(2000) 03 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1058 of 2000

Dainik Navjyoti APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Rajasthan Lands and Buildings Tax Act, 1964 — Section 11, 16(1)

Citation : AIR 2000 Raj 381 : (2000) 3 WLC 679

Hon'ble Judges : R.R. Yadav, J;Asok Parihar, J

Bench : Division Bench

Advocate : Anant Kasliwal, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Indisputably, the petitioner''s real grievance is confined to Annexure-6 assessment order passed by Assessing Authority u/s 11 of Rajasthan Lands & Buildings Tax act, 1964 against which he has filed an appeal before respondent No. 3 -- the Director (Appellate

Authority) u/s 16of the Rajasthan Lands & Buildings Tax Act, 1964, which reads thus:--"(1) Any person aggrieved by an order under Sections 10, 11 (13. 15 or 15B) may at any time before the expiry of thirty days from the date of the order, prefer an appeal to the Collector of the District, where the (land and 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:

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

2. After filing of the appeal, the respondent No. 3 issued a notice Anncxure-8 to the petitioner to make compliance of proviso of Sub-section (l) of Section 16 of the Rajasthan Lands and Buildings Tax Act, 1964. The petitioner instead of making compliance of Annexure-8 before respondent No. 3, preferred to file the

present writ petition challenging the constitutional validity of proviso of Sub-section (1) of Section 16 of the aforesaid Act which is quoted here in above in preceding paragraph of this order merely to circumvent its compliance by adducing satisfactory proof of payment of tax assessed u/s 11 of the said Act against him.

3. It is well to remember that a writ petition is maintainable after exhausting the statutory remedy. Here in the present case, admittedly, the petitioner has filed an appeal under Sub-section (1) of Section 16 of the aforesaid Act, therefore, the present writ petition is not maintainable.

4. It is next contended by the learned counsel for the petitioner that constitutional validity of proviso of Sub-section (1) of Section 16 of Rajasthan Lands & Buildings Tax Act, 1964 cannot be challenged before respondent No. 3, therefore, he is entitled to file the present writ petition. For argument sake, even if it is conceded that the petitioner is entitled to invoke Jurisdiction of two forums for the same relief; one by way of filing the present writ petition, and other by way of filing an appeal under the aforesaid section then, choice of forum depends on the discretion of the petitioner. Once he has chosen to file an appeal under Sub-section (1) of Section 16 of the Rajasthan Lands. & Buildings Tax Act, 1964, he is debarred to file the present writ petition challenging the

constitutional validity of proviso of the aforesaid section, simultaneously, merely because under proviso of Sub-section (1) of Section 16 of Rajasthan Lands & Buildings Tax Act. 1964, he is required to furnish satisfactory proof of payment of tax assessed u/s 11 of the said Act against him to make his appeal entertainable.

5. It is not disputed before us that there are part materia provisions u/s 30 of Workmen''s Compensation Act, 1926 and in other enactments recently enacted. Thus, deposit of tax as well as satisfactory proof evidencing the deposit as condition precedent for filing an appeal u/s 16(1) of Rajasthan Lands & Buildings Tax Act, 1964 cannot be said to be arbitrary, unjustorunreasonable.This condition seems to us to have been incorporated keeping in view that running the administration and to carry out welfare schemes, the Government needs liquid money.

6. There is yet another reason to arrive at the aforesaid conclusion. In case the assessment order is interfered in appeal and it is allowed by appellate authority, the petitioner would be entitled to refund of the amount so deposited. This is modern trend of legislation where statutory appeals are being made tenable after deposit of tax or any other amount determined with certainty under statutory provisions of an enactment after giving opportunity of hearing to an aggrieved person. It is to be Imbibed that scope of interference in appeals are wider than the scope of interference in writ Jurisdiction on recognised line. It goes without anything that writ petitions are not decided as appeals and revisions.

7. In our considered opinion, the petitioner is not entitled to file the present writ petition challenging the constitutional validity of Sub-section (1) of Section 16 of

the Rajasthan Lands & BuildingsTax Act, 1964, after filing an appeal before respondent No. 3 against assessment order Annexure-6 assessed by Assessing Authority in exercise of his power conferred upon him u/s 11 of Rajasthan Lands and Buildings Tax Act, 1964 after giving reasonable opportunity of hearing to the petitioner. It is impermissible to allow the petitioner to prosecute his legal remedy against assessment order

Annexure-6 approaching two forums simul-taneously i.e. one by filing an appeal under Sub-section (1) of Section 16 of Rajasthan! Lands & Buildings Tax Act, 1964, and other by way of filing the present petition under Article 226 of the Constitution before exhausting statutory remedy of appeal under the aforesaid section. If petitioner is permitted to do so, it would tantamount to abuse of process of Court leading wastage of public time.

8. It is to be imbibed further that there is presumption about the provision of an enactment to be intra.vires unless compelling reasons are shown by a person who claims that provisions of an enactment are ultra vires. Burden of proof to establish an enactment to be ultra vires lied on the shoulder of the petitioner or he who claims it to be ultra vires. The learned counsel for the petitioner in the present case fails to demonstrate how the proviso of Sub-section (1) of Section 16 of the Rajasthan Lands & Buildings Tax Act, 1964 is ultra vires. Nothing is brought to our notice that the aforesaid enactment passed by State Legislature is beyond Its legislative competence. Nothing is brought to our notice how the proviso of Sub-section (1) of Section 16 of the Rajasthan Lands & Buildings Tax Act, 1964 contravenes the constitutional philosophy enshrined in our constitution.

9. In our considered opinion, the present writ petition has been filed to circumvent the deposltof tax assessed by AssessingAuthor-ity in exercise of his power conferred upon him u/s 11 of Rajasthan Lands & Buildings Tax Act, 1964, after giving opportunity of hearing to the petitioner and also to avoid to adduce satisfactory proof evidencing such deposit as condition precedent for filing an appeal u/s 16 of the said Act which is legally and constitutionally not permissible.

As a result of aforesaid discussion, the instant writ petition is hereby dismissed in limine as not maintainable during the pendency of statutory appeal filed by the petitioner under Sub-section (1) of Section 16 of Rajasthan Land & Buildings Tax Act. 1964.