2025:PHHC:061282

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-9915-1992 (O&M)
Date of Decision: 09.05.2025

Punjab Alkalies and Chemicals Limited Through
Its Company Secretary Shri Pardeep Nauharia

..... Petitioner

Versus

Notified Area Committee, Naya Nangal, District Ropar Through
Its Executive Officer and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Arun Nehra, Advocate and
Mr. Sant Kashyap, Advocate
for the petitioner.

Mr. Randhir S.Mangat, Advocate for
Mr. K.D.S. Sidhu, Advocate
for respondent No.1.

Mr. Navneet Singh, Senior DAG, Punjab.

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HARSH BUNGER J. (ORAL)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside impugned order dated 21.02.1987 (Annexure P-4) passed by the learned Executive Officer, Notified Area Committee, Naya Nangal; order dated 15.07.1991 (Annexure P-8) passed by the learned

Deputy Commissioner, Ropar; and order dated 29.10.1991 (Annexure P-10) passed by the learned Secretary to Government of Punjab, Department of Local Government.

2. Briefly, the petitioner-Company is engaged in the manufacturing and sale of caustic soda, liquid chlorine and other inorganic chemicals; and owns its manufacturing unit at Naya Nangal within the Notified Area Committee, Naya Nangal (presently 'Municipal Council').

2.1 Respondent No.1 (Notified Area Committee, Naya Nangal) issued notice dated 02.04.1984 (Annexure P-1) to the petitioner-Company, indicating that it had assessed the Annual Rental Value of the petitioner's Industrial Buildings, etc., at the rate of 5% of the capital cost as Rs.10,01,078.10/- and the House Tax worked out to Rs.1,50,161.71/- (being 15% of the Rental Value) for the year 1984-85.

2.2 It appears that the petitioner-Company, vide letter dated 11.05.1884, claimed exemption from payment of House Tax for a period of three years by placing reliance upon the Punjab Government Notification dated 01.06.1983 (Annexure P-3).

2.3 The Notified Area Committee, Naya Nangal granted exemption, as sought by the petitioner-Company, however, after expiry of three years, the respondent-Committee, vide order dated 21.02.1987 (Annexure P-4), again assessed the House Tax of the petitioner's Industrial Premises for the year 1987-88 at Rs.1,50,161.71/-.

2.4 Petitioner-Company claims that it paid the aforesaid amount of House Tax under protest vide receipt dated 11.08.1987. Thereafter, the petitioner-Company challenged the aforesaid order dated 21.02.1987 (Annexure P-4) by filing an appeal before the Deputy Commissioner, Ropar,

which came to be partly allowed to the effect that the Annual Rental Value was ordered to be calculated at the rate of 4% of the capital cost as against 5%, vide order dated 14.09.1988 (Annexure P-5).

2.5 Still aggrieved, the petitioner-Company challenged the aforesaid order dated 14.09.1988 (Annexure P-5) by way of filing a petition under Section 237 of the Punjab Municipal Act, 1911 (in short 'the 1911 Act') before the Joint Secretary, Local Government, Punjab. On the other hand, the respondent-Committee also challenged the said order (Annexure P-5) by way of filing a separate petition.

2.6 Both the aforesaid petitions came to be decided by the Joint Secretary, Local Government, Punjab vide order dated 18.07.1990 (Annexure P-6), whereby, the assessment was maintained at the rate of 4% of the capital cost.

2.7 Still aggrieved, the respondent-Committee preferred a writ petition (CWP-4032-1991) before this Court, which came to be disposed of vide order dated 19.04.1991 (Annexure P-7) by observing as under:-

> "*Perusal of orders, Annexures P/4 and P/5 shows that the orders have been passed mechanically. No reason has been given for reduction in tax from 5% to 4%. The Joint Secretary while hearing the appeal has also not given any reason for his agreeing with these orders. Such orders have been passed mechanically and without application of mind and the same are set aside and appellate authority is directed to decide the appeal by passing a speaking order within three months from the receipt of this order.*"

2.8 Thereafter, the matter was again taken up by the learned Deputy Commissioner, Ropar, who vide its order dated 15.07.1991 (Annexure P-8) again ordered that the Annual Rental Value be assessed at the rate of 4% of the capital cost of the building.

2.9 Still aggrieved, the respondent-Committee preferred a revision petition before the Secretary, Local Government, Punjab, which came to be allowed vide order dated 29.10.1991 (Annexure P-10), thereby setting aside order dated 15.07.1991 (Annexure P-8).

3. In the aforementioned circumstances, petitioner has filed the instant writ petition before this Court seeking relief(s), as noticed hereinabove.

4. Learned counsel for the petitioner submits that the premises regarding which the House Tax Assessment has been made is situated within the area of Naya Nangal, where the provisions of East Punjab Rent Restriction Act, 1949 (in short 'the 1949 Act') are applicable. It is accordingly contended that in terms of the provisions of the 1949 Act, the respondent-Committee is to assess a building for the purpose of house tax on the basis of fair rent and not on the basis of capital cost of the land and building, as has been done in the instant case. It is submitted that the fixation of Annual Rental Value at the rate of 5% of the capital cost is wholly arbitrary and unjustified as the area of Naya Nangal is not a big Industrial Township and has no administrative importance. It is contended that the Annual Rental Value of the building in question is not more than 2 Lacs per years, and therefore, the assessment of the premises in question is required to be done on the basis of fair rent. Accordingly, prayer has been made for setting aside the impugned orders and for remanding the matter back to the respondent No.1-Committee/Municipal Council, for assessing the property after determining the fair rent thereof.

5. Learned counsel for the respondent-Committee has opposed the submissions of learned counsel for the petitioner by submitting that in the

earlier round of litigation, the Revisional Court had passed order dated 18.07.1990 (Annexure P-6), whereby the premises in question was ordered to be assessed on the basis of Annual Rental Value at the rate of 4% of the capital cost, as against 5%, which has not been challenged by the petitioner any further, and therefore, the same has attained finality. It is submitted that location of the premises cannot be an exceptional circumstances for calculating the lower percentage than 5% of the capital cost. It is submitted that the House Tax has rightly been assessed by the respondent-Committee at the rate of 5% of the capital cost and no reduction thereof is called for, as the same is in consonance with Section 3(1)(c) of the 1911 Act. It is next submitted that it was difficult to assess the fair rent of the premises in question as the same was never let out and there was no similar accommodation which has been rented out in the adjoining areas of the Naya Nangal. It is further submitted that since the premises is self-occupied building of the petitioner-Company and the petitioner being a big Industrial Unit, there can hardly be any premises in the township of Naya Nangal on the basis of which fair rent could be calculated. Accordingly, prayer for dismissal of the instant writ petition has been made.

6. In rebuttal, learned counsel for the petitioner has placed reliance upon judgment rendered by the Hon'ble Supreme Court in ***"Dewan Daulat Rai Kapoor v. New Delhi Municipal Council and Others", (1980) 1 SCC 685***; to contend that even in case of self-occupied buildings, the annual value must be determined on the basis of the standard rent determinable under the provisions of the Rent Act.

7. I have heard learned counsel for the parties and gone through the paper book with their able assistance.

8. In the present case, the petitioner is claiming assessment of House Tax on the basis of fair rent, whereas, the stand of respondent-Committee is that it is difficult to assess the fair rent of the premises in question as it is self-occupied by the petitioner-Company and there is no such similar building/land which has been rented out in Naya Nangal.

9. Here, it would be gainful to refer to a few judicial pronouncements.

10. The Hon'ble Apex Court in ***"Dewan Daulat Rai Kapoor v. New Delhi Municipal Council and Others", (1980) 1 SCC 685*** has observed as under:

> *"11. The problem can also be looked at from a slightly different angle. When the Rent Control Legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measures of the standard rent prescribed by it to be reasonable. It lays down the norm of reasonableness in regard to the rent payable by the tenant to the landlord. Any rent which exceeds this norm of reasonableness is regarded by the legislature as unreasonable or excessive. When the legislature has laid down this standard of reasonableness, would it be right for the court to say that the landlord may reasonably expect to receive rent exceeding the measure provided by this standard? Would it be reasonable on the part of the landlord to expect to receive any rent in excess of the standard or norm of reasonableness laid down by the legislature and would such expectation be countenanced by the court as reasonable? The legislature obviously regards recovery of rent in excess of the standard rent as exploitative of the tenant and would it be proper for the court to say that it would be reasonable on the part of the landlord to expect to recover such exploitative rent from the tenant? We are,*

therefore, of the view that, even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of the standard rent.

12. It is, therefore, clear that in each of the present cases, the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 and it cannot exceed such measure of standard rent. We accordingly allow Appeals Nos. 1143 and 1144 of 1973 and declare in each of these two cases that the assessment of the annual value of the building in excess of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 was illegal and ultra vires. So far as Appeal No. 1201(N) of 1972 preferred by the Municipal Corporation of Delhi is concerned, it relates to assessment of annual value of self-occupied building and since we have held that in case of self-occupied building also, the annual value must be determinable on the basis of the standard rent determinable under the provisions of the Delhi Rent Control Act, 1958 and there we have agreed with the judgment of the High Court, that appeal must be dismissed. The assessee in each case will get his costs through."

11. It is apposite to note here that the judgment rendered by the Hon'ble Supreme Court in the case of ***Dewan Daulat Rai Kapoor*** **(supra)** was again considered by a Three Judge Bench of the Hon'ble Supreme

Court in the case of ***"Dr. Balbir Singh v. M.C.D" 1985 (1) SCC 167***; wherein the question of law which came up for consideration before the Hon'ble Supreme Court and also the different categories of properties *qua* which the issue regarding determination of rateable value may arise; was noticed in paragraphs No.1 and 2, which reads as under:-

> *"This group of writ petitions and appeals raise interesting questions of law in regard to determination of rateable value of certain categories of properties situate in the Union Territory of Delhi. The questions are of great importance since they affect the liability of a large number of property owners in the Union territory of Delhi to pay property tax under the Delhi Municipal Corporation Act 1957 and the Punjab Municipal Act, 1911. The appeals before us arise out of writ petitions filed in the High Court of Delhi challenging assessments made by the Municipal Corporation while the writ petitions fall broadly into two categories-one category consisting of writ petitions which were originally filed in the High Court of Delhi but were subsequently transferred to this Court, while the other consisting of writ petitions which were filed directly in this Court. We are definitely of the view that the writ petitions filed directly in this Court are not Maintainable under Article 32 of the Constitution since none of them complains of violation of any fundamental right and ordinarily we would have rejected them straight way without going into the merits, but the parties before us agreed that in view of the fact that these writ petitions involve identical questions as the appeals and the other writ petitions transferred to this Court and those questions would in any event have to be determined by us, we should not dismiss these writ petitions on the ground of non-maintainability but should proceed to dispose them of on merits on the assumption that they are maintainable.*
>
> *2. We are concerned in these appeals and writ petitions with four different categories of properties namely (1) where the*

> *properties are self-occupied, that is, occupied by the owners (ii) where the properties are partly self-occupied and partly tenanted; (iii) where the land on which the property is constructed is leased hold land with a restriction that the lease hold interest shall not be transferable without the approval of the lessor and (iv) where the property has been constructed in stages. The question is as to how the rateable value is to be determined in respect of these four categories of properties. So far as properties situate in the Union Territory of Delhi except New Delhi are concerned. the determination of rateable value for the purpose of assessability to property tax is governed by the Delhi Municipal Corporation Act, 1957 while the determination of rateable value for the purpose of assessability to property tax in respect of properties situate in New Delhi is governed by the Punjab Municipal Act, 1911. The relevant provisions of both these statutes in respect of determination of rateable value for the purpose of assessability to property tax are almost identical as observed by this Court in Dewan Daulat Ram v. New Delhi Municipal Committee, 1980(1) Rent Control Reporter 619 (SC) and it would therefore be sufficient if we refer to the provisions of the Delhi Municipal Corporation Act, 1957. Whatever we say in regard to determination of rateable value under the provisions of the Delhi Municipal Corporation Act, 1957 would apply equally in relation to determination rateable value under the provisions of the Punjab Municipal Act 1911.*"

11.1 As regards the case in hand is concerned, the question for determination of rateable value for the premises which are self-occupied, came to be discussed under the first category by observing as under:-

> *"10. Now, let us take up for consideration the first category of premises, in regard to which the question of determination of rate able value arises, namely, where the premises are self-occupied, that is, occupied by the owner. We will first consider the case of residential premises. It is clear from the above*

discussion that the rateable value of the premises would be the annual rent at which the premises might reasonably be expected to be let to a hypothetical tenant and such reasonable expectation cannot in any event exceed the standard rent of the premises, though in a given situation it may be less than the standard rent. The standard rent of the premises would constitute the upper limit of the annual rent which the owner might reasonably expect to get from a hypothetical tenant if he were to let out the premises. Even where the premises are self-occupied and have not been let out to any tenant, it would still be possible to determine the standard rent of the premises on the basis of hypothetical tenancy. The question in such case would be as to what would be the standard rent of the premises if they were out to a tenant Obviously, in such an eventuality, the standard rent would be determinable on the principles set out in sub-section (1) (a) (2) (b) of Section 6 of the Rent Act. The standard rent would be the rent calculated on the basis of 7½ percent or 8.¼ per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction. The Delhi Municipal Corporation, however, contended that where any premises constructed on or after 9th June 1955-and the premises in most of the cases before us are premises constructed subsequent to 9th June 1955 have not been let out at any time and have throughout been self occupied, the standard rent of such premises would be determinable under the provisions of sub-section (2) (b) of Section 6 and any rent which could be agreed upon between the landlord and the tenant if the premises were let out to a hypothetical tenant would be deemed to be the standard rent of the premises and the formula set out in Sub-section (I)(B)(2) (b) of Section 6 would not be applicable for determining the standard rent by reason of the non-obstant clause contained in the opening part of sub-section (2) of Section 6. This contention, plausible though it may seem, is in

our opinion not well founded. It is difficult to see how the provision enacted in Sub-section (2) (b) of Section 6 can be applied for determining the standard rent of the premises when the premises have not been actually let out at any time. Sub-section (2) (b) of Section 6 clearly contemplates a case where there is actual letting out of the premises as distinct from hypothetical letting out, because under this provision the annual rent agreed upon between the landlord and the tenant at the time of first letting out is deemed to be the standard rent for a period of five years from the date of such letting out and it is impossible to imagine how the concept of first letting out can fit in with anything except actual letting out and how the period of five years can be computed from the date of any hypothetical letting out. It is only from the date of first actual letting out that the period of five years can begin to run and for this period of five years the annual rent agreed upon between the landlord and the tenant at the time of first actual letting out would be deemed to be the standard rent. Sub-section (2) (b) of Section 6 can have no application where there is no actual letting out and hence in case of premises which are constructed on or after 9th June 1955 and which have never been letout at any time, the standard rent would be determinable on the principles laid down in sub-section (1) (A) (2) (b) Section 6. So also in case of premises which have been constructed before 9th June 1955 but after 2nd June 1951 the standard rent would, for like reasons, be determinable under the provisions of sub-section (I)(A) (2) (b) of Section 6 if they have not been actually let out any time since their construction. But if these two categories of premises have been actually let out at some point of time in the past, then in the case of former category, the annual rent agreed upon between the landlord and the tenant when the premises were first actually let out shall be deemed to be the standard rent for a period of five years from the date of such letting out and in the case of the latter category, the annual rent calculated with reference to the rent at which the premises were actually let for

the month of March 1958 or if they were not so let, with reference to the rent at which they were last actually let out shall be deemed to be the standard rent for a period of seven years from the date of completion of the construction of the premises. However, even in the case of these two categories of premises, the standard rent after the expiration of the period of five years or seven years as the case may be, would be determinable on the principles set out in sub-section (I) (A) (2) (b) of Section 6. Thus in the case of self-occupied residential premises, the standard rent determinable under the provisions of sub-section (2) (a) or (2) (b) of Section 6 in cases falling within the scope and ambit of those provisions and in other cases, the standard rent determinable under the provisions of subsection (I) (A) (2) (b) of Section 6 would constitute the upper limit of the rateable value of the premises. Similarly, on an analogous process of reasoning, the standard rent determinable under the provisions of sub-section (2) (a) or (2) (b) of Section 6 in cases falling within the scope and ambit of those previsions and in other cases, the standard rent determinable under the provisions of subsection (I)(B) (2)(b) of Section 6 would constitute the upper limit of the rateable value so far as self occupied non-residential premises are concerned. The rateable value of the premises, whether residential or non-residential cannot exceed the standard rent, but, as already pointed out above, it may in a given case be less than the standard rent. The annual rent which the owner of the premises may reasonably expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind, it would avoid wide disparity between the rateable value of similar premises situate in the same locality, where some premises are old premises constructed many years ago when the land prices

were not high and the Cost of construction had not escalated and others are recently constructed premises when the A prices of land have gone up almost 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub-section (I) (A) (2) (b) or (l) (B) (2) (b) of Section 6 would be comparatively low, while in case of latter category of premises, the standard rent determinable on these principles would be unduly high. If the standard rent were to be the measure of rateable value, there would be huge disparity between the rateable value of old premises and recently constructed premises, though they may be similar and situate in the same or adjoining locality. that would be wholly illogical and irrational. Therefore, what is required to be considered for determining rateable value in case of recently constructed premises is as to what is the rent which the owner might reasonably expect to get if the premises are let out and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such premises. The position in regard to the determination of rateable value of self-occupied residential and non-residential premises may thus be stated as follows: The standard rent determinable on the principles set out in sub-section (2) (a) or (2) (b) or (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6 as may be applicable, would fix the upper limit of the rateable value of the premises and within such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let to a hypothetical tenant and for the purpose of such determination, the assessing authorities would have to evaluate factors such as size, situation, locality and condition of the premises and the amenities therein provided. The assessing authorities would also have to take into account the rent which the owner of similar premises constructed earlier and situate in

the same or adjoining locality, might reasonably expect to receive from a hypothetical tenant and which would necessarily be within the upper limit of the standard rent of such premises, so that there is no wide disparity between the rate of rent per squar foot or square yard which the owner might reasonably expect to get in case of the two premises. Some disparity is bound to be there on account of the size, situation, locality and condition of the premises and the amenities provided therein. Bigger size beyond a certain optimum would depress the rate of rent and so also would less favorable situation or locality or lower quality of construction or unsatisfactory condition of the premises or absence of necessary amenities and similar other factors. But after taking into account these varying factors, the disparity should not be disproportionately large. We may also point out that until 1980 the assessing authorities were giving a self occupancy rebate of 20% in the property tax assessed on self occupied residential premises. We would suggest that, in all fairness, this rebate of 20% may be resumed by the assessing authorities, because there is a vital distinction, from the point of view of the owner, between selfoccupied premises and tenanted premises and the right to shelter under a roof being a basic necessity of every human being, residential premises which are self-occupied must be treated on a more favourable basis then tenanted premises, so far as the assessability to property tax is concerned."

11.2 Further, Hon'ble Supreme Court went on to make the following observations in paragraph No.19 thereof:-

"19. These are the principles on which the rateable value of different categories of properties is liable to be assessed under the Delhi Municipal Corporation Act 1957. The same principles would a fortiorari apply also in relation to assessment of rateable value under the Punjab Municipal Act, 1911."

12. Keeping in view the aforesaid judicial pronouncements, there is

no manner of doubt that the rateable value of a building, whether tenanted or self-occupied, is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Rent Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority. Further, the standard rent determinable on the principles set out in the Rent Act is the upper limit of the rent which the landlord may expect to receive from a hypothetical tenant, but it may in a given case be less than the standard rent having regard to various attending circumstances and considerations.

13. Considering the totality of circumstances in light of the judicial precedents noticed above, the instant writ petition is partly allowed. Order dated 21.02.1987 (Annexure P-4) passed by the learned Executive Officer, Notified Area Committee, Naya Nangal; order dated 15.07.1991 (Annexure P-8) passed by the learned Deputy Commissioner, Ropar; and order dated 29.10.1991 (Annexure P-10) passed by the learned Secretary to Government of Punjab, Department of Local Government, are set aside and the matter is remanded to the concerned Executive Officer/Competent Authority of Respondent No.1 – Notified Area Committee, Naya Nangal (presently 'Municipal Council') with a direction to re-examine the matter and undertake a fresh determination of the annual value of the petitioner's premises, along with the consequential house tax liability, strictly in accordance with law, as noticed above. The Assessing Authority is directed to pass a reasoned and speaking order afresh, after granting the parties an adequate opportunity of hearing. In the event it is found upon reassessment that any amount has been paid by the petitioner in excess of the house tax legally due from it, such excess shall be adjusted against future house tax

payable by the petitioner. Conversely, should it be found that any amount remains due from the petitioner, the petitioner shall be liable to pay the balance amount.

13.1 Let the aforesaid exercise for fresh determination of the annual value of the demised premises along with consequential house tax liability for the concerned year(s) be carried out within a period of six months from the date of receipt of certified copy of this order.

14. The writ petition is accordingly disposed of in the aforestated terms.

15. All pending application(s), if any, shall also stand closed.

09.05.2025 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No