(1980) 08 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Petition No. 227 of 1978

Nathmal Dalichand APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 11-08-1980

Acts Referred:

Citation : (1980) WLN 590

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

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Lodha, J.—These 14 writ petitions arise out of the assessment proceedings under the Rajasthan Urban Land Tax Act, 1964 which is now known as the Rajasthan Land and Buildings Tax Act, 1964 as amended by the Act, 1973 (hereinafter called as the Act of 1964).

2. Tne undisputed facts of these cases are as follows. All the 14 petitioners are the residents of village Rani Khurd of District Pali of Rajasthan. They have either been assessed or are sought to be assessed under the provisions of the above Act. The lands and buildings on which the tax has either been levied or is sought to be levied are admittedly in the area of Rani Khurd.

3. It is also not in dispute that this court by judgment in Ummed Singh v. State of Rasjathan (S.B. Civil Writ Petition No. 415 of 1977, decided on October 25, 1977) has held that the population of this village Rani Khurd as per the census report of 1971 was less than 8,000 because it was only 5653. It was also held that a municipality can be constituted under the provisions of Rajasthan Municipalities Act only when the population of such area, is not less than 8 000 inhabitants or if any specific reasons are given in the notification itself. It was also held that the notification issued under Sections 6 and 4 failed to give any such reasons.

4. On the, above factual position, this Court held that since the population to be

taken into consideration for the purposes of Section 5 of the Municipalities Act, 1959 is that mentioned in the most recent census, according to definition contained in Sub-section (22) of Section 3 of the 1959 Act, only population of 1971 can be taken into consideration. Since it was only 5653, and because no reasons were given under notifications under Sections 4 and 6 of the Act, for departing from legal mandate, the constitution of the municipality at Rani Khurd was illegal. It was also held that the Government was therefore, justified in declaring that the said local area was a Panchayat, and, therefore, the conversion of the Municipality in Gram-panchayat at Rani Khurd was justified and legal.

5. Mr. Sishodia, the learned Government Advocate, appearing for the State has conceded that no apreal has been filed against the judgment of the Single Bench of this Court, and that judgment has become final.

6. In view of the above undisputed facts the buildings and lands of the petitioners, which are in village Rani Khurd cannot be treated as situated in an Urban area, as is required by Section 3 of the Act. Section 3 of the Act is as under:

Section 3-Levy of urban land tax: (1) subject to the other provisions contained in this Act, there shall be levied and collected for each year a tax on urban lands, from every owner of urban land, at such rate not exceeding 2% of the market value of such urban land as determined u/s 4, as the State Government may by notification in the official Gazette declares in this respect.

Provided that the State Government may fix graduated rates of tax on different slabs of market value of urban lands.

Provided further that no tax shall be levied on any urban land if the owner thereof or his predecessor in interest has acquired such land by transfer from the Government or any local authority within a period of two years immediately preceding the year for which the tax is levied.

The definition of Urban Area is contained in Sub-clause (7) of Section 1 which is as under:

Section 2(7)-''Urban Area'' means a Municipality or cantonment as the case may be.

7. The Municipality has been defined in sub-clause (6)(a) of Section 2 of the Act which as under:

Section 2(6)(a)-''Municipality'' means any local area which is at the commencement of the Rajasthan Urban Land Tax (Amendment) Act, 1973, a Municipality, and any area which may hereafter be constituted a Municipalty, u/s 4 of the Rajasthan Municipalities Act, 1959 (Rajasthan Act 38 of 1957).

8. It would thus be seen that the lands and buildings situated in Rani Khutd are not in urban area because they are neither in a municipality nor in a cantonment area, contrary to it they are in ''Pandhayat'' area.

9. In view of this, I have got no hesitation in holding that the provisions of Rajasthan Land and Buddings Tax Act, 1964 as amended by Act of 19/3 are not applicable to all the lands and buildings, situated in Rani Khurd of Pali District. Consequently all the notices given to the petitioners, and the proceedings taken for the assessment of the lands and buildings tax under this Act, and amount if realised, are illegal, nuil and void.

10. (The result is that all these 14 writ applications are accepted. The impugned other regarding assessment in all these case are quashed. The responcents are further directed and restrained from taking any proceedings under the Rajasthan Land and Buildings Tax Act, till the area is declared ''municipality'' according to law.

11. It has been pointed out that in pursuance of direction of this Court the land and buildings tax has been deposited by the petitioners. In case any such amount is lying in deposit, the same should be refunded. There would be no order as to costs.

