

RAJASTHAN HIGH COURT

Rajaram Kandoi

Vs.

Divisional Commissioner

C.W.P. No. 3421 of 1999

(Mohammad Rafiq, J.)

23.07.2007

ORDER

Mohammad Rafiq, J.

1. The petitioner has challenged the order dated 22-3-1999 passed by the Additional Divisional Commissioner, Jaipur whereby his revision petition was only partly accepted with the direction that after 15-12-1997 the disputed land and building were partitioned between the petitioner-Rajaram Kandoi and his brother Naresh Kumar Kandoi as per the decree of the Civil Court, therefore, the same should be considered as separate units for the purpose of assessment of the land and building tax. The petitioner has also challenged the order passed by the appellate authority dated 21-3-1998 and the order passed by the Assessing Authority dated 22-3-1996 whereby the aforea said two units for the purpose of assessment were treated as one unit.

2. I have heard Sri P. S. Sharma, the learned counsel for the petitioner and Sri S. N. Gupta, the learned Deputy Government Advocate.

3. Sri P. S. Sharma argued that the petitioner had purchased the land jointly with his brother paying for half share by registered sale deed on 8-4-1991. A family settlement was arrived at between the petitioner and his brother and the said land and building were partitioned between the petitioner and his brother which was duly attested by Notary Public on 4-7-1992. A civil suit was also filed to get the aforesaid partition sanctified which eventually was decreed by the Court on 15-12-1997. Learned counsel argued that since there are two separate units, they ought to be treated as two, but the learned authorities below have committed an error of law in treating these units as one for the purpose of assessment. He argued that half of the value of the property can be accepted as the valuation of one unit owned and possessed by the petitioner.

Assessment has to be made on the basis of maximum value and in doing so the Assessing Authority has to give due weight age to the valuation report of the registered valuer. According to the report of the valuer submitted by the petitioner, valuation of the building as on 1-4-1992 was only Rs. 10,54,600/- whereas the Assessing Authority has assessed its value to the tune of Rs. 24,98,800/- as on 1-4-1995 which is excessive and unreal, given the fact that the Assessing Authority for the previous block of two years had assessed the value of the same property at Rs. 5,10,700/- as on 1-4-1992. The appellate authority did not apply its mind to all these arguments and disposed of the appeal by perfunctory and non-speaking order. The revisional authority also without entering into all these aspects, merely based its order on the pre-received report without deciding the plea of the petitioner to assess the two units separately. Shri P. S. Sharma in support of his arguments relied on the judgments of this Court in *Smt. Shanta Gupta v. State of Rajasthan, S.B.*¹ decided on 8-7-1993 and *State v. Narendra Kumar Kaushik, S.B.*².

4. On the other hand, Sri S. N. Gupta, the learned Deputy Government Advocate has opposed the writ petition and argued that none of the orders passed by the authorities below suffer from any error apparent on the face of the record. He argued that there was a common dispute whether property is purchased by the petitioner and his brother. In fact they submitted joint valuation report of the property showing the construction to have been completed in March, 1994. Subsequently, the petitioner by letter dated 12-10-1994 informed the department that construction of the building was still not complete. The petitioner and his brother have rightly been taxed on their property. The Assessing Authority has assessed the value of the property at Rs. 24,98,800/- as on 1-4-1995 and that order is perfectly legal and valid. He therefore prayed that the writ petition be dismissed.

5. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record. While the department claims that the property in dispute which is owned by petitioner and his brother is one single unit and, therefore, is liable to be assessed accordingly, but the petitioner's contention is that there was a sale deed duly attested by the notary public according to which the plot in the size of 90 feet x 50 feet having construction was divided into two parts. The petitioner filed a civil suit for a decree of partition before the Civil Court sometime in the year 1997 and the same was decreed on 15-12-1997 on the basis of compromise. This fact has also been acknowledged and recognized by the learned Divisional Commissioner who has by the impugned order allowed two separate units

though w.e.f. the date of decree of the Civil Court dated 15-12-1997. In Smt. Shanta Gupta, supra, the learned single Judge in the context of a property jointly purchased by husband and wife held that mere one factum of purchase would not give rise to the conclusion that one of the two owners would be entitled to receive rent for the entire property. It was held that if the assessee was able to satisfy that he was not owner in respect of particular unit which property is in the hands of other person, the assessee was not liable to assessment for the entire property. The learned single Judge in the aforesaid judgment relied on the Division Bench judgment of this Court in *Rajputana Hotels Pvt. Ltd. v. State of Rajasthan, D.B.* ³ The Division Bench in the aforesaid judgment held as under :-

"From the inclusive definition of ownership, the criteria are not the registered ownership of a unit of land or building alone. The focus of the sections is entitlement to receive rent. Even those persons who are entitled to receive rent had been considered to be owner and, therefore, if the petitioner is able to satisfy the assessing authority that he is not the owner in respect of a particular unit constructed and sold (whether by way of registered or unregistered deed of conveyance and those persons were entitled to receive the rent if the property is let out, then the property is assessable in the hands of such persons and not in the hands of the petitioner."

In another judgment co-ordinate Bench of this Court in *State v. Narendra Kumar Kaushik* (supra), held that when the property was divided amongst three brothers on the basis of family settlement and they have separate possession and ownership over their portion as the character of the building is one and each separate unit has become one separate unit, it does not become one unit simply because it has been given on rent by one person.

6. In the facts of the present case I find that when the factum of partition on the basis of family settlement arrived at on 4-7-1992 which has been sanctified by decree of the Court dated 15-12-1997, has been acknowledged by the provisional authority when it directed that the petitioner would be liable to be assessed only in respect of one of the two units at least from the date of decree of the Court, there is no reason not to treat the subject property as two separate units w.e.f. the date of family settlement.

7. In view of the above discussion, the writ petition deserves to be allowed and is accordingly allowed. The impugned orders are set aside and the petitioners are liable to be assessed in respect of the land and building as two units w.e.f. the date of family settlement and the revised assessment orders would be accordingly passed. There shall

be no order as to costs.

Petition allowed.

Cases Referred.

1. Civil Writ Petition No. 757 of 1993
2. Civil Writ Petition No. 4134 of 1992 decided on 23-8-1993, reported in 1994 (1) WLC 150
3. Civil Writ Petition No. 511 of 1989 decided on 27-5-1992.