
M/s. The New Picture Company Pvt. Ltd. and others

Versus

The State of Haryana and another

...

PRESENT: Mr. Ashish Chopra, Advocate
for the petitioners.

Mr. Sidharath Sarup, Assistant Advocate
General, Haryana for respondent No.1.

Mr. Vikram Aggarwal, Advocate
for respondent No.2.

...

Ajay Kumar Mittal, J.

In this petition under Articles 226 and 227 of the Constitution of India, the petitioners, who are owners of Khushwant Cinema House, Radhika Cinema House and Raj Picture Palace respectively, situated within the municipal limits of town Rewari, have prayed for the issuance of a writ in the nature of certiorari, quashing notices dated 15.3.1982, 16.1.1984, 6.2.1984, Annexures P-6, P-8 and P-9 respectively, issued by the Municipality, Rewari - respondent No.2. The petitioners have also prayed for quashing notification dated 24.6.1980 (Annexure P-10) issued by the Government of Haryana, Local Government Department published in Haryana Government Gazette on 5.8.1980 and for the refund of show tax illegally

recovered by respondent No.2 and for issuance of a writ of prohibition restraining respondent No.2 from charging show tax at a rate beyond Rs. 2/- per show.

The petitioners have averred in the writ petition that it was for the first time that vide notification dated 6.3.1967, Annexure P-1, show tax at the rate of Rs. 2/- per show was imposed on the cinema houses owned by the petitioners. Thereafter various moves made by the respondents to enhance the rate of show tax from time to time were dropped, the same being thwarted by the petitioners by filing objections or otherwise opposing to the same. In the meantime, it is further averred in the petition, that respondent No.1 asked the Municipality, Rewari by letter dated 24.5.1969 to maintain a uniform rate of show tax depending upon the category of the Municipality. Since the respondent- Municipality fell in category of 2nd class, imposition of show tax at the rate of Rs.4.50 per show was proposed, but this demand had also to be dropped on a resistance made by the petitioners. Ultimately, respondent No.1 vide letter dated 2.9.1976 asked all the Municipalities in the State of Haryana including the respondent- Municipality, to revise the rates of show tax to augment the income of the municipalities whereby the show tax at the rate of Rs.8/- per show was proposed in the case of Municipalities of Class-I, Rs. 7/- per show in the case of Class-II Municipalities and Rs.4/- per show in the case of Notified

Area Committees. The objections made by the petitioners to the proposed enhancement were said to have been rejected without assigning any reason and without affording any opportunity of hearing. No notification was, however, issued effecting enhancement and the petitioners went on demanding a copy of the notification, if any, issued in that behalf, but somehow the petitioners started paying the tax at the enhanced rate under protest or if said in their own words, "under a mistake of law and fact."

The matter did not rest here and the petitioners received a letter dated 6.12.1979 from the respondent-Municipality saying that Municipality, Rewari has been brought in the category of Class-I, in terms of the notification of the State Government and therefore, show tax at the rate of Rs.8/- per show be paid with effect from 18.4.1979. Copy of letter dated 6.12.1979 is available on record as Annexure P-4. The petitioners objected to this enhancement as well on the ground that proper procedure for imposition of tax as contained in the Act had not been followed. However, with a view to run the cinema houses without any interruption from this corner, the petitioners started paying the show tax even at the rate of Rs.8/- per show, pending their grievance that the tax had not been imposed in accordance with law as there was no notification issued in that regard. The

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petitioners ultimately, received a notice Annexure P-6

from the Administrator, Municipality, Rewari requiring them to pay the amount of difference in tax to be calculated at the rate of Rs.8/- per show pertaining to the period from 18.4.1979 to 7.12.1979, and in the event of default in deposit, the matter was to be referred to the Deputy Commissioner for taking proceedings under the Cinemagraph Act. This notice was duly replied to by the petitioners wherein primarily, the petitioners repeated their grouse for supply of copy of notification under which the rates were enhanced. The respondent-Municipality by its letter dated 16.1.1984 (Annexure P-8) clarified that notification had been issued bringing the respondent- Municipality within the category of Class-I and not with regard to the fixation of rates of show tax and again the demand of tax as raised in terms of Annexure P-6, was repeated. Similar demand notice, Annexure P-9 was issued to petitioner No.1 also. The petitioners were, ultimately able to lay hands to the notification, Annexure P-10, which had been published way back in the Haryana Government gazette dated 5.8.1980 in exercise of powers of the Government conferred by clause (b) of sub-section (9) of section 74 of the Haryana Municipal Act, 1973 (for short "the 1973 Act") whereby cinema show tax at the rate of Rs. 8/- was imposed. It was also stated that the tax so imposed shall come into effect after the expiry of a period of one month from the date of publication of the

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notification. It is, this notification and aforesaid three notices which have been challenged in this petition.

The respondents filed separate replies. It was stated in the written statement filed on behalf of respondent No.1 that the petition suffered on account of delay and laches and the petitioners have approached this Court without first exhausting alternative remedy available to them by way of appeal and revision under sections 99 and 100-A of the Act. The Government had already issued notification dated 24.6.1980 (Annexure P-10), which was published on 5.8.1980 in the official gazette of the Haryana Government, imposing revised rates of cinema show tax and therefore, it does not lie in the mouth of the petitioners to say that no notification was issued. All that is further said is that the tax had been imposed after following the procedure contemplated under the relevant provisions of the Act.

Respondent No.2 in its reply stated that objections to the enhancement of the tax were duly considered and decided and there was no provision in the Act to afford personal hearing before passing the final order in that regard. The procedure laid down under section 74 of the Act for imposing tax was followed by the Municipality. On 17.1.1977, the Government issued a letter directing the Municipality to enforce the new rates under section 74(6) of the Act and on these directions, the Municipality vide its resolution No.134, dated

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28.1.1977 enforced the tax with effect from 5.3.1977. It was further stated that tax payable in the area covered by the Municipal Committee is Rs. 8/- per show and notice

was given to the petitioners on 6.12.1979 conveying that since the respondent- Municipality had become Class-A Municipal Committee, tax payable would be Rs. 8/- per show. A copy of directions of the Government regarding enhancement of tax was attached as Annexure R-1 with the reply. It was further stated that the tax of the nature of show tax is imposable under the Municipal Act and the enhancement of tax already levied is only enhancement of the rate of tax and this is not the imposition of new tax and, therefore, the provision as contained in section 74 of the Act is relevant at the initial stage of the imposition of the tax and the enhancement of the rates of tax made vide resolution No.327 dated 18.1.1980 was perfectly valid.

Mr.Ashish Chopra, learned counsel for the petitioners very strenuously contended that notification issued by respondent No.1 in exercise of its powers under section 74(9) (b) of the Act whereby the rate of show tax was enhanced from Rs. 2/- per show to Rs. 8/- per show was published in the official gazette on 5.8.1980 and, therefore, recovery for the period prior thereto is illegal, arbitrary and void. It was then next contended that the respondents while issuing notification Annexure P-10 have failed to follow the procedure as prescribed

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under section 74 of the Act as no resolution had been passed by respondent No.2 proposing to enhance the rate of show tax at the rate of Rs.8/- per show and consequently, the objections were not at all invited from the

petitioners and others likely to be affected and thus, the levy of show tax at the rate of Rs. 8/- per show with effect from 5.8.1980 is legally unsustainable as the respondents have failed to follow the mandatory procedure provided under the Act.

Learned counsel for the petitioners then argued that detailed procedure for imposing/ recovering the taxes provided under section 70 of the Act, is contained in Section 74 of the Act. According to him, the taxes enumerated in section 70 become operative after following the procedure under section 74 of the Act and become recoverable after the same is notified in the official gazette from a date not less than one month from the date of notification.

Mr. Vikram Aggarwal, learned counsel appearing for the Municipal Committee- respondent No.2 and Mr. Sidharath Sarup, learned counsel appearing for respondent No.1 with equal vehemence controverted the claim of the petitioners and raised a preliminary objection regarding maintainability of the present petition on the ground of alternative remedy and argued that the petitioners have alternative, effective and efficacious remedy by way of appeal under section 99 and then by way of revision under

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section 100-A of the Act and, therefore, this Court should not entertain the present petition on this short ground alone. Controverting the claim of the petitioners on merits, they submitted that as far as enhancement of show tax to Rs. 7/- per show is concerned, an order was passed

by the State Government on 17.1.1977 directing respondent No.2 to enforce new rates of show tax and respondent No.2 vide resolution dated 28.1.1977 enforced the tax w.e.f. 5.3.1977 and, therefore, levy at the rate of Rs. 7/- per show was justified. The same was subsequently enhanced to Rs. 8/- per show. The said enhancement was on the directions of the Government contained in Annexure R-2/1 dated 2/9.8.1976, on respondent No.2 - Municipal Committee having been declared to be Class 'A' Municipality and, therefore, the enhancement in show tax is legal and valid. He also submitted that no fresh show tax has been levied. In fact, it is only an enhancement of the existing show tax which had been imposed earlier in 1967. They further submitted that enhancement of tax is dealt under section 75 of the Act and the procedure as provided thereunder has been duly followed. It was next submitted that though in the notification, Annexure P-10, the mention is to the provisions of section 74(9)(b) of the Act but the same has been erroneously mentioned. In case the Government or the Municipal Committee have the power under the Act, mentioning of wrong provisions in notification Annexure P-10 shall not take away the power of the respondents to

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issue the said notification and it shall not render the notification unlawful on that count alone. For this proposition that in the case of enhancement, the procedure as envisaged under section 75 is only to be followed and not under section 74 of the Act, learned counsel for the respondents placed reliance on Citizens' Welfare Council,

S.A.S. Nagar and others Versus State of Punjab and another, 1994 P.L.J. 649; Notified Area Committee, Uchana Versus Dhanpat Rai, 1991 P.L.J. 137; M/s. Naranjan Dass Doomra Rice and General Mills and others Versus The State of Punjab and others, 1991 P.L.J. 685; M/s. V.P. Theatre, Kurali Versus The State of Punjab and another, 1990 P.L.J. 282; Kehar Singh and others Versus Municipal Committee, Rajpura and others, 1976 P.L.J. 563 and Shri Krishan Kumar Sanan and others Versus The Punjab State and another, 1972 P.L.R. 149.

Learned counsel for the petitioners while replying to the submissions of the respondents, then submitted that for the first time without there being any whisper in the pleadings or the contention raised now that enhancement of the tax has been done under section 75 of the Act and not under section 74 of the Act cannot be allowed to travel beyond their pleadings. The counsel submitted that it has nowhere been pleaded that notification Annexure P-10 has been issued in exercise of powers under section 75 of the Act.

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According to the learned counsel, the perusal of sub section (1) of Section 75 of the Act shows that the said provision gives powers to the Government in respect of taxation to require the committee to impose any tax mentioned in Section 70 of the Act which is not already imposed and further requires the committee to fix the rate and the time period in which the same is to be imposed.

It gives power to the Government to require the committee to modify the rate of tax which is already imposed and correspondingly it casts duty upon the committee to modify the tax as required, within the time, which may be fixed by the State Government. Sub-sections (1) and (2) of section 75 of the Act do not dispense with the requirement of the procedure provided under section 74 of the Act. According to the learned counsel, the committee is under legal obligation to follow the prescribed procedure while imposing any tax or while modifying the rate of tax. Sub section (3) of Section 75 provides that in the case of failure on the part of the Committee to carry out the orders passed by the Government under sub sections (1) or (2), the Government is empowered to pass suitable order and notify the same in the gazette, imposing or modifying the tax as required by it under sub sections (1) or (2) of Section 75 of the Act respectively. This order, as per the provisions of sub section (3) of Section 75 shall operate as if it was a resolution duly passed by the Committee and as if the proposal was sanctioned in

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accordance with the procedure contained in section 74 of the Act. According to him, sub-section (3) makes it abundantly clear that the committee while passing any order in pursuance to the directions of the State Government under sub-sections (1) and (2) of Section 75 of the Act, is required to pass the orders in accordance with the procedure contained in section 74 as otherwise, the last two lines of sub section (2) of Section 75 would be

rendered redundant. It was further stated that it is only when the order is passed by the Government under sub-section (3) and is notified in the official gazette under this very sub-section that the procedure under section 74 of the Act is deemed to have been followed. It was further submitted that the notification published in the official gazette showing the same to be issued in exercise of the particular powers under a statute, is deemed to have been issued under the provisions of the said section only and, therefore, the notification having been issued under section 74(9)(b) of the Act cannot be deemed to have been issued in exercise of powers under sub-section (3) of section 75 of the Act. It was then submitted that the judgments relied upon by the counsel for the respondents do not apply to the facts of the present case.

I have heard learned counsel for the parties at length and have gone through the provisions of the Act and the relevant case law on the subject. Chapter V of the

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Act deals with taxation. The provisions relevant for the decision of this case are contained in section 70 which deals with taxes that may be imposed. Section 74 provides the procedure for imposing taxes and section 75 relates to the powers in respect of taxation. Sections 70, 74 and 75 of the 1973 Act as under:-

"70. Taxes that may be imposed.-(1) Subject to any general or special orders of the State

Government in this behalf and to the rules, a committee may from time to time, for the purposes of this Act, impose in the whole or any part of the municipality any of the following taxes, tolls and fees, namely:-

(i) to (iv) xxx xxx xxx

(v) a show tax;

(vi) to (xv) xxx x xx xxx xxx

(2) The rates of any tax, toll or fee under sub-section (1) except that under clause (viii) thereof shall be determined by the committee; Provided that such rates shall not exceed the maximum limits which the State Government may, from time to time, by notification, specify in this behalf."

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74. Procedure to impose taxes.-(1) A committee may, at a special meeting, pass a resolution to propose to imposition of any tax under section 70.

(2) When such a resolution has been passed, the committee, shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the

tax to be imposed, and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.

(4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals, along with a notice indicating that they are in modification of those previously published for objection.

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(5) Any objections to the amended proposals which may be received within thirty days of their publication shall be dealt with in the manner prescribed in sub-section (3).

(6) When the committee has finally settled its proposals, it shall, if the proposed tax fails under clause (i) to clause (xiv) of sub-section (1) of section 70, direct that the tax be imposed, and shall forward a copy of its order to that effect through the Deputy Commissioner,

to the State Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection, if any, made in connection therewith to the Deputy Commissioner.

(7) If the proposed tax falls under clause (xv) or sub-section (1) of Section 70, the Deputy Commissioner shall submit the proposals and objections with his recommendation to the State Government.

(8) The State Government on receiving proposals for taxation under sub-section (2) may sanction or refuse to sanction the same, or return them to the committee for further consideration.

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(9) When -

(a) a copy of order under sub-section (6) and (7) has been received; or

(b) a proposal has been sanctioned under sub-section (8) the State Government will notify the imposition of the tax in accordance with such order or proposal and shall in the notification specify a date not less than one month from the date of the notification, on

which the tax shall come into force.

(10) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July or on the first day of October in any year, and if it comes into force on any other than the first date of the year by which it is leviable shall be leviable by the quarter till the first day of such year then next ensuing.

(11) A notification of the imposition of a tax under this Act be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

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75. Power of Government in respect of taxation.-(1) The State Government may, by special or general order notified in the Official Gazette, require a committee to impose any tax mentioned in Section 70 not already imposed at a such rate and within such period as may be specified in the notification and the committee shall thereupon act accordingly.

(2) The State Government may require a committee to modify the rate of any tax already

imposed and thereupon the committee shall modify the tax as required within such period as the State Government may direct.

(3) If the committee fails to carry out any order passed under sub-section (1) or sub-section (2), the State Government may, by a suitable order notified in the Official Gazette, impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the committee and as if the proposal was sanctioned in accordance with the procedure contained in Section 74.

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In view of section 70 of the 1973 Act, certain taxes can be imposed by the municipality within the municipal limits and show tax is one of the taxes, imposable under section 70(1) of the Act. The procedure for imposing taxes contemplated by section 70 is contained in Section 74 and the imposition of taxes under section 70 become operative and recovery effected after the same is notified in the official gazette.

Section 75 of the Act deals with the power of the Government in respect of taxation. Sub-section (2) of Section 75 empowers the State Government to modify the rate of any tax already imposed and thereupon the committee shall modify the tax as required within such period as the State Government may direct. Sub-section

(3) thereof provides that where the committee fails to comply with any order passed under sub sections (1) and (2), the State Government can by a suitable order notified in the official gazette, impose or modify the tax and the said order shall operate as if it was a resolution duly passed by the committee and as if the proposal was sanctioned in accordance with the procedure contained in section 74.

Now adverting to the facts of the present case, it deserves to be mentioned at the very outset that undisputedly, the Khushwant Cinema House, Radhika Cinema House and Raj Picture Palace fall within the municipal limits of Rewari. The Municipal Committee, Rewari in

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exercise of its powers under sub-section (2) of Section 61 of the Punjab Municipal Act, 1911, as applicable to the State of Haryana at that time, proposed to levy a tax on Cinema shows etc. at the rate of Rs. 2/- per show. On this proposal being sanctioned by the Governor of Haryana, a notification dated 6.3.1967 (Annexure P-1) was issued by the Government of Haryana, notifying the imposition of show tax. It was directed that the imposition of tax will come into effect with effect from 15.4.1967. Admittedly, the petitioners started paying the said tax without raising objections of any kind. Thereafter, as per petitioners' own case, certain enhancements were sought to be made from time to time in the rates of show tax by the Municipal Committee, Rewari and accordingly notices were issued to the petitioners inviting objections in terms of

section 62 of the 1911 Act. The petitioners filed objections. It is also the specific stand of the petitioners that on the asking of the State Government, the Municipal Committee Rewari issued a notice dated 10.9.1976 (Annexure P-2) conveying the petitioners " that respondent No.2 in a special meeting held on 10.9.1976 had decided to revise the rates of show tax in the town of Rewari which rates had earlier been notified vide notification of March, 1967 (Annexure P-1). It was also mentioned in the notice that proposal for enhanced rates will be considered by the Municipal Committee, Rewari after 30 days, from the date of the notice, and any person

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interested or affected by the said proposal should forward his objections within that period. To this proposal as well, the objections were filed. The Municipal Committee finally settled its proposals regarding enhancement of show tax of Rs. 7/- per show and a copy of the order to this effect was sent to the Government through proper channel vide letter dated 28.10.1976 for revised notification. The notification was not published in the official gazette by the Government and on 17.1.1977, the Government issued a letter directing the Municipal Committee to enforce the new rates and on these directions, the Municipality vide its resolution No. 134 dated 28.1.1977 enforced the revised show tax with effect from 5.3.1977 and a copy of this resolution was sent to the Government for information. The Municipal Committee ultimately, informed the petitioners vide letter dated

6.12.1979, Annexure P-4 that Municipality Rewari had fallen in the category of First Class with effect from April, 1979 and therefore, as per the directions issued by the State of Haryana, rate of cinema show tax had been fixed at Rs. 8/- per show and they should, therefore, deposit the show tax at the said rate payable with effect from 18.4.1979. In addition, another letter dated 23.5.1980 (Annexure P-5) was issued by the Municipal Committee to the Manager of Khushwant Cinema, Rewari requiring him to deposit the show tax at the revised rate of Rs. 8/- per show with effect from 18.4.1979. It was

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further stated therein that the same are based on the directions of the Government regarding enhancement of the tax contained in letter dated 2.9.1976, a copy of which had been attached as Annexure R2/1 with the reply.

Thereafter through notices dated 15.3.1982, 16.1.1984 and 6.2.1984, Annexures P-6, P-8 and P-9 respectively the petitioners were asked to deposit the show tax at the revised rate. In the meantime, the petitioners started paying show tax at the revised rate, though under protest, and continued insisting the respondents to supply them copies of notification vide which the rates of show tax were enhanced. The primary challenge by the petitioners is to the aforesaid three notices. Besides, a challenge has also been made to notification published in the official gazette of the Haryana Government dated 5.8.1980, Annexure P-10.

Since the primary argument of learned counsel

for the petitioners is that while issuing notification, Annexure P-10, the respondents have not followed the procedure as prescribed under section 74 of the 1973 Act and the bone of contention is notification, Annexure P-10, it will be useful to extract hereunder the relevant portion from the said notification:-

"In exercise of the powers conferred by clause (b) of sub-section (9) of section 74 of the Haryana Municipal Act, 1973, and all other powers enabling him in this behalf, and in

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partial modification of Haryana Government Notification No. 1781-DULB-IC/67, dated the 6th March 1967, the Governor of Haryana hereby notifies the imposition of tax described in column 2 of the Schedule given below at the rates specified against each in column 3 of the said Schedule in the Municipality of Rewari in Mohindergarh District, and further directs that the said tax shall come into force after the expiry of a period of one month from the date of publication of this notification in the official gazette:-

SCHEDULE

1. Cinema show tax	Rs. 8.00"
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It seems that it was the language used in this

notification which gave rise to the whole dispute. It is apparently on the basis of what has been mentioned in this notification that the petitioners are clamouring for quashment of the said notification and the notices demanding show tax at the revised rate issued in consequence thereof. It is this very notification on the basis of which the contentions have been raised on behalf of the petitioners that while issuing the said notification, the procedure as prescribed under section 74

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of the 1973 Act has not been followed as no resolution had been passed by Municipal Committee proposing to enhance the rate of the show tax at the rate of Rs. 8/- per show and that even the objections were not invited from those likely to be affected by the proposed enhancement. Not only this, even the contention on behalf of the petitioners that since the notification enhancing the rate of show tax at the rate of Rs.8/- per show was published in the official gazette on 5.8.1980 and therefore, recovery for the period prior thereto was illegal, is also based on the confusion created in the said notification itself.

On a consideration of the entire matter, I am of the considered opinion that neither of the aforesaid contentions of the counsel for the petitioners has merit. Undisputedly, for the first time the show tax was imposed on the petitioners at the rate of Rs. 2/- per show under section 61(2) of Punjab Municipal Act, 1911 as applicable to them at the relevant time which is equivalent to

section 70(1) (v) of 1973 Act. The State Government under the provisions of sub section (1) of Section 75 of 1973 Act is empowered by special or general order notified in the official gazette to require a committee to impose any tax mentioned in section 70 not already imposed and the committee shall thereupon act accordingly. Under sub-section (2) of Section 75, the State Government may require the committee to modify the rate of any tax

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already imposed and thereupon the committee shall modify the tax as required within such period as the State Government may direct. Under sub-section (3) of Section 75, in the eventuality of the committee failing to carry out any order passed under sub-sections (1) or (2), the State Government under sub-section (3) of section 75 is authorised to pass a suitable order notified in the official gazette, imposing or modifying the tax. It is clear from the provisions of sub-section (3) of section 75 that the order so passed by the State Government under the provision of sub-section (3) shall operate as if it were a resolution duly passed by the committee and as if the proposal was sanctioned in accordance with the procedure contained in section 74 of the Act. As noticed already, the stand of the respondent-committee is that the State Government thereafter issued a letter dated 2.9.1976 (Annexure R-2/1) to all the Municipalities in the State of Haryana conveying the rate of show tax at the rate of Rs. 8/- per show in the Municipalities falling in City I and at the rate of Rs. 7/- in respect of Municipalities

falling in City II. This was stated to have been done with a view to maintain uniform rates in all Municipal Committees in the State of Haryana. The State Government in exercise of power under section 75(2) of the 1973 Act issued a directive vide its letter dated 17.1.1977 to the petitioners to enforce the new rates and in compliance to this direction, the respondent-committee vide its

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resolution dated 28.1.1977 enforced the tax with effect from 5.3.1977. It is mentioned in the written statement of respondent No.2 in clear terms that while doing so, the procedure laid down in section 74 was strictly followed and the petitioners were afforded opportunity to file objections and the objections so filed by them were duly considered before finalising the proposal. According to the respondents, the petitioners started paying the show tax at the enhanced rate voluntarily and without any protest. The respondent-committee fell in the category of A-Class Municipal Committee in April 1979 and, therefore, the show tax at the rate of Rs. 8/- per show became payable with effect from 18.4.1979 as per the directions contained in letter dated 2.9.1976, Annexure R-2/1. This is petitioners' own case that a notice was given to them by the respondent - committee vide letter dated 6.12.1979 (Annexure P-4) requiring them to deposit the show tax at the rate of Rs. 8/- per show with effect from 18.4.1979. This enhancement was made in view of the direction of the State Government as contained in letter dated 2.9.1976, Annexure R-2/1 where however, as per respondents stand,

the factum of State Government having issued a notification in regard to said enhancement was wrongly mentioned whereas it ought to have been mentioned that enhancement was done as per directions of the Government. Further stand of the respondents in the written statement is that the show tax was legally imposed and it was only

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enhancement of the rate of tax and not imposition of new tax and therefore, while doing so, the procedure laid down in section 74 was not required to be followed. It may be noticed that when enhancement in the rate of tax is made under section 75(2) of the Act, the same is not required to be published in official gazette. The gazette notification is only required when the power is exercised under sub sections (1) or (3) of Section 75 of 1973 Act.

Apart from the above, the stand of respondent No.1 in the written statement is that State Government had already issued a notification dated 24.6.1980 (Annexure P-10), published on 5.8.1980, imposing revised rate of cinema show tax and the said notification is perfectly legal and within jurisdiction and in pursuance of the said notification, the petitioners were found liable to pay cinema show tax at the revised rate of Rs. 8/- per show. No doubt true that while issuing notification dated 24.6.1980, a wrong provision i.e. the same having been issued under sub-section (9) (b) of section 74 of the Act was mentioned, but it appears that the said notification was issued under sub-section (3) of section 75. Sub-section (9) (b) of section 74 of the Act is totally in

a different context which relates to the procedure being adopted for imposition of tax mentioned in section 70 of the Act. Admittedly, the notification dated 6.3.1967, Annexure P-1 imposing show tax on the petitioners in the first instance under section 61(2) of the 1911 Act had

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already been issued and, therefore, there was no occasion for the State Government to issue another notification under sub section (9) (b) of section 74 which is required to be done only for imposing a new tax in the first instance. It is equally true that owing to this confusion, it has been stated in the written statement filed by respondent No.1 that notification dated 24.6.1980 (Annexure P-10) does not suffer from any legal infirmity and is perfectly in accordance with law. It is because of this confusion and mentioning of wrong provision in the notification Annexure P-10 which gave rise to the submissions having been raised by the petitioners that while enhancing the rate of the show tax, procedure as envisaged under section 74 of the Act was not followed. As a matter of fact, the procedure required to be followed under sub section (9) (b) of section 74 is required to be followed in the case of imposition of new tax in the first instance and it has no concern with the enhancement of the tax. The enhancement or modification of the show tax can only be done under sub section (2) of Section 75 whereby the State Government may require a committee to modify the rate of any tax already imposed or in the eventuality of the committee failing to carry out the order of the State

Government passed in exercise of its power under sub section (2) of section 75, the State Government in exercise of its power under sub section (3) of section 75 may by passing a suitable order duly notified in the

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official gazette, impose or modify the rate of tax.

The upshot of the above discussion is that enhancement of show tax from Rs.2/- to Rs. 7/- per show with effect from 5.3.1977 and thereafter to Rs. 8/- with effect from 18.4.1979 had been done by the Municipal Committee under the provisions of sub-section (2) of Section 75 of 1973 Act. There is no legal requirement for issuance of a notification under the said provisions of the Act.

Since enhancement of show tax from Rs. 2/- to Rs. 7/- and thereafter to Rs. 8/- has been held to be valid, therefore, controversy regarding, whether in the facts of the present case, notification Annexure P-10 could have been issued under sub section (3) of Section 75 or not, need not be gone into as the same shall not effect the merits of the petition.

From all that has been discussed above, it is crystal clear that in the first instance the show tax was imposed under a perfect and valid notification (Annexure P-1), issued under the Punjab Municipal Act, 1911, which was applicable in the State of Haryana also at the relevant time, about which there is no challenge on behalf of the petitioners but thereafter, the rates of show tax were only enhanced under the provisions of sub-section (2)

of section 75 of the 1973 Act.

The question that procedure prescribed under section 74 of the Act had not been followed which was

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required to be done, fell for consideration before this Court in Citizens Welfare Council, case (supra), wherein it was held by a learned Single Judge of this Court as under:-

"Mr. Batta submits that the prescribed procedure under Section 62 has to be followed even in a case where the Government levies a tax. This contention is concluded against the petitioners and is wholly lacking in merit. Reference in this behalf may be made to the decision of a Division Bench of an earlier decision in Shri Krishan Kumar Sanan and others v. The Punjab State and another, 1972 P.L.R. 149 "where it was held that by virtue of the provisions of sub-section (3) of Section 62-A of the Act, necessity of complying with the procedure for the imposition of tax has been dispensed with and the procedure of Section 62 was meant for the Municipal Committee and not for the State Government exercising power under sub section (3) of Section 62-A of the Act." In view of this authoritative pronouncement, the contention cannot be accepted.

Undisputedly, the provisions of sections 62 and 62-A of the Punjab Municipal Act, 1911 (for short "the

1911 Act") are in pari materia with the provisions of Sections 74 and 75 of the Haryana Municipal Act, 1973 and

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it is for this reason that a comparative table highlighting the provisions of the above sections of the two Acts has not been drawn here. From the above referred judgment of learned Single Judge, it is evident that view taken by a Division Bench of this Court in Shri Krishan Kumar Sanan's case (supra) was followed. While sitting singly, I am also bound to follow the exhaustive interpretation of the provisions of sections 74 and 75 of 1973 Act within the ambit of which the controversy raised herein falls.

Similar view was taken by another learned Single Judge of this Court in Dhanpat Rai's case (supra) wherein also the ratio of law laid down by the Division Bench in Shri Krishan Kumar Sanan's case was followed. Concurring with the view taken therein it was held that in view of notification issued under section 62-A of the 1911 Act (equal to 75 of 1973 Act) it was not necessary to issue notice to the person against whom the house tax was imposed, and the Municipal Committee was not under an obligation to invite objections for the assessment of the house tax. In M/s. Naranjan Dass Doomra Rice and Genera Mills and others's case (supra) also, the Division Bench followed the view taken by another Division Bench in Shri Krishan Kumar Sanan's case (supra).

To the same effect is the observations in Kehar Singh's case (supra), where the question for consideration

before the learned Single Judge was, whether in the

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absence of any evidence on record to show that the State Government had issued any order to the Municipal Committee to impose the house tax and that the Municipal Committee had failed to comply with that order and as such the house-tax could not be imposed by the State Government under section 62-A of the 1911 Act. This question did not find favour with the learned Judge. On a consideration of the matter, it was held as under:-

" This contention has no substance. According to sub-section (3) of section 62-A of the Act, the order passed by the State Government is to operate as if it were resolution duly passed by the Municipal Committee and as if a proposal was sanctioned in accordance with procedure contained in section 62 of the Act. Sub-section (12) of section 62 of the Act lays down that a notification of the imposition of a tax under the Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act."

In view of the above, it can, therefore, be held without any hesitation that no notification as required under section 74 of the 1973 Act had to be issued in the facts of the present case as the enhancement was made under the provisions of sub section (2) of Section 75 of 1973 Act.

Coming to the next submission of learned counsel for the petitioners that since the notification (Annexure P-10) was published in the gazette on 5.8.1980, recovery for the period prior thereto was illegal, I am of the considered opinion that this submission equally is devoid of any merit. It has come in discussion earlier that the Municipal Committee on the direction of the Government and resolution No.134 dated 28.1.1977 had enforced the enhanced rate of show tax at the rate of Rs. 7/- per show with effect from 5.3.1977 which further stood enhanced to Rs. 8/- per show with effect from 18.4.1979 as the respondent- Municipality having been converted into A Class Municipality, the enhancement was valid under the provisions of section 75(2) of the Act. The recovery of enhanced show tax from the petitioners is thus, valid.

Coming to the next question, which was raised on behalf of the respondent-committee about the maintainability of the present writ petition on the ground of alternative remedy of appeal under section 99 and then under section 100-A of the 1973 Act by way of revision, it is suffice to say that the petitioners in this petition under Articles 226/227 of the Constitution of India have challenged the notices requiring them to pay the show tax at the enhanced rate and also the notification, Annexure P-10 by virtue of which enhancement had been ordered. They also sought a writ of mandamus restraining the respondent-committee from charging the show tax at the

rate beyond Rs. 2/- which was imposed in the first instance. In my opinion the petitioners have a right to invoke the extra-ordinary jurisdiction of this Court under Articles 226/227 of the Constitution as the prayer for quashing notification Annexure P-10 does not fall within the purview of sections 99 and 100-A of the 1973 Act and the same can be challenged by filing a writ petition. This contention is, devoid of any merit and is consequently rejected.

For the foregoing reasons, this writ petition is without any merit and is accordingly dismissed. There shall, however, be no order as to costs.

August 27, 2004
MALIK

(Ajay Kumar Mittal)
Judge