Her Highness Maharani Kesarkunverba Saheb of Morvi

Vs

Commissioner of Income-Tax, Bombay North, Kutch and Saurashtra.

Civil Appeal No. 138 of 1959

(J. L. Kapur, S. K. Das, M. Hidayatullan JJ)

15.03.1960

JUDGMENT

KAPUR, J. –

This is an appeal by special leave against a judgment and order of the High Court of Bombay. The assessee, Her Highness Maharani Kesarkunverba Saheb, the Raj Mata of Morvi State, is the appellant and the Commissioner of Income-tax, Bombay North, is the respondent. The question that arises for decision is whether the annual cash allowance paid to the appellant in circumstances stated below falls within paragraph 15(1)(i) of the Part B States (Taxation Concessions) Order, 1950 (hereinafter referred to as the Order) and is therefore exempt from income-tax.

The appellant was receiving from the Morvi State since 1922 an allowance called Jiwai (maintenance allowance). By a resolution dated September 26, 1946, passed by His Highness Lukhdhirji of Morvi, the husband of the appellant, it was resolved that a sum of Rs. 5,000 per month be paid to the appellant and provision be made for the amount by the Treasury Office in the Budget in the same manner as before. On January 21, 1947, His Highness Lukhdhirji abdicated and his son His Highness Mahendra Sinhji succeeded to the rulership. The covenant for the formation of the Kathiawar State's Union was signed on January 23, 1948. On February 26, 1948, a resolution was passed by the son of the appellant granting a village, Mota Dahisara, to the appellant. The relevant portion of this resolution was as follows :

> "From ancient times there has been a tradition in our family to grant a village to the Maharani for her enjoyment in order to maintain her status and dignity. However, since a village remains to be granted accordingly to our revered mother, Akhand-Sau-Bhagyawana Kesar Kunverba Sahib as the Maharani, it is resolved to grant her the village of Mota Dahisara, under (our) control and having the area and boundaries as per annexures hereto.
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> We resolve to grant the said village, for enjoyment to out Maharani, Shri Vijaykunver of Rangpur, after the lifetime of our mother Kesar Kunverba Sahib in accordance with the above tradition."

A formal grant was made on March 16, 1948, which was as follows :

> "In order to preserve permanently your status and dignity the village of Mouje Mota Dahisara.....is hereby granted to you as a gift in pursuance of the immemorial tradition of this State... The said village and the land etc., thereof have been granted

> to you in order to maintain your status and dignity as the Queen Mother as stated above. You may enjoy the same in peace exclusively. On your death the right of enjoyment of the entire right, together with the restrictions mentioned in the present writing, shall vest in our Akhan Saubhagvanta Maharani Shri Vijay Kunvar of Rangpur."

On March 20, 1948, the State of Morvi became a part of the Saurashtra Union. The Government of Saurashtra refused to continue the maintenance allowance or to recognise the grant of the village Mota Dahisara to the appellant. She then made certain representations and after some conferences and some discussion a copy of the order of the Political Department was sent to the appellant in which it was stated that the village would be resumed and an amount calculated on the basis of average revenue of the village for 3 years would be paid to her as cash allowance for lifetime. To this the appellant took objection and her son the Maharaja of Morvi also wrote a letter to the Rajpramukh of Saurashtra stating that the village had been illegally resumed and that her Jiwai had also been stopped. To this the Rajpramukh replied on May 19, 1949, saying that it had been decided that the village would be resumed and a cash allowance in lieu thereof would be paid to the appellant for life and he advised the Maharaja of Morvi not to press the claim as put forward in his letter and also that the appellant should accept the resumption of the village and agree to take a cash allowance instead. The appellant then wrote a letter to the Rajpramukh on May 26, 1949, in which she insisted that she should continue to have the village. On November 19, 1949, the appellant's husband wrote to the Regional Commissioner, Mr. Buch, stating that he and her son, the Ruler, had with difficulty persuaded the appellant to accept Rs. 5,000 a month and not to insist on anything more. The following extract from the letter is rather important and is therefore quoted :

> "Most ladies are sentimental and she is no exception, and says her 'Abru' would go if she loses her village, so we suggested that if she gets the income of the village, whatever it may be and any amount over and above that will be given to her as Jiwai, making a total of Rs. 60,000 a year; with this she can say she got both the things and her prestige will not suffer."

On March 30, 1950, the Government of Saurashtra passed a resolution that in pursuance of the decision taken at the Jamnagar Conference the grant of the village Mota Dahisara would be resumed and in lieu thereof a cash annuity of Rs. 35,807 would be paid. The appellant was also granted Jiwai as Rajmata of Rs. 24,193 per annum and thus a sum of Rs. 60,000 per annum, i.e., Rs. 5,000 per mensum, was continued to be paid to the appellant. On June 19, 1950, the grant of the village was liable to income-tax because in his view the appellant received that sum in exchange for two assets - right to the old maintenance allowance and the right to enjoy income from the village during her lifetime.

On appeal to the Appellate Assistant Commissioner the amount of Rs. 35,807 was held to be liable to tax and not the sum of Rs. 24,193. An appeal was then taken to the Income-tax Appellate Tribunal which held that the entire sum was exempt from income-tax and super-tax, as it fell within paragraph 15(1)(i) of the Order. The Tribunal said :

> "In the circumstances of the case stated above, it appears to us that the sum of Rs. 60,000 is exempt from income-tax and super-tax. If you look at the substance of the transaction, it means that the assessee was granted a maintenance allowance of Rs. 60,000. The assessee wanted somehow or other to be associated with the village Mota Dahisara. To her it was a question of prestige. Again the cash annuity of Rs.

> 35,807 was given to the assessee in lieu of the village Mota Dahisara. The village was granted to her for the purpose of maintaining the assessee's status and reputation as the Raj Mata. In other words, the village was given to her for her maintenance."

At the instance of the respondent following question was referred under section 6(1) of the Income-tax Act to the High Court :

> "Whether there was material for the Tribunal to hold that the sum of Rs. 35,807 granted to the assessee was a maintenance allowance exempt within the meaning of paragraph 15(1)(i) of the Part B States (Taxation Concessions) Order, 1950 ?"

which was framed by the High Court as follows :

> "Whether on the facts and circumstances of the case the sum of Rs. 35,807 granted to the assessee was a maintenance allowance exempt within the meaning of paragraph 15(1)(i) of the Part B States (Taxation Concessions) Order, 1950 ?"

The High Court held that Rs. 35,807 and Rs. 24,193 were two distinct heads of cash annuities, the former in lieu of village Mota Dahisara and the latter by way of Jiwai, i.e., maintenance. It was of the opinion that the appellant was granted Jiwai (maintenance) of Rs. 5,000 per month by her husband as from September, 1947. It also held that the grant of the village was not by way of maintenance. After taking into consideration the several documents, that is, the grant, the letter of the appellant's son dated March 23, 1949, to the Rajpramukh of Saurashtra, the letter dated November 19, 1949, of the appellant's husband to Mr. Buch and the resolution of the Government dated March 30, 1950, the High Court held that under the resolution of the Saurashtra Government the appellant was given a cash annuity of Rs. 35,807 in lieu of the village and not by way of maintenance. Against this judgment, the appellant has come to this court in appeal by special leave.

The controversy between the parties is confined to the nature of the grant of the village made to the appellant. The appellant contended that the grant of the village was as much maintenance as was the cash allowance which had been made to her before, and therefore it fell within the exemption under paragraph 15(1)(i) of the Order which is as follows :

> "Any income falling within the following classes shall be exempt from income-tax and super-tax and shall not be included in the total income or total world income of the person receiving them :
>
> (i) any sum which the widow or the mother of a person who was the Ruler of an Indian State receives as her maintenance allowance out of public revenue."

The respondent on the other hand submitted that the words of the resolution dated February 26, 1949, and of the grant and particularly the following recitals therein :

> "From ancient times there has been a tradition in our family to grant a village to the Maha Rani for her enjoyment in order to maintain her status and dignity"

showed that the grant of the village was not by way of maintenance but merely to maintain a tradition of the family for keeping up the status and dignity of the appellant, and this, it was submitted, was fortified by the letter of the appellant's husband dated November 19, 1949, where His Highness stated that the appellant's 'Abru' (prestige) would go if she were to lose the village.

Reference in this connection was also made to the appellant's letter dated May 26, 1949, wherein she insisted that the village should not be taken away from her as this would be unreasonable, arbitrary and contrary to the spirit of the covenant.

In our opinion the connection of the appellant is well founded. The Tribunal has found after going into all the documents including the document containing the words "to maintain her status and dignity" and the letter of the appellant's husband to Mr. Buch which mentioned the word "Abru" that the grant of the village was by way of maintenance and merely because the appellant's relations wanted a face-saving device by splitting up the total amount payable per year it would not change the nature of the transaction nor would it change the grant of maintenance made to the appellant into something else. The grant of the village was as much by way of maintenance as was the cash allowance called "Jiwai". Maintenance must vary according to the position and status of a person. It does not only mean food and raiment.

The appellant was the wife of a ruling prince and at the time the grant of the village was made, she was the Raj Mata and therefore neither the use of the words "status and dignity" nor the reference to ancient usage could in any way change the nature of the grant. It is true that the appellant was anxious to retain the village because that gave her the satisfaction of having agricultural land which would be a tangible asset providing her a sure source of income; but, merely because she wanted the village and in the resolution of March 30, 1950, mention is made of a sum an lieu of income from the village, the nature of the grant which in this case was by way of maintenance would not change.

The question which was referred to the High Court was whether there was material to hold that the sum of Rs. 35,807 was maintenance allowance, but the High Court reformulated this question and after going into various documents it came to a conclusion different from that of the Tribunal and it reversed the findings of the Tribunal and answered the question in a manner suggestive of an appellate rather than advisory jurisdiction. In our opinion the High Court could not go behind the findings of the Tribunal. Even on the question as reformulated what the High Court had to decide was whether on the facts found the sum of Rs. 35,807 granted to the appellant was maintenance within paragraph 15(1)(i) of the Order. The Tribunal had found that the appellant had a maintenance allowance since 1922 and the grant of the village was also by way of maintenance. On these findings the answer to the question clearly was that the sum of Rs. 35,807 was maintenance falling within the paragraph abovementioned.

Counsel for the respondent tried to support the High Court on the ground that what the High Court had done was that it examined the Resolution of March 30, 1950, along with the documents which led to it and thus it construed a document of title. But the Resolution of March 30, 1950, must be construed in the background of the facts and circumstances which led up to it. So construed the inescapable conclusion is that the village having been granted by way of maintenance, the sum of Rs. 35,807 was also maintenance allowance.

In our view the High Court was in error in holding that Rs. 35,807 was not by way of maintenance and therefore was not exempt from taxation under paragraph 15(1)(i) of the Order. We, therefore, allow this appeal set aside the order of the High Court and answer the question in favour of the appellant. The appellant will have her costs in this court and in the High Court.

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