(1999) 08 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 400 of 1998

Kumaun Jal Sansthan APPELLANT

Vs

Prescribed Authority and Another RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Uttar Pradesh Jal Sansthan (Assessment of Annual Value of Premises) Rules, 1981 — Rule 3, 9
Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 52, 52(2), 53, 53(2), 53(4)

Citation : AIR 2000 All 30

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : R.M. Saggi, for the Appellant; Siddharth, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—These writ petitions have been preferred by the Kumaun Jal Sansthan, a statutory authority constituted under the U.P. Water Supply and Sewerage Act, 1975 and are directed against identical orders passed by the Civil Judge (Senior Division), Nainital whereby he allowed as the appeals filed by the respondents u/s 54 of the said Act. All the orders are dated 13th of July, 1998 and have been passed in appeal Nos. 2 of 1997, 4 of 1997, 5 of 1997, 6 of 1997, 7 of 1997, 3 of 1997 and 1 of 1997, respectively. Affidavits have been exchanged.

2. I have heard Sri R. M. Saggi, learned counsel for the petitioner and Sri Siddharth, learned counsel for contesting respondent No. 2.

3. The respondents are residents of town Jaspur in the district of Udham Singh Nagar within the territorial area of Kumaun Jal Sansthan, Nainital and are owners/occupiers of various properties. Somewhere in the June-July, 1997, suddenly the Jal Sansthan initiated proceedings for the recovery of water tax for the periods 1979 to 1997 and demand notices in various sums were issued. The demand in each case being substantial as it related to a period of (sic) years, the

respondents, except Smt. Shanti Devi respondent in Writ Petition No. 404 of 1998, came to this Court in Civil Misc. Writ Petition No. 24821 of 1997 challenging the recovery of water tax on various grounds. This Court by an order dated 4th of August, 1997 and without issuing any notice to the Jal Sansthan that was arrayed as respondent No. 2 to the said writ petition, disposed of the same observing that no water tax demand can be raised without assessment having been made and any assessment made is appealable before the Prescribed Authority. The petitioners were, therefore, ordered that they may take up appropriate proceedings against the assessment order and if an appeal is preferred by the petitioners against the assessment order within one month, then the same will be entertained by the appellate authority without raising any objection as to the limitation. This Court further directed that if the petitioners apply for obtaining a copy of the assessment order, then the same will be supplied by the assessing authority within one week from the date of the receipt of proper application. It was thereafter that the respondents in these petitions preferred appeals to the Prescribed Authority i.e. the Civil Judge (Sr. Div.) Nainital stating inter alia that they applied for the copy of the assessment orders to the Asstt. Engineer of the Jal Sansthan but no copy has been supplied. The appeal was contested inter alia on the ground that the same was not maintainable under the provisions of the Act because no assessment was made by the Jal Sansthan as it had adopted the assessments made by the Municipal Authority. The learned Civil Judge held that whatever be the basis of assessment, an appeal lies to the Prescribed Authority. The learned Civil Judge found that no specific order of assessment had been made and no opportunity of hearing was given to the appellants. The prescribed authority (Civil Judge, Sr. Div.) Nainital allowed the appeals and quashed the demand notices dated 7-2-1997 and the Jal Sansthan was directed to issue notices to the appellants and to make the specific orders of assessment after giving them an opportunity of hearing. The Jal Sansthan feels aggrieved by the orders of the Prescribed Appellate Authority and has come to this Court through these writ petitions.

4. Sections 52, 53 and 54 of the U.P. Water Supply and Sewerage Act, 1975 are relevant for decision of these writ petitions which stands as under.

"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 water tax; and

(b) where the area is covered by the sewerage services of Jal Sansthan, a sewerage tax.

(c) 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 per cent and not more than 14 per cent and in the case of sewerage tax shall be not less than 2 per cent and not more than 4 per cent 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.

53. Assessment of annual value (1) For the purposes of Section 52, annual value means--

(a) in the case of railway stations, educational institutions (including their hostels and halls) factories (as defined in the Factories Act, 1948) and commercial establishments (as defined in the Uttar Pradesh Dookan Aur Vaniya Adhisthan Adhiniyam, 1956) five per cent of the market value of the premises;

(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 per cent less than the annual value otherwise determined under this section.

(2) The annual value ,of the premises for the purposes of the levy of taxes mentioned in Section 52 shall be assessed by such authority as the State Government may, by general or special order direct, and such authority may be either the Jal Sansthan itself or any other agency may be specified in the order.

(3) Where the assessment is made by the Jal Sansthan or by any other agency the Jal Sansthan or such other agency shall follow the prescribed procedure.

(4) Until an assessment of the annual value of premises in any local area is made by the Jal Sansthan or any other agency specified under Sub-section (2) the annual value of all premises in that local area, as assessed by the local body concerned for the purposes of house tax shall be deemed to be the annual value of the premises for the purposes of this Act as well.

(5) Where the annual value of premises of any local area is assessed by the Jal Sansthan or other agency specified under Sub-section (2), it shall, subject to any variation therein on appeal u/s 54, be deemed to be the annual value of the premises for the purposes also of house tax levied by the local body concerned, anything contained in the law constituting such local body notwithstanding

54. Appeal against assessment.-- (1) any person aggrieved by an order of assessment made by a Jal Sansthan or any other agency under Sub-section (2) of Section 53 may, within thirty days from the date of such order, prefer an appeal to the prescribed authority

(2) Where an appeal is preferred from an order of the Jal Sansthan or any other agency under Sub-section (1), the prescribed authority may stay the enforcement of that order for such period and on such terms as it deems fit.

(3) The prescribed authority may, after giving to the parties an opportunity of being heard, confirm, set aside or modify the order under appeal.

(4) A decision on the prescribed authority under Sub-section (3) shall be final and binding on the parties."

5. The contention of the learned counsel for the petitioner is that no assessment order has been made by the Jal Sansthan or by any prescribed authority under Sub-section (2) of Section 53, of the Act and, therefore, no appeal u/s 54 could lie as the said Section specifically provided an appeal only against an assessment under Sub-section (2) of Section 53. According to the learned counsel for the petitioner by virtue of Sub-section (4) of Section 53 the Jal Sansthan could adopt the annual value of all premises in that local area as assessed by the Local Body concerned for the purpose of water tax which value shall be deemed to be the annual value of the premises for the purposes of the said Act as well. This contention, in my view, cannot prevail for two reasons, firstly this Court in the aforesaid writ petition has held that no water tax demand can be raised without an assessment having been made and any assessment made will be appealable. This Court dismissed the aforesaid writ petition and permitted the petitioners to file appeals. Therefore, that order was binding on the lower appellate authority and having not been challenged by the present petitioner, is binding on it also.

6. Further the contention that where the annual value of the house property as determined by the municipal authority is adopted, no further action towards the assessment of tax need be done by the Jal Sansthan is too wild a proposition and cannot be accepted. Assessment of annual value is only one stage of the assessment. Once the annual value is determined, the appropriate authority has to calculate the amount of water tax leviable in respect of each property keeping in view of the provision of Sub-section (2) of Section 52 of the Act and the relevant notifications regarding the rates of tax. Then there are certain restrictions on the levy of taxes contained in Section 55 of the Act, that stands as under;

"55. Restriction on levy of taxes -- The levy of taxes mentioned in Section 52 shall be subject to the following restrictions, namely--

(a) they shall not be levied on any land exclusively used for agricultural purposes unless water is supplied by the Jal Sansthan for such purposes to that land;

(b) the water tax shall not be levied on any premises --

(i) of which no part is situate within the radius prescribed from the nearest stand-post or other water works at which water is made available to the public by the Jal Sansthan; or

(ii) the annual value of which does not exceed rupees three hundred and sixty, and to which no water is supplied by the Jal Sansthan.

(e) the sewerage tax shall not be levied on any premises --

(i) of which no part is within a radius of one hundred metres from the nearest sewer of the Jal Sansthan, or

(ii) the annual value of which does not exceed one hundred fifty rupees."

These restrictions too have to be kept in mind. Further the Jal Sansthan (Assessment of Annual Value of Premises) Rules, 1981 show that the process of assessment of annual value includes the determination of the amount of water tax and sewerage tax Rule 3 of the said Rule reads as under :

"3. Preparation of assessment list: Section 53(2) -- The Assessing Authority shall cause an assessment list of all lands and buildings in the local area within the jurisdiction to be prepared of the Jal Sansthan for which such Authority has been construed. Such list shall contain --

(a) the name of the street or mohalla in which the property is situated

(b) The description of the property either by name or by number sufficient for identification,

(c) The name of the owner or occupier, if known,

(d) In the case of railway stations, educational institutions (including their hostels and halls), factories and commercial establishment; the market value of the premises,

(e) 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,

(f) The amount of water tax and sewerage tax assessed thereon."

Then Rule 9(1) provides as follows :

"9. Power of the Assessing Authority : (1) The Assessing Authority may at any time alter or amend the assessment list --

(a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation alter the authentication of the assessment list; or

(b) by substituting therein the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property for the name of the owner or occupier or any property; or

(c) by enhancing the valuation, or assessment on, any property which has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistake; or

(d) by revaluing and reassessing any property the value of which has been increased by additions or alterations to the buildings; or

(e) by reducing, upon the application of the owner or on satisfactory evidence that the owner is untraceable and the need for reduction established or upon its own initiative the valuation of any building which has been wholly or partly demolished or destroyed; or

(f) by correcting any clerical, arithmetical or other apparent error;

Provided that the Assessing Authority shall give at least one month''s notice to any person interested in any alteration or amendment which the assessing authority proposes to make under Clause (a), (b), (c) or (d) of the said rule and of the date on which the alteration will be made."

7. Rule 4 provides for the publication of the assessment list and the right of inspection etc. Rule 5 provides for entertainment of objections which have to be investigated and disposed of and the result of the disposal is to be noted in a book required to be maintained by Sub-rule (2) of Rule 5 and after all that is done the list has to be authenticated by the signature of the General Manager of the Jal Sansthan Every list so authenticated has to be deposited in the office of the Jal Sansthan and shall be declared by public notice to be open for inspection. It is only after the authentication and publication that a citizen can normally prefer an appeal to the Prescribed Authority. Rule 7 provides that a new assessment list shall ordinary be made once in every five years which means that the Jal Sansthan cannot levy tax for 18 years at a time.

8. In view of the above provisions, the word "assessment" used in Section 54(1) cannot be understood in the restricted sense of the determination of the annual value only and even where the Jal Sansthan adopts the annual value as determined by the Local Body, further exercises for determining the actual amount of tax levied in respect of each property and the person liable for its payment has to be undertaken in accordance with the procedure prescribed in the rules. Rule 9(c) refers to Valuation or assessment which unequivocally indicates that valuation is only a stage or part of the process of assessment and even where the annual value as determined by a local body is adopted the exercise of preparation of assessment lists, their publication, entertainment and decision of objections, authentication and publication will have to be undertaken. The only difference would be that a citizen would not be able to challenge the annual value.

9. Learned counsel for the Jal Sansthan contended that the provision is made in Section 30 of the Act for settlement of disputes between the Jal Sansthan and the consumer, if the dispute relates to any matter other than the determination of annual value. This contention, in my view, is not tenable because so far as the assessment and levy of tax by the Jal Sansthan is concerned elaborate provisions have been made in the rules. No doubt, the provisions of Sub-sections (2) and (4) of Section 53 and Sub-section (1) of Section 54 give an impression that an appeal would lie only if the annual value is determined by the Jal Sansthan under Sub-section (2) of Section 53 of the Act but the determination of the annual value not being an end in itself and provision having been made in the rules regarding the contents of the assessment list, its publication, authentication etc. Section 53(2) and 54(1) of the Act have to be read in a manner that advances

the purposes of law and not in a manner that defeats the purpose. Take for example a case where the annual value as determined by the local authority is adopted but a wrong rate of tax is applied or provisions of Section 55 are not kept in mind or that the name of the owner/occupier is wrongly written. In such situation, according to the learned counsel for the petitioner, the aggrieved person must approach the Jal Nigam at Lucknow for a settlement of the dispute while in respect of the annual value, an appeal can be locally preferred. Such does not seem to be the legislative intent and policy and all sort of grievances and objections in relation to the levy of water and sewerage tax must be remedied locally through an appeal u/s 54(1) of the Act. It may be relevant to have a look at the legislative policy in Section 160 of the U.P. Municipalities Act which deals with appeals relating to taxation and the provision is wide enough to cover all aspects of the assessment. Similar are the provisions in Sections 207 to 213 and 472 of the U.P. Municipal Corporation Adhiniyam, 1959, Sections 123 to 128 and 135 of U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 and Rules 8 to 12 of the U.P. Zila Parishads (Imposition, Assessment and Collection of Circumstances and Property Tax) Rules, 1994, Sections 15 to 18 of the U.P. Town Areas Act and Sections 66 to 72 and 84 of the Cantonments Act, 1924, I, therefore, hold that the appeals in question arising from the issue of the demand notices by the petitioner Jal Sansthan were maintainable before the Prescribed Authority.

10. As is evident, the petitioner is challenging the order passed by the appellate authority but has made no effort to show that it proceeded in accordance with the rules in levying the amount for which notices of demand were issued. Therefore, so far as the merits of the order passed by the prescribed appellate authority was concerned, no argument was raised and since the appeal was maintainable and the prescribed procedure was not shown to have been followed, the appellate authority was justified in quashing the demands and directing the Jal Sansthan to take appropriate proceedings, in accordance with the provisions.

11. It may be mentioned that the learned counsel for the respondents referred to Model Tannery, Kanpur v. State of U.P. (1990) 2 UPLBEC 1409 : 1990 All LJ 1045 D. K. Yadav v. JMA Industries Ltd. (1993) 67 FLR 111 : AIR 1993 SCW 1995 Modi Industries Ltd. v. State U.P. 1999 (1) LBESR 790 (Alld) and Lala Jagdish Prasad and Another Vs. Administrator, Municipal Board, Saharanpur and Another, . There is nothing in these judgments that may need a discussion further.

12. In the result, the writ petitions are dismissed with costs to the respondent No. 2.

