."*

Learned State counsel has referred to the operative part of such order dated 28.08.2017 issued by the Commissioner, Municipal Corporation, Ludhiana containing a reasoning that the premises in question is fully facilitated with various amenities. Such commercial complex is a famous wholesale market and is known as a 'hub of business'. Furthermore, the Municipal Corporation, Ludhiana provides all basic amenities i.e. roads, sewerage and street lights and as such the premises are to be treated as a "Mall".

Even a report of the Senior Town Planner, Department of Local Bodies, has been referred to in the reply wherein it is noticed that the building is built on over 6560 sq. yds. of area and there are approximately 750 shops/offices in the building. Counsel for the respondents in unison have argued that the building has rightfully been held to be a "Mall" and has been levied tax accordingly in terms of the notification dated 31.12.2014.

We have heard learned counsel for the parties at length and perused the pleadings on record.

The short issue that arises for consideration is whether the "Caliber Plaza (A.C. Market)" would fall within the definition of a "Mall" under the notification dated 31.12.2014 (Annexure P-1) or it is to be treated as a "commercial building" for the purposes of levy of property tax?

It would be apposite at this stage to take note that earlier in point of time CWP No. 15980 of 2015 titled as Sudesh Rani Vs. State of Punjab and others and other connected petitions came to be filed before this Court raising the same very issue and pertaining to the same premises. Vide order dated 15.12.2016 (Annexure P-6) a Division Bench of this Court disposed of the petitions in terms of granting liberty to the petitioner(s) in the connected petitions to file a detailed and comprehensive representation along with the documentary proof to substantiate their claim as regards the premises to fall within the term of "commercial building". Directions were issued for the authorities concerned to pass a speaking order thereupon after affording an opportunity of hearing to the petitioner(s). CWP No. 16346 of 2016 titled as Satish Kumar Vs. State of Punjab and others came to be filed at a stage when a representation submitted by the petitioner therein as also other identically situated petitions had not yet been decided. During the pendency of CWP No. 16346 of 2016 an order dated 04.11.2016 came to be passed by the respondents authorities. This Court noticed that the order dated 04.11.2016 did not deal with the submissions/contentions raised by the petitioner(s) in the representation(s). Confronted with such a situation, 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 Municipal Corporation was accepted by this court and direction was issued for a speaking order to be passed. This led to the passing of order dated 28.08.2017 (Annexure P-8) taking a view that the property in question is covered under the definition of "Mall" and to be levied property tax accordingly. However, while deciding CWP No. 16346 of 2016 this Court took a view that proper consideration of the matter had not been accorded and the definition of a "Mall as contained in the notification dated 31.12.2014 as also that of "commercial building" under the Punjab Municipal Corporation/Council Building Bylaws 2004, has not been analyzed in the true perspective. Accordingly, the order dated 28.08.2017 passed by the Commissioner Municipal Council Ludhiana was set aside and the matter was remanded back to decide the issue afresh vide judgment dated 22.05.2018 passed by this court in CWP No. 16346 of 2016 (Annexure P-9).

It is in purported compliance of the directions issued by this Court that the impugned order dated 28.01.2019 (Annexure P-10) has been passed reiterating the view of treating "Caliber Plaza (A.C. Market)" as a "Mall" for the purpose of levy of property tax under notification dated 31.12.2014.

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 definition of Mall 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 Cage, 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 was stipulated even for 'commercial building' yet the Notification dated 31.12.2014 does not define the term '*commercial building*'.

Under the Ludhiana Municipal Corporations Buildings Bye-Laws 1997, 5 categories of buildings stand carved out i.e.

- Residential building,
- Commercial building
- Industrial or warehouse building
- Public building/institutional building
- Mixed land use building

Commercial building under the 1997 byelaws is defined in the following terms:

> *"Commercial Building: shall mean a building used or constructed or adopted to be used wholly or partially for shops, private offices, banks, nursing homes, hotels, restaurants, beauty parlours, boutiques, video libraries, marriage palaces, cinemas and auditoriums or any other such building used for similar purpose engaged in trade and commerce, but shall not include industries."*

Thereafter, the Punjab Municipal Corporations/Councils Building Byelaws (First Amendment) Bye-Laws 2004 were notified in which the following 03 categories in addition to the categories under the 1997 Bye-Laws were added i.e.

- Nursing homes/hospital building
- Marriage Palace building
- Multiplexes building.

"Commercial Building" came to be defined even under the amended 2004 Bye-Laws in the following terms:-

> *"Commercial Building: shall means a building other than industrial building used or constructed or adopted to be used wholly or partially for shops, private offices, banks, hotels, restaurants, beauty parlours, boutiques, video parlours, 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."*

A conjoint reading of the definition of 'Mall' under the notification dated 31.12.2014 (Annexure P-1) as also the definition of *'commercial building'* under the 1997 Building Byelaws and the amended 2004 byelaws would clearly indicate that both are over-lapping. However, in the notification dated 31.12.2014 (Annexure P-1) there is a separate categorization as regards levy of tax insofar as '*commercial building"* on the one had and multiplex/malls on the other. Even though the multiplex as also a mall stand defined under the notification dated 31.12.2014 (Annexure P-1), there is no definition of '*commercial building*' inspite of there being a distinct classification insofar as rate of tax is concerned. Under such situation, it would be imperative for each category of buildings under the 2014 notification to be assigned a meaningful identity for the various tax slabs under the notification to apply.

As per definition of "Mall" under the notification dated 31.12.2014 (Annexure P-1), a 'Mall' would be construed as an integrated complex comprising of a '*bouquet of activities'* in the nature of not only shops but also eating joints, health and fitness centers, cyber cafes, corporate offices, pubs and the like. Viewed from such perspective, a Mall would be seen as a "one stop destination" catering to the different needs of the public at large.

In juxtaposition case on behalf of the petitioner is that "Caliber Plaza (A.C. Market)" consists of shops confined to cloth trade and such premises have no activities in the nature of a health club, fitness center, restaurants, food plazas, clubs, call centers, corporate offices, convention hall, bank, cyber cafe, video game parlours, pubs, bowling alley and other recreational activities. Such factual premise has not been rebutted either in the pleadings or by counsel representing the respondent/Municipal Corporation at the time of hearing. 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.

The notification dated 31.12.2014 (Annexure P-1) recognizes a clear distinction between "commercial building" on the one hand and "Mall" on the other for the purposes of levy of property tax and at different rates. In case this Court were to accept the view taken on behalf of respondent-Municipal Corporation of treating the petitioner 'Plaza' as a 'Mall' then the distinction between a '*commercial building*' and a 'Mall' as per notification dated 31.12.2014 (Annexure P-1) would get obliterated. In view of the discussion hereinabove, we hold the decision of the Municipal Corporation to treat "Caliber Plaza (A.C. Market)" as a 'Mall' for the purposes of levy of property tax under the notification dated 31.12.2014 (Annexure P-1) to be erroneous.

The reasoning adopted in the impugned order dated 28.01.2019 (Annexure P-10) treating the petitioner plaza to be a Mall is as follows:

> *"It is needless to mention that approximate 750 shops and offices are situated in this shopping complex/centre. Moreover, dictionary meaning of "Shopping Complex" is "A group of retail stores and services establishments usually with ample parking facilities and usually designed to secure a Humanity and Neighbourhood". Similarly, the "Shopping Centre in the dictionary has been defined as "A group of shops with common area for parking". This Shopping Complex/Centre is open to public entry and has ample parking therein. The goods sold in this market is for public use. Above all, the building plan of the premises under reference was sanctioned as "Shopping Complex". This "Shopping Complex" was accordingly assessed as single unit and was allotted property No. B-II-1389.*
>
> *In the light of the above cited facts, record and the provisions of law, I have arrived at just conclusion that the Building No. B-II-1389 under consideration is a shopping complex/Centre which has approximate 750 shops and offices, therefore is a Mall as envisaged in clause 10 of the Government Notification dated 31.12.2014, therefore, the Tax on "Lands and Buildings" on the shops and offices situated in this Shopping Complex/Centre is leviable @ Rs. 15/- per square foot. Therefore, the prayer of the petitioners to levy and charge tax @ Rs. 4/- per square feet treating their shops as part of the Commercial building is declined/rejected according to the facts narrated above."*

The afore-reproduced reasoning would show that instead of analyzing the different categories of buildings under the notification dated 31.12.2014 (Annexure P-1) for the purposes of levy of property tax, the 3rd respondent has been swayed by the fact that there are a large number of shops and offices situated within the plaza and which is serviced with ample parking facility and, therefore, is a 'Mall'.

In our considered view, such reasoning is not well-founded. Merely for the reason that “Caliber Plaza (A.C. Market)” is built upon a total area of more that 6540 sq. yds. and is having a facility of escalator/lift as also ample vehicle parking space would not transpose the premises in question to fall within the definition and expression of 'Mall'. In our considered view, the petitioner 'Plaza' would fall within the expression *'commercial building'* under the notification dated 31.12.2014 (Annexure P-1).

For the reasons recorded above, writ petition is allowed. Impugned order dated 28.01.2019 (Annexure P-10) is set aside. Directions are issued for property tax to be levied upon “Caliber Plaza (A.C. Market)” by treating the same as a *'commercial building'* under the notification dated 31.12.2014 (Annexure P-1).

It is further directed that property tax already deposited in excess of the relevant slab pertaining to commercial buildings be calculated and refunded within a period of 03 months from the date of receipt of certified copy of this order.

The petition is allowed on the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

Dated:22.12.2022
kv

(SANJIV BERRY)
JUDGE

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