

# RAJASTHAN HIGH COURT

Jugal Kishore

Vs.

State of Rajasthan

Civil Writ Petition No. 5148 of 1998

(Shiv Kumar Sharma, J.)

18.01.2002

## ORDER

**Shiv Kumar Sharma, J.**

1. All these writ petitions involve identical questions of law and fact therefore I propose to decide them by a common order.
2. Precise controversy that has to be resolved, relates to the applicability of proviso appended to Rule 73(i) of Rajasthan Stamp Rules 1955 (in short 1955 Rules), which came into existence vide notification dated Feb. 26, 1997.
3. Rule 73(i) of 1955 Rules provides thus-

"73. Revision by the Chief Controlling Revenue Authority -

(i) Any person aggrieved by an order made by the Collector under Chapters IV and V and under clause (a) of the First proviso to Section 26 and under Section 31 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order;

Provided that no revision application shall be entertained under Section 56 of the Act or under this rule unless it is accompanied by satisfactory proof of the payment of fifty per cent of the recoverable amount."

4. Contextual facts depict that the petitioners purchased agricultural land by registered sale deeds dated September 7, 1994 and paid the consideration. The Sub Registrar made a report under Section 47-A of the Indian Stamp Act, 1899 (in short 1899 Act) adapted in Rajasthan, to the effect that as the land was situated in Ward No. 17 of Chomu and there was probability of the land being converted into ABADI therefore

the valuation ought to have been made on the basis of the market rate of the Abadi land. The market rate suggested in the report was Rs. 120/- per square yard. The contention of the petitioners against the report was that there was no basis to calculate the market value of the land. As the petitioners were cultivating the land, the valuation of the land could not have been made on the basis of potential value of the property. The consideration paid by the petitioners was duly set forth in the instrument and therefore the decision of the Sub-Registrar was illegal. The Collector Stamps inspected the site on Feb. 12, 1996 and vide order dated March 30, 1997 determined the market value as Rs. 120/- per square yard treating the land as residential area and found deficiency of stamp duty and registration charges. Aggrieved by the said order, the petitioners filed revision petitions under Section 56 of the 1899 Act before the Chief Controlling Revenue Authority (Board of Revenue). The petitioners also moved applications claiming exemption from depositing 50 per cent of the amount determined by the Collector on the ground that the amendment made in Rule 73 of 1955 Rules was not retrospective. The Board of Revenue vide order dated August 7, 1997 dismissed the revision petitions holding that as the petitions were not filed in accordance with the mandate of proviso appended to Rule 73(i), the same could not be entertained. Against this order of the Board of Revenue that the petitioners have preferred the instant writ petitions.

5. I have heard Mr. Pavan Kumar Pareek, learned counsel appearing for the petitioners and Mr. J. K. Singh learned counsel appearing for the respondents and carefully scanned the impugned order of the Board of Revenue.

6. Vide Notification No. F.2(12) FD/DN/93 dated Feb. 26, 1997, proviso came to be appened with Rule 73 (i) with effect from Feb. 26, 1997. Undeniably the sale deeds were registered on September 7, 1994.

7. Section 56 of the 1899 Act mandates that the powers exercisable by a Collector under Chapters IV and V and under clause (a) of the first proviso to Section 26 and under Section 31 shall in all cases be subjected to the control of the Chief Controlling Revenue Authority i.e. Board of Revenue. by appending the a fore quoted proviso to Rule 73 (i) the framers of the Rule intended to make a check on the revisional powers of the Chief Controlling Revenue Authority. The Division Bench of this Court in *Gaurav Gupta etc. etc. v. State*<sup>1</sup> indicated that condition to deposit 50 per cent of the recoverable amount at the time of filing revision was *ultra vires* and the said condition was ordered to be struck down. Mr. J. K. Singhi, learned counsel appearing for the respondents vehemently canvassed that the Division Bench judgment was rendered on

December 12, 2000 and it cannot be made effective to the orders earlier passed by the Board of Revenue. I am not impressed by this submission. The effect of striking down a provision will be that it never existed on the Statute Book. Proviso appended to Rule 73 (i) of 1955 Rules, after the High Court struck it down, will be deemed to have never been existed in 1955 Rules. Moreover the sale deeds that were executed in 1994 could not have been subjected to a provision which was added in 1997.

8. The learned Board of Revenue in my view had arbitrarily dismissed the revision petitions of the petitioners and committed illegality in passing the impugned order.

9. Resultantly, I allow the writ petitions and set aside the impugned order dated August 7, 1997 and remand all the cases to the learned Board of Revenue with the direction to decide them on merits. The parties shall appear before the Board of Revenue Ajmer on February 11, 2002. Costs easy.

Petitions allowed.

Cases Referred.

1. 2001 (1) RLR 536