(1987) 11 AHC CK 0027

In the Allahabad High Court

Case No : Second Appeal No. 2675 of 1987

Garhwal Jal Sansthan — APPELLANT

Vs

Sardar Pritam Singh — RESPONDENT

Date of Decision : 16-11-1987

Acts Referred:

Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 30, 52, 52(1), 53, 53(1)

Citation : (1988) 1 AWC 116

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : V.B. Upadhya, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Misra, J.—Having lost in both the courts below Garhwal Jal Sansthan has filed the present second appeal in this Court. The plaintiff-Respondent had filed a suit for a declaration of a rebate at the rate, of 25% in the water tax levied against him on the basis of the water tax already assessed against him. Admittedly, the plaintiff-Respondent is the owner of House No. 84, Reethamandi, Dehradun. At the time of valuation for the periods relating to years 1979 to 1983 and 1984 to 1986, the said house was assessed at annual value of Rs. 1980. At that time, the house was let out. Subsequently, it is the admitted case of the parties that the tenants had vacated and the house was occupied solely by the owner thereof for residential purpose. In this changed situation, the plaintiff-Respondent moved an application dated 8-5-1985 for rebate in accordance with proviso to Sub-clause (b) of Clause (1) of Section 53 of the U.P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as the Act).

2. Since the defendant refused to make necessary rebate, the plaintiff-Respondent had filed the said suit for declaration that in the changed situation he is entitled to 25% rebate in the water tax already assessed against him. The relief for recovery of interest on the amount of said rebate was also prayed for.

The parties were at issue on both the aforesaid two points. Since the facts of the case were not disputed, both the courts below, after interpreting the relevant provisions of the Act, have come to a conclusion that the plaintiff-Respondent is entitled to a declaration for the rebate prayed for and interest at the rate of 6 per cent per annum. The defendant-Appellant was directed to pay the amount of interest also.

3. I have heard learned Counsel for the Appellant. Let me now advert to the relevant provisions of the said Act:

Section 52 of the Act ;

52. Taxes leviable:

For the purposes of this Act, a Jal Sansthan shall levy, on premises situated within its area:

(a) where the area is covered by the water supply services of Jal Sansthan, a water tax ; and

(2) The taxes mentioned in Sub-section (1) shall be levied at such rate which in the case of water tax shall be not less than 6 percent and not more than 14 percent and in the case of sewerage tax snail be not less than 2 percent and not more than 4 percent of the assessed annual value of the premises as the Government may, from time to time after considering the recommendation of the Nigam, by notification in the Gazette, declare.

Section 53 of the Act:

53. Assessment of annual value-For the purposes of Section 52, annual value means-

(b) in the case of any other premises, the gross annual rent for which such premises are actually let or where the premises are not let, the gross annual rent for which the premises might reasonably be expected to be let:

Provided that the annual value in the case of premises occupied by the owner himself shall be deemed to be twenty-five percent less than the annual value otherwise determined under this section.

4. Form a perusal of the above, it is, therefore, clear that under sub Clause (2) of Section 52 of the Act, water tax is levied at a certain rate in the assessed annual value of the premises (emphasis supplied). In the present case, such Annual Value is determined according to the principles laid down under Sub-clause (b) of Sub-section (1) of Section 53 of the Act. Under the proviso thereof, such annual value as assessed under the main provisions of sub Clause (b) as aforesaid is to be further reduced in the contingency contemplated by the said proviso. If the facts of a case so permit, this can be done for any year to determine the correct annual value of that year. In the present case, as is clear from the admitted facts of the case the contingency mentioned in the proviso was present. In this

situation, in my opinion, the Appellant-Sansthan was under a duty to act according to law. Therefore, there is no force in the present second appeal as both the courts below have rightly interpreted the aforesaid proviso to Sub-clause (b) of Sub-section (1) of Section 53 of the Act and the plaintiff-Respondent has been rightly granted the reliefs prayed for by him.

5. During the course of hearing, learned Counsel for the Appellant has also raised a point that the suit is barred by Section 30 of the Act. Admittedly, the parties were not at issue on this plea in the courts below. In my opinion, this plea not only necessitates investigation, for bringing on record, certain facts but also whether the said section itself as worded is valid or not and if so, to what extent ? All this has not been done in the present case. I therefore, refuse to entertain this plea at this stage.

6. In the result, the second appeal fails and is dismissed summarily.

