

CASE NO.:
Appeal (civil) 7423 1996

PETITIONER:
FOOD CORPORATION OF INDIA

Vs.

RESPONDENT:
STATE OF PUNJAB & OTHERS

DATE OF JUDGMENT: 01/12/2000

BENCH:
D.P.Mohapatro, Y.K.Sabharwal

JUDGMENT:

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J U D G M E N T

D.P.MOHAPATRA, J.

The legality and validity of the order amending the assessment list in respect of its property by the Municipal Committee, Sangrur in the State of Punjab is under challenge in this appeal filed by the Food Corporation of India (hereinafter referred to as 'the Corporation').

The assessment in question relates to a godown described in the notice as "property unit No.239-Block No.1 situated within the local limits of the Municipality". By notice No.110/HP dated 27.6.1991 issued under section 67 of the Punjab Municipal Act, 1911 (for short 'the Act') the Municipal Committee intimated the Corporation that it intends to amend/revise the assessment in respect of its property and if the Corporation has any objection it may file the 'same along with documentary proof in support, within a month. The relevant portion of the notice is extracted here-under:

"To The Distt. Manager, Food Corporation of India, Jakhal Road, Sunam. Property Unit no.239 Block No.1 Which is situated in the Municipal limits Sunam, in connection with which you are hereby informed vide this notice that the amendment in the assessment of your this property is liable to be done necessarily due to the following reasons and is done as under:-

Whereas your above mentioned property has wrongly been left out from the assessment list whereas it should be/should have been in the same.

2. Whereas the assessment of this property of yours was assessed less due to inadvertent mistake/fraud or

intention, which needs amendment thereby.

Therefore, vide this notice you are hereby informed that your above mentioned property i.e. house/shop/plot alongwith office, godowns and quarters, the assessment of the same is being amended due to the aforementioned reasons w.e.f. the year 1986-87 as per details mentioned hereunder and the new assessment is fixed as below. Any objection in this behalf may be given in writing alongwith the documentary proofs in support of the same within one month from today.

Property House/ Name of the Name of Annual Tax Unit
No. Ward Owner of tenant assessed asse- No. the if any
rent ssed property after 15% deducting 10 % Note:- The
differential 1. Godown of house tax in food grains, respect
of capacity the years will 206656 bags be recovered @ 20
paise 493972.00 69373/15 from you after per bag per paise/
allowing the month. P.A. tax paid. 2.Pedestals outside
for 28790 bags @ 08 paise per bag per month 2303.00
3.Quarters of class IV employees attached 3600.00 4.Weigh
Bridge 4000.00 5. Office two sets 8000.00 - - - - -

313875.00

4% Maintenance 51387.50 - - - - - @@
II

462487.50 - - - - -

Earlier given notice No.PMA under Section 67 and No.654/HT dated 2.1.91 is hereby recalled and this new notice is issued accordingly.

Sd/- Executive Officer, Municipal Committee Sunam"

In reply to the notice the Corporation denied that any additional tax liability should be imposed on it in respect of the property since the godown in question has already been assessed to property tax; that no addition/alteration has been made in the building/godown after finalisation of the last assessment, therefore, no revision of the tax is required to be made. The Corporation also questioned the validity of the revision of tax with retrospective effect from 1986-87. The Corporation also denied the statement in the notice that the capacity of its godown is 2,06,656 bags and not 1,84,000 bags on the basis of which the previous assessment was finalised. The Corporation drew the attention of the Municipal Committee that the notice containing a similar proposal for revising the property tax in respect of the same property on same grounds had been issued previously and on receipt of the objection of the Corporation the said notice was withdrawn. The assessing officer, by order dated 5.12.1991, amended the assessment list enhancing the property tax of the godown to Rs.4,62,487.50, rejecting the objections raised on behalf of the Corporation. He held, inter alia, that the previous assessment list was prepared under the mistaken impression that capacity of the godown in question was 1,84,000 bags in place of 2,06,656 bags. Since the Corporation failed to produce any material in support of its stand that there was

no error in the previous assessment and such assessment was made on the correct factual position regarding capacity of the godown the objection raised by it was liable to be rejected. Regarding the withdrawal of the previous notice, the assessing officer stated that the said notice was issued proposing a revision of the tax on the ground that the building/godown had undergone a change which, on verification, was found to be incorrect; therefore the said notice was withdrawn. Regarding the rate of rent per bag the assessment officer held that the tax is to be assessed on the basis of rent @ 20 paise per bag per month which, in his view, was the rate at which godowns were being let out in the town. On these findings the assessment list was amended/ revised fixing Rs.4,62,487.50 and the order was given effect from the year 1986-87. In the appeal filed by the Corporation the Additional Deputy Commissioner, Sangrur by order dated 22.7.92 confirmed the order of the assessment with the modification that the amended assessment list will be given effect from 1.4.92 in place of the year 1986-87. From the orders it appears that the appellate authority, rejecting the objection raised by the Corporation against the rate of 20 paise per bag per month fixed by the assessing officer, gave the reason: "because in principle it has been stated by the Corporation/Warehousing corporation in a number of cases that they have no objection if the assessment of godown be fixed at the rate of 20 paise per bag per month". The petition filed by the Corporation before the State Government under section 237 of the Act challenging the order of the appellate authority confirming the amended assessment list proved futile. Then the Corporation filed a Writ Petition before the Punjab & Haryana High Court seeking a writ of certiorari quashing the aforementioned orders passed by the statutory authorities which was summarily dismissed by the order dated 6.9.94. The order reads :

"Heard. No ground to interfere has been made out. Dismissed."

The said order is under challenge in this appeal.

Shri Y.Prabhakar Rao, learned counsel appearing for the appellant contended that the notice seeking revision of the assessment list is vague and lacks particulars. It has been issued without application of mind to the relevant factors. The learned counsel further contended that the revision of tax has been made without ascertaining the capacity of the godown which has not undergone any change in structure or capacity since the last assessment and the per bag rate fixed in the order is also without any basis. According to the learned counsel the Corporation has been paying tax assessed on the basis of rental of 16 paise per bag per month in respect of the godown taken on hire and there is no reason why that rate should not be accepted as the basis for assessing the tax. Per contra Shri Ajay Majithia, learned counsel for the respondent Municipal Committee supported the order of amended/revised assessment. He submitted that the Corporation proceeded to amend/revise the tax in respect of the godown in question since the previous assessment as such had been prepared on erroneous basis relating to the capacity of the godown and the rate of rent per bag. The power to amend/revise the assessment list, according to the learned counsel, is specifically vested in the Municipal Committee under section 67 of the

Act in exercise of which the order has been passed, and therefore, the High Court rightly dismissed the Writ Petition. Before entering into merits of the contentions raised it will be convenient to notice the relevant statutory provisions. Chapter IV of the Act (Sections 51 - 68A) contains the provisions relating to Municipal Fund and Property. The procedure for assessing immovable property is dealt with in sections 63 to 68A. Section 63 deals with preparation of assessment list. Section 64 deals with publication and completion of the assessment list. Section 65 mandates the Committee to give public notice for the time fixed for revising the assessment list. Section 66 which deals with settlement of lists lays down that after the objections have been inquired into and the persons making them have been allowed an opportunity of being heard either in person or by authorised agents, as they may think fit, and the revision of the valuation and assessments has been completed, the amendments made in the list shall be authenticated by the signatures of at least two members of the committee, who shall at the same time certify that no valid objection has been made to the evaluation and assessment contained in the list, except in the cases in which amendments have been entered therein and subject to such amendments as may thereafter be duly made, and that the tax so assessed shall be deemed to be the tax for the year commencing on the first day of April of the year in which notice was issued under section 64 or section 65 of the Act. In sub-section(2) of section 66 it is provided that the list when amended under this section shall be deposited in the committee's office and shall there be open during office hours to all owners or occupiers of property comprised therein or the authorised agents of such persons and a public notice that it is so open shall forthwith be published. In Section 67 provision is made for further amendments of an assessment list. Since the proceeding under challenge was initiated under that section, it is quoted in extenso: "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 inserting any property which 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 authorized 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 the Committee shall consider any objection made 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."

Section 68-A vests further power in the Committee to amend assessment list on grounds of fraud, accident or mistake on the part of the Committee or of the assessee. 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 affected 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 noticee 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. On perusal of the notice issued to the Corporation, which is on record, it is evident that the notice is vague and lacks particulars. It neither states the reason for/or the ground on which the amendment is proposed to be made nor does it indicate any material on the basis of which the revision as stated in the notice is proposed to be made. It is stated in the notice: "Whereas your above-mentioned property has wrongly been left out from the assessment list, whereas it should have/should have been in the same. Whereas the assessment of this property of yours was assessed less due to inadvertent mistake/fraud or intention, which needs amendment thereby".

It is apparent that the Committee is not sure on which ground it proposes to proceed for amending the assessment list. Such a notice not only does not comply with the statutory requirements, it also defeats the very purpose of the statutory provisions. Coming to the question of increase of the capacity of the godown in question and the rate of rent, neither the discussions in the orders under challenge indicate any basis for increasing the capacity of the godown from 1,84,000 to 2,06,656 bags, nor has our attention been drawn to any primary material in support of the order. In the circumstances the contentions raised by the learned counsel for Corporation that notice is vague and it has been issued without due application of mind and the grounds stated in the order are based on no material, have to be accepted. From the discussions in the foregoing paragraphs it is clear that the order passed by the assessing officer and confirmed by the appellate authority and the State Government are clearly unsustainable. The High Court was in error in dismissing the writ petition summarily by passing an unreasoned order as has been done in this case. Accordingly, the appeal is allowed with costs. The order passed by the High Court dismissing the writ petition is set aside. The writ petition is allowed and the

orders passed by the assessing authority, the appellate authority and the State Government are quashed.

JUDIS