

Punjab-Haryana High Court

Budh Ram vs Municipal Committee And Anr. on 17 December, 2004

Equivalent citations: (2005) 140 PLR 63

Author: A K Mittal

Bench: A K Mittal

JUDGMENT Ajay Kumar Mittal, J.

1. The petitioner in the present writ petition under Articles 226/227 of the Constitution of India is aggrieved against the assessment of property bearing No. 2/925 which is situated within the municipal limits of Municipal Committee, Mansa whereby the annual value has been enhanced from Rs. 1,600/- to Rs. 8,000/- for the year 1985-86.

2. Briefly, the facts of this case are that the petitioner's building measuring 14 feet x 35 feet bearing unit No. 2/925, which is situated within the municipal limits of Municipal Committee, Mansa was assessed for the purpose of house tax for Rs. 1,600/-, for the year 1985-86. Accordingly, the petitioner deposited house tax amounting to Rs. 200/-plus Rs. 5/- as notice fee on 14.10.1985 as demanded by the respondent-Municipal Committee. The property of the petitioner, was, however, sought to be re-assessed for Rs. 25,500/- and notice Annexure P-1 in that behalf was accordingly issued to the petitioner. The action for re-assessment of the petitioner's property was done under Section 67(1) of the Punjab Municipal Act, 1911 (for short "the 1911 Act"). The petitioner submitted reply to the notice Annexure P-1, but his property was reassessed and the assessment for the purpose of house tax was made at Rs. 8,000/- vide order dated 26.2.1986, Annexure P-2. Aggrieved against the enhancement of assessment, as noticed above, the petitioner preferred appeal before respondent No. 2. The appeal was dismissed by the Additional Deputy Commissioner, Bhatinda vide order dated 17.3.1986, Annexure P-3. The petitioner, however deposited Rs. 792/- under protest on account of enhanced house tax.

3. In this petition the petitioner has prayed for the issuance of a writ of certiorari quashing the order of assessment of house tax made by the Municipal Committee, Mansa by order, Annexure P-2 and also the order Annexure P-3, passed by the Additional Deputy Commissioner, Bhatinda dismissing the appeal filed by the petitioner against the order of assessment.

4. In the written statement filed on behalf of respondent No. 1, it is stated that since the son of the petitioner had agreed to the assessment made on 28.2.1986, the petitioner was estopped from challenging the same. It is further stated that in the reply filed to the notice, the petitioner did not take any objection, which is clear from Annexure R-1. It is also stated that the entire unit in question was demolished and re-constructed in the year 1985-86 and it is for this reason the rental value of the property was increased. It was stated that the present tenant in the property in question has been praying Rs. 22,000/-per annum as rent, therefore, rental value of the property fixed at Rs. 8,000/- cannot be said to be excessive or arbitrary.

5. Learned counsel for the petitioner submitted that respondent No. 1 in its written statement in preliminary objection No. 2 has stated that order of assessment was passed by the Municipal Committee on 26.2.1986 in the presence of the petitioner and his son. According to the learned

counsel, once the petitioner was present on 26.2.1986 and the property belongs to him, therefore, the question for his son to have agreed for the assessment does not arise.

6. Learned counsel further submitted that a perusal of Annexure P-1 shows that Municipal Committee, Mansa has sought to take action under Section 67(1) of the 1911 Act. According to the learned counsel, under Section 67 of the 1911 Act, a change in the assessment list can be made only if the property was earlier erroneously valued or assessed through fraud, accident or mistake and not otherwise and the burden lies upon the Municipal Committee to establish this pre-condition before exercising its power for revising the assessment. The exact nature and detail of the fraud, accident or mistake which had resulted in undervaluation at the time of previous assessment must be stated in the notice and also proved by positive evidence. The issuance of notice under Section 67 is not a mere formality. Failure to provide such proof for increase in the assessment for any reason would render the exercise of power bad in law. The learned counsel then submitted that as per the facts of the present case, the Municipal Committee has failed to discharge its burden which was cast upon it before exercising the power vested in it under the 1911 Act for the assessment of rental value of the property in question for the purposes of the house-tax.

7. According to the learned counsel, the Municipal Committee through notice issued under Section 67(1) of the Act had sought to re-assess the annual value on the ground that the current rent for the shop in dispute for the year 1985-86 is Rs. 25,200/-. According to the learned counsel, this cannot be done as it is an established principle of law that in case of buildings governed by the East Punjab Urban Rent Restriction Act, 1949, the rental value of the building must be limited to the fair rent determinable under that Act. It is undisputed that the provisions of Rent Act are applicable to the building in dispute and, therefore, the rental value of the building has not been determined in accordance with the provisions of the rent Act.

8. Learned counsel for the respondents controverted the submissions made by the learned counsel for the petitioner and reiterated the stand taken in the written statement.

9. I have heard the learned counsel for the parties and perused the record.

Section 67 of the 1911 Act reads thus:-

"67. Further amendments of Assessment list:- (1) The Committee may at any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, or in the case of tax, payable by the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time, not less than one month from the date of service at which the amendment is to be made.

(2) Any person interested in any such amendment may tender his objection to the committee in writing before the time, fixed in the notice or orally or in writing at that time, and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent, as he may

think fit.

(3) Notwithstanding anything contained in this Act, the Committee may with a view to give effect to the annual value as modified by the Punjab Municipal (Amendment) Act 11, 1994, amend the assessment list of the year commencing on the first day of April of the relevant year for increasing or reducing annual value of any property and of the assessment thereupon after giving notice at any time to any person affected by the amendment of a period not less than one month from the date of service at which the amendment is to be made and in this regard by any such person and the amended assessment list shall come into force with effect from the first day of April of the year in which notice was given to the person affected."

The Apex Court in Food Corporation of India v. State of Punjab, A.I.R. 2001 S.C. 250;2001(1) P.L.J. 213 while interpreting the scope of Section 67 had in para 11 laid down as under:-

"11. On a reading of the afore-quoted provisions, it is clear that while vesting the power in the committee to amend an assessment list, the legislature has taken care to specify the circumstances in and the grounds on which such amendment may be made; it has also laid down the manner in which such amendment or revision of the assessment list is to be made. Care has also been taken to comply with the principle of natural justice by making the provision for giving notice to the person who is likely to be affected by the proposed amendment giving him not less than a month's time to tender objection, if any, to the committee and allowing him an opportunity of being heard in support of the objections raised. Notice to the effected person mandated in the section is not an empty formality; it is meant for a purpose. A vague and unspecific notice will not provide reasonable opportunity to the notice to file objection meeting the reasons/grounds on which the amendment of the assessment list is proposed to be made. Such a notice cannot be taken to be complying with the statutory requirement."

10. On a perusal of notice, Annexure P-1 issued by the Municipal Committee, it is clear that the notice is vague and it lacks particulars as it does not specify the nature of mistake, accident or fraud committed at the time of previous assessment by the owner/assessee. The re-assessment on the basis of current rent when the building is governed by the provisions of Rent Act is contrary to the Apex Court decisions in Devan Daulat Rai Kapoor etc, v. New Delhi Municipal Committee and Anr. A.I.R. 1980 S.C. 541, Dr. Balbir Singh and Ors. v. M.C.D. and Ors. A.I.R. 1985 S.C. 339.

11. The plea of the Municipal Committee that the son of the petitioner had agreed for the assessment and, therefore, the petitioner is estopped from challenging the same is equally devoid of merit. In the written statement, it has been stated in preliminary objection No. 2 that the petitioner alongwith his son was present on 26.2.1986. Therefore, there was no occasion for the respondents to get the signatures of the son of the petitioner when the petitioner himself was present. The respondents have not shown that the son of the petitioner had signed as attorney of his father. Moreover, the impugned orders Annexure P-2 and P-3 also do not mention anything regarding the acceptance of the annual value of the property at Rs. 8,000/- by the son of the petitioner. Thus, the contention of the respondents is rejected.

12. In view of above, the writ petition is allowed. Orders, Annexures P2 and P-3 are hereby quashed. There shall be, however, no order as to costs.