**(2015) 03 RAJ CK 0224**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 7780 of 2010

Sahitya Sadawart Samiti — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

**Date of Decision :** 04-03-2015

**Acts Referred:**
Income Tax Act, 1961 — Section 12A

**Citation :** (2015) 03 RAJ CK 0224

**Hon'ble Judges :** Alok Sharma, J

**Bench :** Single Bench

**Advocate :** Madhav Mitra, for the Appellant; Rajendra Prasad, AAG, Advocates for the Respondent

**Final Decision :** Disposed off

## Judgement

Alok Sharma, J.—The issue in this writ petition is with regard to the allotment price of land to a charitable institution, engaged in imparting education, under the then extant policy of the State Government. The case set up in the petition is that price at which 30 acres of land was allotted to petitioner society, a charitable institution, was wholly excessive, discriminatory and without reference to the governing policy for such allotment. In the circumstances it has been prayed that the respondent Jaipur Development Authority (hereinafter ''JDA'') be directed to allot 15 hectares of land to petitioner society in terms of letter of intent (LOI) issued therefor on 30-12-2005 at 50% of the then prevailing DLC rates for agricultural land. It has also been prayed that the demand notice dated 30-3-2010 by which the petitioner society has been allotted 30 acres of land at 40% of the then current institutional price along with interest and penalty be quashed.

2. The facts of the case are that the Government of Rajasthan at the time relevant to the filing of the writ petition had an ongoing policy for allotment of land inter alia to educational institutions, including those seeking to set up a university, at a concessional rate. The petitioner society engaged in the field of

 

education since 1938 and running various schools and colleges with a strength of students of about 6500, in terms of State Government''s land allotment policy applied for allotment of 15 hectare of land in khasra Nos. 251, 254, 255, 256, 257, 258, 259, 260, 261, 266, 610, 611, 613 and 619 in village Rajawas, Sikar Road Jaipur for setting up a University. Vide letter dated 30-12-2005 the JDA issued a letter of intent to the petitioner society qua the aforesaid land on the condition that within three months of the said LOI the petitioner society obtain NOC from the State Government for setting up University and that it also take steps for change of land in issue, then recorded as rural under the Jaipur Master Plan, to institutional. The time provided for in LOI dated 30-12-2005 for the two aforesaid compliances was extended and finally the NOC having been obtained from the State Government and change of land use in the Jaipur Master Plan from Rural to Institutional having been obtained, the JDA''s Land and Property Disposal Committee in its 43rd meeting forwarded the case of the petitioner society to State Government for grant of sanction for allotment of 30 acres of land to petitioner society, as also to determine the rate at which the land was to be allotted. Vide letter dated 29-1-2007 addressed to the Secretary Urban Development Housing Department the petitioner society requested the State Government to make the allotment of land 30 acres to the society at 50% of the DLC rate for the reason that (i) the society had been functional as an institution of repute in the field education for the last several decades; (ii) was a charitable recognized trust under Section 12A of the Income Tax Act, 1961 (hereinafter ''the Act of 1961''), (iii) was in the process of setting up the first Research and Development based University, and (iv) under the then current policy of the State Government similarly placed applicants had also been allotted land at such a concessional rate.

3. Vide letter dated 4-4-2008, the State Government in a communication to Secretary JDA sanctioned allotment of 30 acres of land to the petitioner Society for setting up a university in village Rajawas Tehsil Amer and determined the allotment rate therefor at the reserve institutional price i.e. Rs. 3150/- per sq. meter. The JDA consequently vide letter dated 13-5-2008 issued a demand notice to the petitioner society aggregating to Rs. 38,62,22,938/- for allotment of 30 acres of land to set up a University.

4. The petitioner society apparently dissatisfied with the rate at which the allotment had been made, finding it to be both arbitrary and discriminatory, yet deposited an amount Rs. 3,86,22,294/- i.e. 10% of the amount of demand notice, while soon making a representation to the Secretary Urban Development Housing on 20-6-2008 praying for reconsideration of the rate at which allotment was to be made to it. The reasons for allotment at 50% of the DLC rate as set out in the petitioner society''s letter dated 29-1-2007 were reiterated. Following the letter dated 20-6-2008 the State Government required the JDA to submit its comments on the petitioner society''s representation for a lower rate of allotment. JDA vide letter dated 28-7-2008 forwarded the case of petitioner society for a lower allotment rate then the institutional reserve price. Vide letter

 

dated 6-10-2008 the Deputy Secretary UDH, Government of Rajasthan communicated to the JDA the State''s decision on the allotment price being 40% of the Institutional reserve price for allotment of land to the petitioner society.

5. It has been submitted that even the 40% of the institutional reserve price for allotment to the petitioner society was yet much higher than the price at which allotment to other similarly educational institutions had been made. Examples cited are that of (i) the Mahila Shiksha Samiti, which was allotted 9.54 hectare of land at Bhavgarh Bandha for setting up university on 12-10-2006 @ Rs. 110.15 per sq. meter, which was 50% of prevailing DLC rate. (ii) the Digantar Shiksha and Sports Samiti allotted 1.78 hectare of land for setting up a University at Bhavgarh Bandha on 10-10-2006 at Rs. 85.85 sq. meter, (iii) ICFAI allotted 40 acres of land at Jamdoli on 10-8-2007 at Rs. 1087.39 sq. meter, and (iv) the LNMIT allotted 160 bighas land free of cost. Be as it may the decision of state government communicated to Secretary JDA on 6-10-2008 for the allotment price being fixed at 40% of the Institutional reserve price for the area was not communicated to the petitioner society by the JDA till 30-3-2010. Then after calculating the price of land at 40% of reserve institutional price, aggregating to Rs. 17,20,93,105/-, a further demand for a sum of Rs. 3,85,60,266/- against interest and Rs. 1,33,47,081/- towards penalty for allegedly delay in the payment of due amount was also made. Representation against the demand notice dated 30-3-2010 having been of no avail this writ petition has been filed. The arbitrary and discriminatory determination of rate for allotment of land to petitioner society for setting up educational institution as also the inexplicable levy of interest and penalty in the demand notice dated 30-3-2010 at the very outset, prior to demand for payment of 40% of institutional reserve price having been made, is under challenge in this writ petition.

6. Reply to the writ petition has been filed. It has been admitted that under the extant policy of the State Government land could be allotted to educational institutions at a concessional rate. It has also been admitted that the petitioner society is a charitable institution and engaged in imparting education for several decades. It is also admitted that the petitioner society was initially issued LOI by the JDA for allotment of 15 hectare of land in village Rajawas Tehsil Amer for setting up a university. It is also admitted that the petitioner society had complied with the conditions of the LOI within the extended time by obtaining NOC from State Government and facilitating change of land use from rural to institutional in the Jaipur Master Plan. It is also admitted that demand notice dated 13-5-2008 issued to the petitioner society was as per rate sanctioned by the State Government i.e. institutional reserve price. It is also admitted that the representation made by the petitioner society to JDA aggrieved of arbitrariness and discrimination qua the rate of allotment, was forwarded to State Government and the State Government vide its communication dated 6-10-2008 had directed that the rate of allotment to the petitioner society for the land in issue for setting up an university was to be 40% of the institutional reserve price-and it was communicated to the petitioner society only on 30-3-2010. It has however been

 

asserted that initially allotment having been made to petitioner society on 13-5-2008, amended rate communicated on 30-3-2010 would relate back to the allotment dated 13-5-2008. And therefore the petitioner society was liable to pay interest for the duration, as also penalty as reflected in the demand notice dated 30-3-2010. Reference to Rule 13(5) of the Urban Improvement Trust Land and Property Disposal Rules has been made to buttress the JDA''s claim for interest and penalty.

7. Counsel for the petitioner society, as in the course of arguments, abandoned the prayers in writ petition with regard to claim for allotment of 15 hectares land as against 30 acres allotted. He has also given up the petitioner society''s case for further diminution of rates of allotment at par with the rate/s of allotment to the Mahila Shiksha Samiti, and Digantar Shiksha and Sports Samiti which were allotted land for setting up a Universities @ 50% DLC rate of the areas in issue which is far lower than 40% Institutional reserve price at which the allotment for the same purpose has been made to the petitioner society. Mr. Mitra has confined the challenge to the levy of interest and penalty in the demand notice dated 30-3-2010. It has been categorically submitted that he has instruction to state that allotment of land at 40% of institutional reserve price was acceptable to the petitioner society.

8. Mr. Mitra submitted that the allotment of 30 acres of land to the petitioner society without settlement of the rate of allotment acceptable to it did not entail a concluded contract. The contract stood concluded only on the petitioner society accepting allotment @ 40% of the Institutional Reserve Price. In the circumstances the petitioner society cannot be said to have been in default on its obligation to pay due amount on 13-5-2008 when the first demand notice was issued and hence levy of interest and penalty for period commencing therefrom cannot be countenanced under law, contract or even equity. Hence to levy interest and penalty effective 13-5-2008 in the demand notice dated 30-3-2010 is wholly arbitrary and unsustainable in law. It has been submitted that the demand notice dated 30-3-2010 is thus vitiated for having included interest and penalty, hence not complied with and instead challenged before this court. Counsel submitted that even otherwise the communication dated 30-3-2010 for allotment of land at 40% of institutional reserve price was a belated communication by the JDA about 18 months (6-10-2008) subsequent to the State Government''s letter dated 6-10-2008 sanctioning the rate of allotment @ 40% Institutional Reserve Price. Additionally in the circumstance requiring the petitioner society to pay interest and penalty from 13-5-2008 to 30-3-2010 is wholly arbitrary, unsustainable in law as also equity, and hence liable to be set aside. It has been submitted that rule 17(5) of the 1974 Rules applies only to allotment for residential purposes and even if referable by analogy to the allotment in issue cannot come to aid of the JDA as the levy of interest and penalty on the amount payable on allotment under the said rules would become due and payable only following failure to pay within 30 days of the communication of the demand. It has been submitted that in the instant case,

 

the demand notice dated 30-3-2010 itself included interest and penalty, a situation inconceivable both in law and logic. It has been submitted that in the circumstances the demand notice 30-3-2010 be quashed and set aside to the extent it seeks to levy interest and penalty. The petitioner society is ready and willing to pay the amount towards consideration (Najrana Rs. 17,20,93,105/-) for allotment of 30 acres of land in Rajawas Tehsil Amer and it be so directed, submitted the petitioner''s counsel.

9. Mr. Rajendra Prasad, AAG appearing for the respondent JDA has however submitted that allotment of land with the applicable rate as determined by the State Government in its discretion was made to petitioner society on 13-5-2008. The said allotment was not kept in abeyance by an order of Government or even of the court but at the petitioner society''s volition on the mere submission of a representation for a lower rate of allotment. The representation was accepted by the State Government on 6-10-2008, and communicated to the petitioner society under JDA''s demand notice dated 30-3-2010. The AAG submitted that the chronology of events would not save the petitioner society from its liability to pay interest and penalty for reasons analogous to Rule 17(5) of the 1974 Rules as the demand notice dated 30-3-2010 would relate to 13-5-2008 -alteration in the rate of allotment notwithstanding. It has been submitted that the logic to levy interest and penalty on amount due is that for the duration of non payment the JDA is deprived of use the money payable to it under an allotment made. It has been submitted that hence the petitioner society was liable to pay interest relating back to initial date of demand notice/allotment dated 13-5-2008 as also penalty.

10. Heard counsel for the parties and perused the material available on record.

11. The compass of the dispute to be adjudicated in this petition is fairly narrow in view of counsel for the petitioner confining the challenge in the course of hearing only to the levy of interest and penalty in the demand notice dated 30-3-2010. The policy of State Government for allotment of land to educational institutions at a concessional rate obtaining at the relevant time is not in dispute. It is also not in dispute that the petitioner society is a charitable institution engaged in imparting education for the last several decades, and at the time of applying for allotment of land to State Government its student strength was about 6500 numbers in its various schools and colleges. It is also not in dispute that the petitioner society was issued LOI by the JDA and conditions of LOI were satisfied by the petitioner society within the time extended by JDA with the petitioner society furnishing both NOC from State Government for setting up a university and also facilitating change of land use of the land in issue from rural to institutional. It is also not in dispute that on recommendation made by JDA and sanction sought from State Government, the State Government in terms of its then extant policy sanctioned allotment of 30 acres of land @ Rs. 3150/- per sq. meter for setting up university under its letter dated 4-4-2008 at the rate of Institutional Reserve Price.

 

12. The dispute between the petitioner society on one hand and JDA/State on the other which evolved was with regard to rate of allotment of 30 acres of land for setting up the university. It is not in dispute that the State Government under its policy at the relevant time allotted land to various educational institutions such as Mahima Shiksha Samiti, Digantar Shiksha and Sports Samiti and ICFAI at concessional rate upto 50% of DLC i.e.85.85 per sq. meter, 110.15 per sq. meter, 1087.39 per sq. meter respectively, which was far less than the prevailing institutional reserve price of Rs. 3150/- per sq. meter where land was to be allotted to the petitioner society.

13. A representation from the petitioner society followed to the State Government as the rate of allotment was not acceptable, albeit the petitioner society deposited Rs. 3,86,22,294/- i.e. 10% amount of the demand notice dated 13-5-2008. On the representation of petitioner society to the State Government, comments from JDA were sought and a decision was taken on 6-10-2008 settling the price of allotment to the petitioner Society at 40% of the Institutional Reserve Price in the area of allotment. The decision of the State Government was however inexplicably conveyed belatedly to the petitioner society only on 30-3-2010. The question which begs an answer is whether in the circumstances interest and penalty could also have been claimed simultaneous to the price for allotment conveyed on 30-3-2010 @ 40% of the Institutional Reserve Price?

14. The Hon''ble Supreme Court in case of Rampur Fertiliser Ltd. Vs. Vigyan Chemicals Industries, (2009) 3 JT 544 : (2009) 3 SCALE 115 : (2009) 12 SCC 234 : (2009) 2 SCR 650 albeit in a different factual context has held that interest can be leviable either in terms of an agreement or statutory provision or by reason of usage having force of law or on equitable consideration as also by way of damages in case where money due is wrongly withheld but subsequent to a notice therefor. In the case of Clariant International Ltd. and Another Vs. Securities and Exchange Board of India, AIR 2004 SC 4236 : (2004) 4 BC 449 : (2004) 122 CompCas 112 : (2004) 4 CompLJ 52 : (2004) 7 JT 69 : (2004) 7 SCALE 180 : (2004) 8 SCC 524 : (2004) 54 SCL 519 : (2004) 3 SCR 843 Supp : (2005) 1 UJ 12 : (2004) AIRSCW 4883 : (2004) 7 Supreme 247 it was held by the Hon''ble Supreme Court that in absence of an agreement or a statutory provision or mercantile usage, interest is payable only at the market rate and that too upon establishment of totality of circumstances justifying exercise of the court''s equitable jurisdiction for the purposes.

15. In the context of aforesaid statement of law qua levy of interest, it appears from the material available on record and arguments advanced by the learned Additional Advocate General that there is no statutory provision pertaining to levy of interest on amount unpaid following a demand notice consequent to allotment of a non residential parcel of land. Rule 17, more particularly 17(5) of the 1974 Rules pertains to allotment of residential plots. It was for the JDA when issuing a demand notice for payment of price for allotment of a non-residential parcel of land to clearly state that non deposit of the amount under the notice

 

within the time stated therein would be visited by levy of interest and penalty or even cancellation. This does not appear to have been done under demand notice dated 13-5-2008. Besides, from the facts detailed herein above, it is apparent that the rate of allotment on the basis of which demand notice dated 13-5-2008 was issued was not accepted by the petitioner society, which however appears to have deposited an amount Rs. 3,86,22,294/- i.e. 10% of the demand notice on 13-6-2008 apparently under legal advice. The said amount appears to have been deposited voluntarily and not as a token of acceptance of the demand notice dated 13-5-2008. It was put to Mr. Rajendra Prasad, AAG as to whether in the event of non payment of whole of the amount under demand notice dated 13-5-2008 the JDA would have been entitled to forfeit the 10% deposit of Rs. 3,86,22,294/-. The answer was in the negative and rightly so, as neither there was any condition with regard to such forfeiture in the demand notice of 13-5-2008 allotment nor any statutory provision therefor. The inevitable conclusion is that the deposit of the amount of Rs. 3,86,22,294/- i.e. 10% of the demand notice dated 13-5-2008 cannot be considered as an acceptance of the rate of allotment. This conclusion is further fortified from the fact that on 20-6-2008 the petitioner society made a representation to the State Government setting out the discriminatory treatment meted out to it in respect of the rate at which the allotment was made, specifically referring to the allotment to Mahila Shiksha Samiti, Digantar Shiksha and Sports Samiti, ICFAI-all at 50% DLC of the area while charging from the petitioner society a far higher amount with reference to the Institutional Reserve Price. On reconsideration of the petitioner society''s representation, on 6-10-2008 the State Government took a decision to charge the petitioner society for allotment at 40% of the institutional reserve price prevailing in the area to which the allotment related. Despite the communication by the State Government to the JDA under letter dated 6-10-2008, the demand notice for payment of premium for the allotment of land to petitioner society was issued inexplicably after a delay of about a year and half on 30-3-2010.

16. I am of the considered view that the demand notice dated 30-3-2010 does not relate to the demand notice dated 13-5-2008 and is wholly independent thereof. The subsequent demand notice was evidently not in the nature of rectification of the earlier one. It was based only a wholly distinct policy decision to allot land to the petitioner society at 40% of the Institutional Reserve Price. It was in the circumstances a fresh/new demand notice. In these circumstances, the petitioner society ought to have been allowed, as per the practice of the JDA, to deposit amount towards premium/najrana for allotment of land for setting up a university aggregating to Rs. 13,34,70,811/- under demand notice dated 30-3-2010 within a period prescribed with the consequence of non adherence to the time prescribed detailed in the said demand notice. This was not done. Contrarily the petitioner society on a complete misdirection by JDA was required to pay interest effective 13-5-2008 till 30-3-2010 at the rate of 15% per annum as also penalty 10% of the premium/najrana on the ground of purported delay in

 

deposit of the amount-the delay being computed with reference to the date of the earlier arbitrary and abandoned demand notice dated 13-5-2008. Counsel for the petitioner society is absolutely right in stating that amounts payable under demand notice dated 30-3-2010 as Nazrana/premium could not have been further unlawfully and arbitrarily enhanced for misguided reasons of levy of interest and penalty in the circumstances obtaining.

17. I find no force in the contention of Mr. Rajendra Prasad the learned AAG appearing on behalf of respondent JDA that the demand notice dated 30-3-2010 would relate back to demand notice dated 13-5-2008. Such would only be a situation in the event of earlier demand notice being rectified for reasons of arithmetical error or omission. The argument of relation back cannot sustain in a situation where were the fundamentals of demand notice i.e. the rate of allotment itself being modified on reconsideration by the State Government on petitioner''s representation aggrieved of discrimination and arbitrariness, pointing out similar cases of allotment at rate far lower than that levied on the petitioner society. In the case of Food Corporation of India Vs. State of Haryana and Another, AIR 2000 SC 1109 : (2000) 2 JT 195 : (2000) 1 SCALE 587 : (2000) 3 SCC 495 : (2000) 119 STC 1 : (2000) AIRSCW 773 : (2000) 2 Supreme 343 the issue before the Hon''ble Apex court was whether interest with reference to the date of an earlier demand subsequently held to be illegal can be levied or whether interest could only be levied on failure to pay the amount under a valid demand. It was held that interest on belated payment of tax demanded could only be levied in respect of tax which was legally payable under a valid demand and could not be levied from the date of an earlier invalid demand set aside by the court. The proposition thus deducible from the aforesaid judgment of the Hon''ble Apex Court is that interest can be leviable only on the failure of a noticee to pay under a valid demand and cannot relate to a period referable to an invalid demand.

18. Adverting to facts of the case at hand, the question that therefore arises is as to whether the demand notice dated 13-5-2008 computed on the basis of the Institutional Reserve Price for allotment of land to petitioner society was a valid demand, non payment whereof would entitle JDA to levy interest/penalty on due amount from the said date? From the facts detailed herein above, it is apparent that the said demand dated 13-5-2008 was not a valid demand, inasmuch as it was based on a discriminatory rate of allotment far higher than the rate of allotment to other similarly situate educational institutions to whom the land had also been allotted. Consequently on the petitioner society''s representation the matter was reconsidered and the rate for allotment of land was freshly settled by the State Government at 40% of the institutional reserve price. Demand based on such rate alone would take colour of a valid demand which was made on 30-3-2010 and is acceptable to the petitioner society as stated at bar by counsel. Consequently the petitioner society would have been liable to pay interest and penalty only in the event of non payment of amount under demand notice dated 30-3-2010 within the period set out in the notice or within reasonable time.

 

However the demand notice dated 30-3-2010 itself was partially vitiated by the arbitrary levy of interest for the period 19-4-2008 to 30-3-2010 and penalty @ 10% of the allotment price. It is quite plain that valid demand notice being accompanied by a untenable levy of interest and penalty was vitiated to that extent. No interest or penalty could have been levied in the first instance with the demand notice to pay the price (Nazrana/Premium) for the allotment of land as indicated in the notice dated 30-3-2010. Further despite the State Government''s settlement afresh of the allotment rate at 40% of institutional reserve price for allotment of land to petitioner society on 6-10-2008, the demand notice was inexplicably sent on 30-3-2010. On this court also, to require the petitioner society to pay interest and penalty between 6-10-2008 to 30-3-2010 would also be grossly unjust and unfair as it would clearly tantamount to burdening the petitioner society for the inexplicable and palpably arbitrary action of the officers of the JDA.

19. In the circumstances obtaining, the writ petition is disposed as under:--

"(i) Demand notice dated 30-3-2010, in so far as it seeks to levy interest and penalty is quashed and set aside.

(ii) The allotment of 30 acres of land to petitioner society for setting up university at the rate of 40% of institutional reserve price is sustained/upheld.

(iii) However as the petitioner society has willy nilly used the due Nazrana/premium amount under demand notice dated 30-3-2010, (excluding the amount of interest and penalty) i.e. Rs. 13,34,70,811/- (while excluding Rs. 3,86,22,294/- already paid) for a period of over four years while enjoying the interim order of this court passed on 28-2-2011 and confirmed on 3-5-2011, I would direct that the petitioner society shall pay interest @ 9% per annum on the said amount Rs. 13,34,70,811/- (aside of Rs. 3,86,22,294/- deposited on 12-6-2008) effective 30-3-2010 on or before April 20, 2015.

(iv) In the event the amount under demand notice dated 30-3-2010 to the extent of Rs. 13,34,70,811/- as aforesaid along with interest @ 9% per annum, as directed in (iii) above, is not paid on April 20, 2015, the said due Nazrana/premium amount of Rs. 13,34,70,811/- would be payable along with interest @ 15% per annum effective 30-3-2010 on or before May 20, 2015.

(v) Non payment of the due amount of Nazrana/premium to the extant of Rs. 13,34,70,811/- under demand notice dated 30-3-2010 on or before May 20, 2015 would entail cancellation of allotment of 30 acres of land in favour of the petitioner society."

20. The petition stands disposed of.

 