

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

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**CWP No.10377 of 2019 (O&M)
Date of decision: 21.04.2023**

RANJIT SINGH GILL**.... Petitioner****Versus****UNION OF INDIA AND OTHERS****.... Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present : Mr. Y.S. Dhaliwal, Advocate for the petitioner.

Mr. Sourabh Goel Sr. Standing Counsel with
Mr. Tej Bahadur and Ms. Shivani Sahni, Advocates
for respondents No.1 to 3.

Mr. Pankaj Gupta and Mr. Paras Jain, Advocate
for respondent No.2.

RITU BAHRI, J. (oral)

Learned counsel for the petitioner has referred to the judgment passed by this Court decided on 25.09.2018 in ***CWP-23404-2016***, titled as ***Balvinder Singh vs. Union of India and others*** which was disposed of in view of the judgments passed by Delhi High Court in WP(C) No.2235 of 2011 titled as ***Suresh Kumar Bansal vs. Union of India***.

The issue involved in the present case is that the petitioner is challenging the levy of service tax by including the share of land, which is transferred or intended to be transferred to the ultimate buyer. The petitioner is seeking quashing of letters dated 22.05.2012 and 05.07.2016 Annexures P-1 and P-2 respectively, issued by respondent No.2 whereby, service tax to be deposited by allottees is mentioned for each type of flat.

In the case of the petitioner, vide letter dated 05.7.2016 (Annexure P-2), respondent No.2 has issued an allotment letter and offer of possession of flat to the petitioner and all the details of the payments made by the petitioner before possession. In this letter, respondent No.2 is insisting upon the payment of service tax on the tentative price as per the prescribed rate as well as payment of welfare corpus @ 2% of the total sale amount.

This issue is came up for consideration before this Court in the case of *Balvinder Singh (supra)* in which by referring to the judgment passed by the Delhi High Court in *Suresh Kumar Bansal's case (supra)*, the civil writ petition is allowed on the ground that service tax cannot be levied at the time of offering possession of flat made by the builder.

The SLP against the judgment of *Suresh Kumar Bansal's case (supra)*, is pending before the Supreme Court, however there is no interim stay.

On this issue, the writ petition is being allowed in terms of the judgment passed by this Court in *Balvinder Singh (supra)*. However, the second prayer of the petitioner for refund of the maintenance charges paid before the possession, is left open and liberty is granted to the petitioner to avail alternate remedy in accordance with law.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

21.04.2023
Jyoti-IV

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