

Before : Gokal Chand Mital, J.

BHAKRA BEAS MANAGEMENT BOARD,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 3314 of 1979.

November 14, 1985.

Punjab Municipal Act (III of 1911)—Section 3(2)—Several residential quarters constructed in one compact building—Such quarters having separate numbers and allotted to different employees—Assessing authority—Whether can treat such quarters as one building—House tax—Whether can be assessed on the cumulative rental value of all such quarters.

Held, that a reading of section 3(2) of the Punjab Municipal Act 1911 shows that each house, hut, outhouse, shed or stable, whether used for the purpose of human-habitation or otherwise, includes a wall and a well. Therefore, if one quarter has a separate boundary wall, it would be one living unit and would be a building within the meaning of the Act. It is not disputed that each quarter is being occupied by a separate employee and as such each separate residential unit would be a building and will have to be treated as such for the purpose of levying house tax and the annual rental value of every separate unit will have to be taken into consideration and not the cumulative rental value of the entire rental building.

(Para 3)

PETITION under Articles 226/227 of the Constitution of India praying that this Hon'ble Court in exercise of its extra ordinary jurisdiction under Articles 226/227 of the Constitution of India praying that:—

- (i) *issue a rule nisi;*
- (ii) *order the respondents to transmit to this Hon'ble Court all the relevant records of the case forthwith;*
- (iii) *allow the writ petition;*
- (iv) *quash the impugned order of the Notified Area Committee, Nangal Township dated 2nd February, 1979 Annexure P.1*

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and order dated 31st August, 1979 of Additional Deputy Commissioner, Ropar Annexure P. 2 and the notice of demand for Rs. 19,668.87 of 6th September, 1979 issued by respondent No. 3, Annexure P. 3 for the Assessment Year 1979-80.

(v) issue a writ in the nature of Certiorari, Mandamus or any other writ, order or direction to the respondents to refund the excess tax already paid and to levy the tax strictly in accordance with the provisions of the Punjab Municipal Act, 1911 and the Punjab Government Notification dated 22nd January, 1976.

(vi) allow costs throughout.

(vii) exempt issuing of notices of motion to the respondents.

It is further prayed that till the final disposal of the writ petition, the operation of the Annexure P. 3 and recovery of the tax for the year 1979-80 may be stayed.

D. S. Nehra Senior Advocate with Arun Nehra, Advocate, for the Petitioner.

J. L. Gupta, Advocate with Rakesh Khanna, Advocate for respondent No. 3.

JUDGMENT

G. C. Mital, J. (Oral).

(1) Bhakra Beas Management Board, Chandigarh (shortly the Board) is a statutory body and is under the control of the Central Government. It owns a number of residential houses which were constructed at Nangal Township for providing residential accommodation to its officers, staff and workers, employed in the Power Houses. There are 10 types of houses ranging from Superintending Engineer to Peon and Mate. Each bungalow and quarter has separate boundary wall and is a compact unit with distinct and separate identification mark/house number and is allotted to each individual officer, staff member or worker. Each bungalow or quarter has been assessed at separate standard rent worked out according to the rules applicable to Punjab Government buildings of similar nature. The Notified Area Committee Nangal (briefly the Committee) issued a bill of house-tax dated 22nd January, 1979 for the year 1978-79,

amounting to Rs. 19668.87. A copy of the bill is Annexure P5. In this bill, the Committee had clubbed quarters or bungalow which adjoin each other and from outside looked like compact building and in this manner, calculated annual rental value and assessed the house-tax. The Board filed objections (Annexure P6) against the assessment of house-tax. Therein it was pointed out that a building having annual rental value not exceeding Rs. 840 was exempt from tax and that most of the quarters whose rental value did not exceed Rs. 840 were exempt from tax. It was also pointed out that certain building had rental value above Rs. 840, but not exceeding Rs. 1,800 and therefore, 12½ per cent tax could be imposed, whereas 15 per cent was imposed which could be imposed on premises, the annual rental value of which exceeded Rs. 1,800. In support of his contention reliance was placed on notification (Annexure P7). It was also pointed out that for the earlier assessment year Civil Writ Petition No. 1946 of 1978 was pending in the High Court and the demand be kept in abeyance. This was rejected by letter Annexure P1. The Board filed an appeal before the Deputy Commissioner. The Additional Deputy Commissioner who heard the appeal, dismissed the same,—vide order dated 31st August, 1979 (Annexure P2) relying upon the earlier decision of the former Deputy Commissioner wherein it was remarked that the Committee should assess the house-tax, considering each block as a separate unit. It was also held that the key word 'building' meant a compact building which is physically separate and distinct from another building, even if it has been provisionally sub-divided into a number of independent units and sublet to different persons. A Division bench decision of this Court, reported in *Sadhu Ram Jain v. State of Punjab and others*, (1) was distinguished by observing that therein different buildings of the same owner were involved and it was held that the rental value of those separate buildings could not be clubbed while making the assessment of house-tax. Some of the relevant words of the Additional Deputy Commissioner in distinguishing that decision are as follows:

“For the purpose of this appeal the key word in the above ruling is “different”, which, under the circumstances of the case, it would be safe to presume means distinct, separate, not the same.”

Feeling aggrieved, the Board has come to this Court in this writ jurisdiction.

(1) 1977 Revenue Law Reporter 79.

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(2) Pending the writ petition, interim order was passed declining stay with the observation that in case the amount is paid and ultimately the writ petition is allowed, the Committee would return the excess amount received along with 6 per cent interest. The writ petition remained pending for a long time and every year the Board filed application for stay and till 1983-84 it was ordered that in case the writ petition is allowed, the Board would forthwith refund the amount, along with interest at the rate of 6 per cent. For the subsequent year it was ordered that the Board would be entitled to the refund of the amount along with interest at 12 per cent.

(3) After hearing the learned counsel for the parties and on perusal of the record, I am of the view that the writ petition deserves to be allowed. A reading of order Annexure P2 shows that each compact building consisting of several quarters or flats, which were physically separate and distinct from each other, was treated as one unit for assessment of annual value. In paragraph 2 of the writ petition, the following averment was made :

“That for the construction, maintenance and operation of the Bhakra Power Houses, situated at left and right banks of the river Sutlej at Bhakra, a number of residential houses were constructed at Nongal Township, for providing residential accommodation to the officers, staff and workers employed in these power houses. This residential accommodation comprised of the following categories :—

- (i) S. E. Type Bungalows.
- (ii) Executive Engineer type bungalows.
- (iii) S.D.O. Type Bungalows.
- (iv) Superintendent type quarters.
- (v) Senior Clerk type quarters.
- (vi) Junior type quarters.
- (vii) Converted type quarters.
- (viii) Fitter type quarters.
- (ix) Peon type quarters.
- (x) T. Mate type quarters.

Each of the above bungalows, quarters have separate boundary walls, and is a compact unit with distinct and separate identification marks/house number and allotted to each individual officer, staff and worker. Each of the bungalows/quarters has been assessed at separate standard rent worked out according to rules applicable to Punjab Government buildings of similar nature. A list showing the description of the building, identification, No. of the building, monthly standard rent and yearly standard rent is attached as Annexure 'P-4' to the writ petition."

No reply has been filed by any of the respondents and therefore, the aforesaid statement of fact remains uncontroverted. It shows that for providing accommodation to the officers, officials, technical-hand officials, peons and mates, residential accommodation was constructed and separate bungalows and quarters were built, each having separate boundary wall with a compact living unit. Merely because a common wall of 2 or 10 quarters is joined together, from outside it may look like one building, but each separate living unit would be a different and separate building within the meaning of 'building'. 'Building' is defined in section 3(2) of the Punjab Municipal Act, 1911 in the following terms :

" "building" means any shop, house, hut outhouse, shed, or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever; and includes a wall and a well."

A reading of the aforesaid definition shows that each house, hut, outhouse, shed or stable, whether used for the purpose of human-habitation or otherwise, includes a wall and a well. Therefore, if one quarter has a separate boundary wall, it would be one living unit and would be a building within the meaning of the Act. Merely because 10 such quarters have common wall, it would not mean that 10 separate residential quarters cannot be termed as 10 buildings and has to be taken as one building for the purpose of calculating rental value. It is not disputed that each quarter is being occupied by a separate employee. Hence, on the interpretation of the word 'building' and on first principles, I am of the view that each separate residential unit would be a building and will have to be treated as such for the purpose of levying house-tax and in doing so,

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the annual rental value of every separate unit will have to be taken into consideration. The Committee and the Additional Deputy Commissioner completely went wrong in treating one block of buildings, consisting of several quarters and residential houses as one building. The stand of the Committee could not be supported by any principle or authority.

(4) Faced with the situation Shri J. L. Gupta, Senior Advocate, appearing on behalf of the Committee urged that if two views are possible for interpreting the word 'building' and the one adopted by the Committee and the Additional Deputy Commissioner is possible, this Court should not interfere in its extraordinary writ jurisdiction. Firstly, only one interpretation is possible, that each separate living unit is a building. Even if two views are possible, since it is a taxing matter, the view which would help the assesseees will have to be taken. Therefore, viewing the case from any angle, the argument cannot prevail.

(5) For the reasons, recorded above, this petition is allowed with costs and the assessment made vide order Annexure P 5 and the decision of the Additional Deputy Commissioner Annexure P2, are hereby quashed, with a direction that each bungalow or a quarter which is separately occupied by an officer, official, clerk or a mate, has to be assessed and if the annual rental value is found out to be less than the minimum, bringing it in the exemption clause, then on the quarter or bungalow no house tax would be leviable. Where annual value will come above the exemption limit, but not exceeding Rs. 1,800, tax at the rate of 12½ per cent would be leviable and on the building where assessment exceeds Rs. 1,800, house tax at the rate of 15 per cent would be leviable. If there is any amendment in this behalf during the period, the same would also be taken notice of by the Committee while making the assessment. On that basis, demands would be raised against the Board.

(6) Under the interim orders of this Court, the Committee was held liable to return the excess amount, along with 6 or 12 per cent interest. The Committee would make the assessment in accordance with law, keeping in view the observations made in this order, within a period of 3 months from today. In case the assessment is made within 3 months, whatsoever excess would be found with the Committee, that will be refunded by it to the Board, along with

6 per cent or 12 per cent, as the case may be, within 3 months thereafter. In case the Committee does not finalise the assessment within 3 months from today, it would be liable to refund the house-tax collected by it for the year 1979-80 till date, along with 6 per cent or 12 per cent interest, as the case may be, forthwith on the expiry of 3 months from today. In that event, the Board would be liable to pay only when assessment of annual rental would be finalised in accordance with law.

N.K.S.