

RAJASTHAN HIGH COURT

N.S. Janu

Vs.

Assistant Director, Land and Building Tax Deptt.

Civil Writ Petn. No. 5945 of 1997
(Arun Madan and K.S. Rathore, JJ.)

23.03.2001

ORDER

Arun Madan and K. S. Rathore, JJ.

1. The brief facts which are relevant for deciding this writ petition are thus :-

The petitioner is an Ex-defense Personnel and was invalided out of service due to disability. He has applied for allotment of retail outlet for running the petrol pump, and other oil products before the UIT, Alwar and of the U.I.T. in pursuance of its order dated 11-8-94 (Annexure 2), had allotted the land to the petitioner measuring 743 sq. mtrs. near Krishi Upaj Mandi, Delhi Road, Alwar at the total cost of Rs. 6,67,214/- as per the terms conditions specified in the letter.

2. Thereafter, the petitioner was handed over the actual physical possession of the land in question. Thereafter, in due course of time, respondent No. 1 Assistant Director, Land and Building Tax Department, Alwar (thereinafter referred to as "the Assessing Authority") initiated proceedings for assessment of tax under the provisions of Rajasthan Land and Building Tax Act, 1964 (hereinafter referred to as the "Act") by issuing demand notice dated 31-3-1996 requiring the petitioner to submit the requisite information which the petitioner did and sent back to the Assessing Authority along with relevant documents relating to:- (a) proof of ownership; (b) Site and Building Plan showing the existing construction; (c) evidence in support of existing construction and (d) details relating to rent in case any portion is let out. Necessary enquiry was also carried out in accordance with the provisions of the Act by the Assessing Authority and ultimately, the Authority issued subsequent notice dated 3-9-

1996 (Annexure 4), in L.B.T. Form 6 under Rule 9 read with Section 11(1) of the Act intimating a proposal to the petitioner to determine the value of the aforesaid land allotted to him for running the petrol pump at the cost of Rs. 53,31,700/- as on 1-4-1995.

3. It is the petitioner's case that he deposited the tax as per his own calculations and also filed his detailed objections through his authorized representative before the respondent No. 1. Various objections were raised including one that the land is located at the distance of 3 kms. away from the main town, where no infrastructural facilities have yet been developed.

4. The petitioner in his objections has further stated that the value of the land in question was not based as per the requisite criteria and in support of his case, he has also referred to an identical case i.e. "M/s. Bihari Ram Sewa Ram situated in Transport Nagar Scheme" where UIT, Alwar had allotted land for petrol pump at a particular price after making appropriate adjustment for the cost indexed which criteria should have also been adopted in the petitioner's case as well.

5. The objections which were raised by the petitioner were finally decided by the Assessing Authority vide (Ann. 6) i.e. assessment order dated 3-3-1997. The Assessing Authority issued a fresh notice of demand calling upon the petitioner to deposit a sum of Rs. 1,40,780/- by 31-3-1997.

6. Consequent upon amendment of the provisions of Section 14 of the Act by which option was invited by the concerned authorities constituted under the Act under one time tax scheme as regards changing of cycle of taxation, the petitioner also exercised his option accordingly on the basis of his own assessment liability and deposited the tax for the assessment year 1996-97 vide treasury challan dated 30-6-1997 vide Ann. 7 on the record.

7. Apart from above, the petitioner also availed the remedy of filing a statutory appeal before the Appellate Authority viz. Director Land and Building Tax, Jaipur accompanied by a stay application for issuance of interim directions relating to recovery of disputed amount of tax. The petitioner also filed an application as per requirements of sub-section (1) of Section 16 of the Act which stipulates as under:-

"16. Appeals.- (1) Any person aggrieved by an order under Section 10, 10-A, 11, 13, 15 or 15-B, 22-A may at any time before the expiry of sixty days from the date of the order, prefer an appeal to the Collector of the district, where the (land or building) in respect of which the order was passed is situate, or to such other authority as the State Government, may by notification in the Official Gazette, appoint in this behalf."

8. The petitioner also deposited the amount of Rs. 69476/- since that was the statutory requirement prior to entertaining the appeal by the Appellate Authority. The appellate authority issued notice to the petitioner requiring him to submit proof of deposit of the entire annual tax liability as above.

9. Being aggrieved of the notice issued by the Authority, the petitioner preferred an application under Section 8(1) of the Rajasthan Taxation Tribunal Act, 1995 (for short "the Act of 1995") before the Rajasthan Taxation Tribunal, Jaipur (hereinafter referred to as "the Tribunal"). In the appeal preferred before the Tribunal the petitioner raised various objections including one that the said demand of Rs. 1,40,780/- is violative of Articles 14 and 19(1)(g) of the Constitution of India and prayed that the impugned assessment order dated 3rd March, 1997 and also notice of demand be quashed with a further prayer that no coercive steps be taken for recovery of the amount pending hearing and decision of the appeal.

10. The petitioner simultaneously also challenged the virtue of the provisions of Section 16(1) of the Act before the Tribunal on the grounds *inter alia* that they impair and imperil the petitioner's right for redressal of his grievance by the Appellate Authority. His further contention was that the right of appeal being statutory right cannot be curtailed or restricted to a condition which appears on the face of it as unjust and unreasonable. The learned Tribunal on taking overall view of the matter and also having taken note of ratio of decision of this Court in Division Bench's judgment of this Court in *titled as Gattani Resorts Private Ltd. v. Rajasthan Taxation Tribunal and others*,¹ held as under :-

"As regards the question of the proviso to sub-section (1) of Section 16 of the Rajasthan Land and Building Tax Act, 1964 is concerned, we do not think that such a provision suffers from any lack of constitutional vires just because an aggrieved person has to deposit the whole of the tax assessed and payable by him while preferring the appeal."

11. The learned Tribunal vide its order dated 26-8-1997 dismissed the application filed by the petitioner under Section 8(1) of the Act of 1995. Being aggrieved of the aforesaid of the Tribunal, the petitioner has come up before this Court by way of this writ petition.

12. Though the learned counsel for the petitioner has also placed reliance upon the Division Bench's judgment of this Court in *Shantu Ram v. State of Rajasthan*,³ wherein the validity of Rule 10/A of the Rajasthan Colonization (Allotment of Government Land to Pong Dam Oustees in Rajasthan Canal Colony Area) Rules, 1974 (for short, the Rules of 1972) was under challenge but, the said judgment was distinguished by the Tribunal on the ground of ratio of later and subsequent decision in the case of *Gattani Resorts* (supra) wherein the High Court held as under :-

"The right of appeal being statutory right came into existence at the very threshold when the suit was instituted and that such a right of appeal could not be snatched away by way of amendment with retrospective effect. Statute while conferring such a right can lay down suitable conditions subject to which such a right can be exercised."

13. The Tribunal held that Rule 10-A requires an appellant to deposit 25% of the reserved price of such land as security in the Government treasury before a second appeal or revision against the cancellation of his allotment of land or rejection of application by the allotting authority could be entertained.

14. Apart from above, the Tribunal was also of the view that Rule 10-A of the Rules of 1972 which provides the deposit of certain amount by way of security, is not the same as that of Section 16(1) of the Act.

15. Proviso to Rule 16(1) of the Act stipulates as under:-

"Provided that no appeal shall be entertained unless it is accompanied by satisfactory proof of payment of the whole of tax assessed and payable by the person preferring the appeal."

16. In reply to show cause notice, the Assessing Authority i.e. Land and Building Tax

Officer (Urban Land and Building Tax Department, Alwar) and others have raised preliminary objections to the maintainability of the appeal preferred by the petitioner contending *inter alia* on merits that the Appellate Authority has rightly refused to entertain the application filed under the provisions of Section 16(1) of the Act as the same was not maintainable.

17. Moreover, the respondents also raised an objection to the effect that aforesaid proviso to Section 16(1) of the Act has already been upheld by the Division Bench of this Court at the Principal Seat at Jodhpur in Gattani Resorts (*supra*) decided on 3-4-1997.

18. Hence, respondents' case was that the petitioner has to mandatorily fulfill the requirements of Section 19(1) of the Act.

19. We have heard the learned counsel for the parties at length and perused the entire record.

20. We are of the view that since the validity of the provisions of Section 16(1) of the Act has already been upheld by the Division Bench of this Court in Gattani Resorts (*supra*) therefore, the validity of the same is again not open to challenge by way of this writ petition.

21. Being faced with this situation, Sri Kasliwal, learned counsel for the petitioner, contended that the petitioner is already burdened with the responsibility of having made a pre-deposit of statutory amount of Rs. 69476/- as per notice Annexure 8 dated 13th August, 1997 by which the petitioner was called upon to make the aforesaid deposit as assessed by the Assessing Authority and which requirement he has already complied with by depositing the said amount on 5th September, 2000. He cannot be saddled with the responsibility for paying the aforesaid amount or higher rate as may be assessed by the Assessing Authority for subsequent years as well. This argument is not tenable for the simple reason that it is for the Appellate Authority to decide this question finally as the same would abide by the decision of the Tribunal after giving due hearing to the parties.

22. We are of the view that since the requirement of Section 16(1) of the Act has been complied with by the petitioner by having made pre-deposit prior to hearing of the

appeal, the making of subsequent deposit at the said rate or higher rate or revised rate will not be insisted upon him pending hearing of the appeal by the Appellate Authority.

23. Further, the petitioner will also not be called upon to deposit any penalty as per requirement of Section 13 of the Act since that will be subject-matter of the final decision of the appeal. As the compliance of Annexure 8 has already been complied with by the petitioner, requirement of Annexure 6 cannot be held binding on the petitioner.

24. To meet the ends of justice, the parties are directed to appear before the Appellate Authority viz. The Director Land and Building Tax Department, Rajasthan i.e. respondent No. 2 on 10th April, 2001. Learned counsel for the respondent will be at liberty to raise such objections which may be admissible to him in accordance with law before the said authority.

24. The Appellate Authority is directed to decide the appeal positively within a period of four months from the date of receipt of the certified copy of this order.

25. With the above observation, the writ petition stands partly allowed and is disposed of accordingly.

26. A copy of this order be also sent to the Appellate Authority i.e. respondent No. 2 for compliance.

Petition partly allowed.

Cases Referred.

1. D. B. Civil Writ Petition No. 1434/97
2. 1995 Raj RD (1) 42