

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CWP-5348-2007 (O&M)
Date of decision:-13.02.2023

SHRI DAULAT RAM KHAN

.... Petitioner

VS.

STATE OF HARYANA AND ORS

...Respondents

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

Present: Mr. Rajesh Lamba, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Prateek Mahajan, Advocate for respondent No.3.

Ritu Bahri, J. (Oral)

In the present petition, petitioner is seeking writ of certiorari quashing of order dated 14.03.2007, Annexure P-1 vide which auction has been fixed for 09.04.2007 in Municipal Auditorium, NIT, Faridabad.

A perusal of the order dated 14.03.2007, Annexure P-1 reveals that the tax on lands and buildings of the petitioner was assessed @ Rs.225989/- per annum and notice of demand including arrears upto 2005-06 in the prescribed forms were served upon the assesses vide bill No. 56/2417 dated 12.07.2005 for an amount of Rs.1014217/- in accordance with provisions of Section 128 of the

Haryana Municipal Corporation Act, 1994.

In order to recover this amount, the Joint Commissioner, NIT Zone Faridabad exercising the power of Commissioner 401(2) of Haryana Municipal Act, 1994 ordered the attachment of plot No. Khan Daulat Dharamshala NH-2(Area/Sector) and building constructed thereon and gave further direction to put the property on public auction on 09.04.2007 at 11:00 am in the Municipal Auditorium, NIT, Faridabad for recovery of the tax.

In the present case, notice of motion on 05.04.2007 and operation of impugned order Annexure P-1 was stayed. Thereafter, the present writ petition was admitted on 04.11.2008 and interim order was to continue.

Learned counsel for the petitioner has referred to a judgment given by co-ordinate Bench of this Court in CWP No.3537 of 2004 decided on 10.01.2006, ***Digamber Jain Society for Child Welfare (Registered), Faridabad and another vs. State of Haryana etc.*** Perusal of this judgment shows that as per the notification dated 30.07.1975 and 30.09.2003, building eligible for exemption from house tax was referred to and as per para 3 of the notification dated 30.09.2003, all buildings and land or portions thereof used exclusively for educational purposes where fees at rates prescribed by Government or equivalent to Government school are charges were exempted from payment of house tax. The writ petition was allowed. Keeping in view that Digambar Jain Society was an approved institution and the demand notice for house tax could not be issued,

the writ petition was allowed by referring to another judgment passed of this Court passed in CWP No. 14138 of 2003, **Tagore Bal Niketan Senior Secondary School Vs. State of Haryana and others** decided on 23.08.2004. A perusal of this judgment also shows that even in that also the issue was whether the schools which are covered by the notification for exemption from house tax can be made liable to pay house tax. In that case also, reference was made to Section 69(a) of the Haryana Municipal Act, 1973, where the stand of the respondent is that the education was not being imparted to 4th class society and therefore, it cannot be held that this institute is charitable. The division Bench observed that Clause (v) of the notification was categoric in providing that buildings and lands used exclusively for educational purposes are exempted from house tax and Clause (iv) was not applicable where a building is used for educational purposes but covers the case of either buildings attached to or owned by educational or charitable institutions. The only objection which the court had examined was that if the institute was making profit and was not imparting free education or complying with other conditions mentioned in Clause (iv), could not be a ground to reject the case of exemption from house tax. The writ petition was allowed keeping in view that the case of the petitioner was covered by exemption notification for the relevant period.

In the present case, relevant notification for seeking exemption is 30.09.2003, Annexure P-6, issued by the Haryana Urban Development Department, which has already been considered by this

Court while deciding CWP No. 3537 of 2004, dated 10.01.2006. As per this notification, all religious buildings and lands shall be exempted from the payment of tax. Relevant extract of which is as under:-

1. *All mosques, temples, churches, dharamshalas, gurudwaras, charitable hospitals, orphan alm houses, drinking water fountains, Municipal Corporation buildings and lands, cremation grounds, Muslim and Hindu graveyards, Christian cemeteries, imambaras, Government Nazul lands under the management of Municipal Corporation, Faridabad, agricultural lands which are cultivated and are assessed to land revenue.*
2. *All residential buildings and lands where annual rateable value does not exceed Rs.1200/- per annum.*
3. *All buildings and land or portions thereof used exclusively for educational purposes where fees at rates prescribed by Government or equivalent to Government schools are charges, including approved colleges, schools, boardings, Hostels and libraries, if such buildings and land or portion there are either owned by the educational institutions concerned or have been placed at the disposal of such Educational Institution without payment of any rent.*

Note:- No exemption will be given to any property as defined in Clauses (1) and (3) if any portion thereof has been

constructed or used for commercial purposes.

As per the above said provisions, the petitioner's case fall under sub-clause (1) as it is a Dharamshala and as per the proviso, this exemption from house tax cannot be given to any property if any portion thereof has been constructed or used for commercial purposes. Even this aspect has been considered by this Court in allowing the CWP No. 3537 of 2004.

The only ground for not extending the benefit of exemption is that the petitioner-Dharamshala is charging money for marriage purposes. The stand taken by the respondents in para 5 of the written statement is that the petitioner-Dharamshala has not undertaken any type of charitable activity and profit by way of renting the building for marriage parties and other commercial functions. Except this, no other ground has been taken by the respondents.

The fact is that this institution is registered as a Dharamshala and is covered by sub-Clause (1) of the notification dated 30.09.2003, Annexure P-6. With respect to conducting marriages, Dharamshala is registered for the use of the community as such and conducting marriages amounts to extending further service to the community and this will not amount to any commercial activity as such. There are private institutes which are made only for marriage purposes which are very expensive and they are the institutes which can taken to be as commercial activity for conducting marriage ceremonies. If Dharamshala is provided on a nominal rent for

conducting marriages, it will not amount to commercial purpose.

In view of the above, the present petition is allowed. Order dated 14.03.2007, Annexure P-1 whereby auction is fixed, is set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

13.02.2023

pooja saini

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



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