

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

ATMA SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2498 of 1988 (O & M)

July 26, 1988.

Punjab Municipal Act (III of 1911)—Ss. 63 to 67—House tax—Preparation of fresh assessment list—Notice under Sections 63 and 66 issued simultaneously—Public notice of required duration not issued—Safeguards provided under the Act violated—Assessment made—Validity of such assessment.

Held, that the notice purporting to be under Sections 63 and 67 of the Punjab Municipal Act, 1911, that is to say, for preparation of assessment list and the settlement of list simultaneously was issued. It was given out that the completed and approved assessment list for the next year could be inspected in the office of the Municipal Committee during office hours. Surprisingly no public notice at this juncture was given. Even if it is accepted that this notice was meant to be published under Sections 63 and 64 of the Act or even under Section 65 of the Act and not under Section 66, public notice of a time not less than one month thereafter had to be given before any legally conclusive measures could be taken.

(Paras 5 and 6)

Held, that the entire process adopted by the Municipal Committee was hurried, hasty, slipshod and with the sole aim of raising its revenue, throwing to winds all the safeguards provided in the Punjab Municipal Act, 1911 under the provisions of Sections 63 to 67. Without the slightest hesitation we quash the entire process, leaving it open to the Committee in future to take any steps known to law.

(Para 6)

Civil Writ Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to issue as under:—

- (a) *a Writ of Mandamus directing the Respondents-Authorities to make fresh assessment of house tax in accordance with law.*
- (b) *a writ of Mandamus directing the Respondents-Authorities not to recover the house tax on the basis of the assessment made for the year 1988-89.*

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- (c) *any other Writ, Order or Direction as this Hon'ble Court may deem fit and proper under the circumstances of the case.*
- (d) *Service of advance notices as required under the Rules be dispensed with.*
- (e) *filing of certified copies of Annexures P.1 to P.9 may be dispensed with.*
- (f) *cost of the petition be awarded to the petitioners and record be called for and perused.*

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It is further prayed that the recovery of the house tax on the basis of the assessment made for the year 1988-89 be stayed till the final decision of the present Writ Petition.

CIVIL MISC. No. 3262 of 1988:

Application Under Section 151 of the Code of Civil Procedure praying that the aforesaid Misc. Petition be allowed and Shri Atma Singh one of the petitioners be allowed to argue the case before the Division Bench.

CIVIL MISC. No. 3263 of 1988.

Application Under Section 151 of the Code of Civil Procedure praying that this Misc. petition be accepted and the recovery of the impugned house tax from the petitioners may kindly be stayed in the interest of justice, Equity and Fairplay.

CIVIL MISC. No. 5141 of 1988.

Application Under Section 151 of the Code of Civil Procedure praying that this miscellaneous petition be accepted and this Hon'ble Court be pleased to grant similar relief to the petitioners during the pendency of this writ petition.

Gurnam Singh, Advocate, for the Petitioners.

S. S. Saroan, A.A.G. Punjab, for Respondents 1 & 2.

A. N. Mittal, Advocate, for Respondents 3 & 4.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) This writ petition is on behalf of 141 property owners of Mandi Gobindgarh, challenging the entire process of enhancing house-tax within the municipal area of Mandi Gobindgarh.

(2) We would not burden this order with unnecessary details. Suffice it to mention that the properties of the petitioners were being assessed to house-tax prior to the year 1988. It can be assumed that those were on the basis of an assessment list maintained by the Municipal Committee. It appears that all of a sudden the Committee decided to prepare a fresh assessment list under section 63 of the Punjab Municipal Act, 1911 (for short, the Act). That provision initiates the procedure for assessing immovable property. Thereunder the Committee shall cause an assessment list of all buildings and lands on which any tax is imposed to be prepared containing the particulars mentioned therein. After the preparation of the list, a public notice thereof is required to be given under section 64 of the Act. Every person claiming to be either the owner or occupier of the property included in the list is at liberty to inspect the list and make extracts therefrom without charge. Under section 65 a public notice is to be given of a time not less than one month thereafter when it will proceed to revise the valuation and assessment. The objections to the valuation and assessment are required to be made in writing before the time fixed, orally or in writing at the time of revising the assessment list. Under section 66 the list is settled after objections have been enquired into. Section 67 prescribes further amendments of assessment list and in that case individual notices have to be served on all persons affected by the amendment. These are the broad provisions which are applicable when preparation or revision of an assessment list is made.

(3) The grouse of the petitioners is that Mandi Gobindgarh is an urban area to which the provisions of the East Punjab Urban Rent Restriction Act are applicable. Their grouse is that the assessments have been revised uniformly five to six times without taking into account the rental values of the buildings in accordance with the provisions of the East Punjab Urban Rent Restriction Act as also without going into the question as to whether there was any alteration or re-erection of buildings.

(4) It is not denied by the committee that the entire assessment has been overhauled. Rather in its return the supporting evidence goes to show that the Committee was oblivious of the provisions of the East Punjab Urban Rent Restriction Act, its applicability to tenanted buildings and other buildings which were self-occupied. Annexure R-4/2 is a copy of order No. 309, dated 4th November, 1987. Thereunder orders were obtained from the Administrator approving

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exercise to be undertaken under sections 63 to 67 of the Act for survey and preparation of the assessment lists, so that necessary steps be taken before 31st March, 1988. On 8th January, 1988,—*vide* order Annexure R-4/3 the assessment lists prepared by the staff under sections 63/64 of the Act were approved, and obviously *ex parte*. Cover was sought to be taken under the provisions of section 65 as these lists were to be thrown open to general public and notices in that regard issued. These notices had to be decided before 31st January, 1988 as given out in the office order so that the tax could be recovered for the year 1988-89. This was incumbent under the provisions of section 66 of the Act, for the tax could be imposed with effect from the first day of January or the first day of April next ensuing. 1st April being close-by, the Administrator on 8th January, 1988, as said before, was keen in having the process completed on 31st August, 1988.

(5) Then followed the notice Annexure R-4/4 on 14th January, 1988 purporting to be under sections 63 and 66 of the Act, that is to say, for preparation of assessment list and the settlement of list simultaneously. It was given out that the completed and approved assessment list for the year 1988-89 could be inspected in the office of the Municipal Committee during office hours. Surprisingly no public notice at that juncture was given. Even if we accept the oral assertion of the learned counsel for the Committee that this notice was meant to be under sections 63 and 64 of the Act or even under section 65 of the Act and not under section 66, public notice of a time not less than one month thereafter had to be given before any legally conclusive measures could be taken. 30 days from 14th January, 1988 expired in February 1988 and the entire exercise to have the tax imposed with effect from 1st April, 1988, would have ended in a fiasco. That was the reason why the provisions of sections 64 and 65 were given a go by and straightaway section 66 was resorted to. Under that cover individual notices were issued to the writ petitioners in the form of Annexure R-4/5 on 9th February, 1988, suggesting raising of objections within 30 days against the valuation and if no objections were to be attracted, the proposed finalisation and the amount of tax payable was simultaneously mentioned therein. So the invitation to objections were tagged with the demand of tax; a procedure unknown to law.

(6) As said before, we would not elaborate any further. The entire process adopted by the Municipal Committee was hurried,

hasty, slipshod, and with the sole aim of raising its revenue, throwing to winds all the safeguards provided in the Act under the provisions of sections 63 to 67. Without the slightest hesitation we quash the entire process, leaving it open to the Committee in future to take any steps known to law. This petition is accordingly allowed *in limine* with costs. The petitioners tax payers will get Rs. 5,000 as costs, payable by the Committee.

S.C.K.

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

GURCHARAN SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5982 of 1988

July 27, 1988.

Punjab Gram Panchayat Act (IV of 1952)—Ss. 102(4) and (6)—Joint Director exercising powers of Director of Panchayats passing order of suspension under Section 102(4) against a Sarpanch—Appeal under Section 102 (6) heard by Joint Secretary—Joint Secretary—Whether has jurisdiction to decide the appeal.

Held, that the argument that Secretary to Government Punjab is also conferred the powers of the Director of Panchayats, and *a fortiori* the Joint Secretary has been conferred the powers of Joint Director of Panchayats and, therefore, an appeal could not lie suffers from a basic fallacy, for an officer may be conferred with more than one power but the point arises that he must at one point of time be aware of what powers he is exercising and whether he was competent to do so or not. Thus, the Joint Director of Panchayats who having been conferred by notification all the powers, duties and functions of the Director under the Punjab Gram Panchayat Act, 1952, the original order being of Joint Director may be conferred with the powers of the Director of Panchayats and an appeal against his order lies under the Standing Orders dated May 10, 1988 to the Joint Secretary, Rural Development and Panchayats. The appellate order was thus passed in the valid exercise of jurisdiction.

(Paras 5 and 6).