
(1980) 08 RAJ CK 0014
In the Rajasthan High Court

Jodhan Real Estate Development Company	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 14-08-1980

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1981) WLN 535

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—These sixty five writ petitions the particulars of which are given in the Schedule 15 & annexed to this order, raises question of law relating to constitutional validity of the provisions of Rajasthan Land and Buildings Taxes Act, 1964 (Act XVIII of 1964) as amended from time to time (hereinafter called "the Act"). The land and building owners filed separate writ petitions in this Court challenging the validity of the Act.

2. The first bunch of 46 writ petitions was decided by a Single Bench at Jaipur on May 11, 1979. (S.B.C.W. No. 877/1973, S.M.S. Investment Corpora Hon Pvt. Ltd. v. State of Rajasthan The learned Single Judge allowed all the writ petitions in part and his findings were as under:

(a) The original Section 3 of the Rajasthan Land & Building Tax Act, 1964 as it was enacted by the Legislature in 1964 is valid and cover-ded by entry No. 49 of List II of Schedule VII of the Constitution.

(b) Second proviso of Section 3 as introduced by the Rajasthan Amendment Act No. 15/78 by which the market value of such lands and buildings were to be taken together, is ultra vires as it was outside the legislative competence of the State Legislature, to have enacted law under entry 86 of List I of the Schedule VII. This proviso levies tax on aggregated or total or composite market value of all lands and buildings of a citizen and is, therefore, outside the scope of entry 49 of List II of Schedule VII.

(c) Section 2 as amended by Act No. 15 of 1973 is still intra vires, because the "above proviso is severable from the rest of the charging Section 3. The doctrine of severability can be applied even though the proviso has been declared ultra vires because of legislative incompetence, This proviso has been deleted by Act No. 18 of 1973.

(d) Section 3 as it stands in the present form after Amendment Act No. 18 of 1973, is within legislative competence of State Legislature, being covered by entry 49 of List II of Schedule VII.

(e) Clause (A-1) of Section 3 as it now stands mentioning that for removal of doubt, it is declared that the tax shall be levied on lands or buildings or both separately as units, is violative of Article 14 of the Constitution as units are not defined and the use of the word "both" makes the meaning of it obscure, giving arbitrary and naked discretion to the assessing authority to discriminate between the assessee at their whims and caprice. In that view of the matter this Sub-section (A-1) can permit aggregation of the market value of all lands or buildings and, therefore, is also outside legislative competence of entry 49.

(f) The absence of definition of "unit" has created obscurity and resulted in contradictory judgments of assessing authorities but on that account, Section 3 cannot be declared invalid. The Government circulars dated 16-12-74 of Dy. Director of Lands & Buildings Tax Deptt. Rajasthan, Jaipur and dated 27-12-74 of Director of Lands & Buildings Tax Deptt. Rajasthan Jaipur for treating all lands and buildings as one unit which are used for one common functional purpose of one owner, are against the charging section 3 and, therefore, are quashed.

(g) Section 3 as covered by entry 49 levies tax on each land and each building as separate unit, and neither two lands nor two buildings nor two or more lands and buildings can be aggregated or joined together for assessment for market value.

(h) The assessing authorities can keep building and the land appurtenant there to the extent it is required to be kept open by the rules or bye laws of the local authorities only, as one unit and the additional land is to be treated as separate unit. So also merely because there are many buildings joined together but each one will have to be treated separate unit;

(i) Section 4 of the Rajasthan Land & Building Tax Act or 1964 as amended upto date, it not violative of Article 14 of the Constitution of India and is consequently declared intra vires;

(j) Provision of appeal and revision contained in Sections 16, 18 and 19 of the above Act are also valid of the Act and can not be declared invalid simply because the law requires that tax is to be deposited as a pre-requisite condition for filing the appeal or revisions;

(k) The respondents are directed to rec insider the impugned orders of assessments of the petitioners, in order to give effect to the principles enunciated above in this judgment to the extent they apply to the individual

cases of the petitioners. The learned Advocate General has also undertaken to get them reconsidered as per this judgment;

(I) All other objections raised in individual writ petitions, which have not been decided by this judgment, have neither been waived nor deemed to be rejected. It would be open to the petitioners to raise them in future separate proceedings, including writ petitions and leave is granted for the same.

Both the State of Rajasthan and the petitioners in those cases feeling aggrieved from the aforesaid order of the single Judge filed 58 special appeals which were decided by a Division Bench at Jaipur on March 31, 1980. (D.B. Civil Special Appeal No, 75/1979, S.M.S. Investment Corporation Pvt. Ltd. v. State of Rajasthan.

3. That Division Bench reversed the judgment of the Single Bench and held that the provisions of the Act including the various amendments were valid.

4. In other respects a number of findings of the single Judge were confirmed by the Division Bench. Apart from holding that the Act is valid, the finding of the Division Bench can be extracted as under:

...This land may separately be taxed as a unit and similarly a building can separately be taxed as a unit. But land and building both shall be taxed together only with they form one unit, namely when land in form of garden or ground is appurtenant to the building and forms an integra part thereof. In the last mentioned case, the land or building cannot be separately taxed, as they together constitute one unit...."

(b) ...It may be made clear that Section 3(1A) does not permit the aggregation or clubbing together of units, but what it merely allows is the inclusion of such land, which is either enclosed by walls or is annexed to the building or a compound or a garden appurtenant to the building and which forms an integral part of the building as a unit....

(e) ...The emphasis is on the levy of tax on unit and as held by the learned Single Judge himself that each land is liable to be taxed as a separate unit and each building is similarly liable to be taxed as a unit, but land and building can be taxed together only in case they form one unit.

(d) ...In our view, the land constituting as integral part of the building, such as garden or ground appurtenant to the building and has been used for the purposes of the main building, such as gar-rages, servant quarters, lawns, tennis or Badminton courts, passages etc. which are necessary for the proper enjoyment of the building or is otherwise appurtenant thereto, can be joined along with the building so as to constitute one unit and that is why Sub-section (1 A) purposefully speaks of "land and building" both as a unit". If land and building do not together form a unit, then they cannot be clubbed together but such ground or garden which is appurtenant to the building so as to form part and parcel of the building can only be aggregated along with it so as to

constitute one unit...."

(e) ...Land and building which are incapable of yielding rent profit, are also exempted from payment of tax. But the industrial establishments cannot be taken out of the purview of the enactment...."

(f) ...Thus, if lands and buildings stand separately then naturally they would not form one unit. In the *Anand Mills Co. Ltd. etc. v. The State of Gujarat* (15) it was held that Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units, and such a tax is directly imposed on lands and buildings. In that case, question was as to whether land extends upwards and also down wards and it was held that land must be under stood in the widest possible sense and it includes not only the surface of the earth, but every thing under it or over it and that land exists upwards as well as downwards.

In the case of *Government of Andhra Pradesh and another vs. Hindustan Machine Tools Ltd.* (16), the matter related to the levy of sales tax by a Gram Panchayat, it was held by their Lordships of the Supreme Court that the levy of house tax on buildings came within the scope of Entry 49 of List II. If tax is levied only on the buildings of a factory and not on the machinery and furniture, then such tax would fall under entry 40 of the list II. Their Lordships also held that the power of tax a building could be exercised without reference to the use to which the building is put and it is irrelevant for that purpose that the building is occupied by factory which cannot conduct its activities without the machinery and furniture. As building falls legitimately within the scope of entry 49 of list II, the building of a factory can lawfully form the subject matter of legislation by the State Legislature, so long as no attempt is made to levy or collect tax in respect of machinery and furniture of such factory. Thus, an industrial establishment would squarely fall within the definition of building, as contained in Section 2 of the Act, so far as the structure and the land over which it is standing and the land enclosed within such structure or appurtenant there to and occupied by such industrial establishment, cannot constitute part of the building for the purpose of imposing tax under the Act....

(g) ...If the State Government or a local authority is the owner of such land on which the depots of Indian Oil Corporation are situated such lands may be exempted from payment of tax under the Act, unless they may fall within the proviso to Clause (10) of Section 2 of the Act.

(h) In the case of land or building owned by the State Government, a licensee or a grantee thereof from the State Government shall be deemed to be the owner of such land or building for the purposes of the Act and the Indian Oil Corporation as a licensee or grantee holding land from the State Government, will not be entitled to get the benefit of the provisions of Section 6 of the Act, unless it holds a lease of the land in question. However, if the Indian Oil Corporation does not hold the land as a lessee or grantee from the State Government but it holds the same as a lessee of the Central Government or of

the Urban Improvement Trust, then it would be deemed to be the owner of such land if it holds a lease for a term of 30 years or more....

(i) ...Thus, in a case of licence or lease from the Central Government or a local authority for a period not less than 30 years, the tax under the Act does not become not payable. But if the lease is for a period of 30 years or for a period exceeding 30 years, the lessee shall be deemed to be the owner of such land or building for the purposes of the Act and would be liable to the payment or tax under the Act

(j) ...It follows that the assessing authority is required to find out the value which the building, including the super-structure and the land underneath and appurtenant to the building would fetch if the same is sold as one unit in the open market. In our view, where a number of buildings are situated within the same compound or the buildings are constructed without any compound, the unit must have nexus to the object of taxation, which as we have already observed above, is land alone or a building alone or land and building both forming one unit. Building or land has to be taxed separately and only with a building, which is either enclosed within it or is appurtenant thereto such land can be aggregated as to constitute an integral part of the said building, forming one unit....

(k) ...We are, therefore, unable to accept the interpretation sought to be placed both by the Director as well as by the Deputy Director of the Lands and Buildings Department, in their afore said circulars, as the said circulars do not correctly interpret the provisions of Section 3 of the Act.

(l) ...tax can be levied separately on land alone or on building alone or on land and building both constituting one unit, inclusive of the fabric and the ground on which the walls of the structure stand and the land enclosed within such walls and the appurtenant thereto so as to form an integral part thereof and an artificial delimitation in accordance with the Municipal bye-laws or rules or bye-laws of other local authorities cannot be utilised for demarcating portions of land appurtenant to a building in two separate units. The assessing authority shall have to investigate in each case as to how much of the land appurtenant to the building so as to constitute one unit. The circular issued by the Director and the Deputy Director of the Lands and Buildings Department, Rajasthan, Jaipur referred to above are quashed.

After levying down the above principles the Division Bench observed as Under,--

...If the assessment orders passed in the cases of the writ petitioners are not in accordance with the principles enunciated above, the petitioners would be at liberty to approach the concerned assessing authority for reconsideration of those assessment orders in the light of the legal position explained above. All other objections raised by the writ-petitioners except those relating to the question of validity of the Act have been left open by us, as was done by the learned Single Judge and it would be open to the writ petitioners to raise all such objections before the concerned authorities in any pending or future proceedings.

5. In the present 65 writ petitions it has been agreed by both the learned Counsel for the petitioners and the learned Government Advocate appearing for the State that so far as these 65 writ petitions are concerned they are clearly governed by the above judgment of the Division Bench. In view of this, it is neither necessary to narrate the facts of each case nor even of one test case nor is necessary to mention the various contentions raised in the writ petitions and reply filed by the State.

6. In some of the writ petitions the order of Assessing Authorities had been filed and challenged and in others the petitioners have come at an earlier stage. However, in view of the order with I propose to ultimately pass in these cases, the learned Counsel for the parties have agreed that it would be unnecessary to go into individual case of assessment.

7. Undoubtedly the assessing authorities have been making assessments on the basis of the circulars issued by the Deputy Director, Lands and Buildings Tax Department, Rajasthan, Jaipur dated 16-9-1974 and another circular issued by the Director of Land and Building Tax Department dated December 27, 1974 for the purposes of clarifying the meaning of the word "both" as used in Sub-section (a) of Section 3 of the Act. The Division Bench in the above mentioned cases have held that they are unable to uphold the interpretation sought to be placed both by the Director and Deputy Director, of the "unit" in their aforesaid circulars as the said circulars do not correctly interpret the provisions of Section 3 of the Act.

8. The above finding of the Division Bench about the circulars issued both by the Director and Deputy Director of the lands and building Tax Department and further the definition of unit as has been given by the Division Bench in the above judgment would certainly result in the reconsideration of many of the cases in which the above principles laid down by the Division Bench has got a direct bearing

9. Confronted with the above situation, the learned Counsel for the petitioner submitted that a general direction must be issued to the assessing authorities to reconsider all the cases in the light of and on the basis of the principles enunciated by the Division Bench. The learned Government Advocate vehemently opposed this request according to him, this would result in reopening almost all the cases in the State even though the principle laid down by the Division Bench may or may not have any implication in those cases.

10. Then, there are four writ petitions relating to the property of the temples. They are as follows--

(1) S.B. Civil Writ Petition No. 592/79 Kushalwari v. State

(2) S.B. Civil Writ Petition No. 1592/79 Nawalchand Supradchand Trust v. State

(3) S.B. Civil Writ Petition No, 102/79 Jain Shvetamhar Nakoda Teerth v. State

4. S.B. Civil Writ Petition No. 579/79 Khemchand v. State

In the above cases, the learned Counsel for the petitioners have argued that since they are temple properties, they are exempted u/s 6 of the Act and also by the notification dated January 24, 1978. According to the various contentions raised before me, the properties which are attached to the actual place of worship are sought to be covered by the exemption, learned Government Advocate has vehemently opposed this interpretation of Section 6 and the notification.

11. Yet another writ petition No. 592 of 1978 Maharaj Hanwat Singh v. State relates to the Nagaur fort and other properties which are claimed to be exempted as charitable trust. In all these five cases, it has been pointed out that trusts have been registered under the Rajasthan Public Trust Act and. therefore also, they as exempted in terms of the notification mentioned above in addition to the various sub-clauses of Section 6 of the Act. After detailed arguments were made both the parties realised that in view of the fact that in terms of the judgment of the Division Bench referred to above, the question of units will have to be reexamined in these cases, it would be inexpedient if these points are decided now because they are mixed question of fact and law. It was, therefore, agreed that the assessing authority should re-examine these cases and while doing so, consider objectively the implications, meaning and interpretation of the notification of January 24, 1978 and also the various clauses of exemption contained in Section 6 of the Act and then pass orders afresh, In view of this, it is not necessary to examine in details the rival contentions about the. meaning which has to be given to the notification of January 24, 1978 and the various clauses of Section 6 containing the exemptions. It would be for the assessing authorities to re-examine the entire matter and decide these cases afresh as indicated above.

12. In S.B. Civil writ Petition No. 527 of 1979, Ramchandra Mangilal v. State, it was pointed out that inspite of there being a registered partition deed of 1959, the assessing authority treated the property of two separate brothers Ramchandra and Mangilal as one unit. The registered partnership deed was filed in the case. From the order of the assessing authorities, it appears that the principle ground was that the copy produced was not a true copy, though it has further been mentioned that spot inspection also revealed that it was one unit. Normally, the petitioner should have been vigilant and produced the photostat copy or the original or true-copy before the assessing authority. However, in view of the directions which are being made in this case, it would be in the interest of justice if the assessing authority reconsiders this matter on production of the original or a certified copy by the petitioner along with the application for reconsideration within a period of three months from today. It is therefore, ordered that the assessiug authority, in this particular case, would reconsider the matter in the light of the observations made above if the petitioner files an application for the same along with a certified copy of the registered partition

deed within a period of three months.

13. It may be stated that all the cases need not be affected by the principles laid down by the Division Bench because in a given case an assessee may only own one building and there may be no dispute at all about the "unit" That being so, a general direction as prayed by the learned Counsel for the petitioner is neither necessary nor warranted in the facts and circumstances of each case.

14. At the same time, it is also necessary that the law as laid down by the Division Bench of this Court in the above cases should be given effect to by the assessing authorities in all these cases.

15. It is therefore, directed that all the assessing authorities in all these 65 cases would be required to reconsider the cases of the petitioners and make fresh orders of re-assessment, in case the petitioners make an application to the concerned assessing authority within a period of three months from today mentioning all the objections which arise in their individual cases on account of the principles enunciated by the Division Bench and in order to give effect to that judgments. The assessing authorities if such an application is made should provide an opportunity of hearing and after giving reasonable opportunity of hearing to the assessee, decided those objections of the assessee afresh and while doing so fully apply the principles laid down by the Division Bench in this respect only the principles which have been extracted above provide guidance to the assessing authorities but the entire judgment of the Division Bench would be the authentic version of the principles laid down by the Division Bench and the assessing authorities should fully apply that judgment as a whole.

16. It is made clear that the assessing authorities will be entitled to reopen only those cases in which as per the principles, laid down in the judgment of the Division Bench, any alteration, amendment or change in the assessment order is prima facie required. It is also made clear as has been done by the Division Bench that other objections if any, made by the petitioners, except those relating to the question of validity of the Act are left open and it would be open to the writ petitioners to raise all such objections before the concerning authorities in any pending or future proceedings.

17. In the result all these writ petitions are disposed of as indicated above. There will be no order as to costs.