

SUREME COURT OF INDIA

First Additional Wealth-Tax Officer, Kozhikode

Vs.

Khan Bahadur Mammed Keyi

(J Shah, K Wanchoo, N R Ayyangar, P Gajendragadkar and S Sikri JJ.)

17.02.1964

JUDGMENT

WANCHOO, J.

1. These five appeals have come before this court on certain cases granted by the High Court of Kerala. They raise common question of law and will be dealt with together. One of the appeals (No. 262) arises out of a writ petition by the karanavan of a Muslim Mopla tarwad in the District of North Malabar, governed by the Marumakkathawam law. The other four appeals arise out of writ petitions by karanavans of Hindu undivided families in Malabar and Cochin. These five writ petitions challenged the constitutionality of the Wealth-tax Act, No. 27 of 1957 (hereinafter referred to as the Act) and prayed for the quashing of the wealth-tax assessments made in these cases. There are certain differences of facts in the five petitions, but we do not propose to refer to those differences as we propose to confine ourselves to the attack on the constitutionality of the Act.

2. The main contentions of the respondents before the High Court with respect to the constitutionality of the Act were two-fold, namely - (1) that Parliament was not competent to include hindu undivided families in the charging section 3 of the Act in view of the provision in Entry 86 of List 1 of the Seventh Schedule to the Constitution and (2) that the provision relating to Hindu undivided families was discriminatory and denied equal protection of laws and was, therefore, hit by article 14 of the Constitution.

3. The High Court held on the first question that Parliament was competent to include Hindu undivided families in section 3 of the Act. On the second question, the High Court held that though the contention under article 14 had not been taken in the petitions before it in the form in which it was presented at the time of argument, it was open to it to go into the question in view of certain adjournments granted to the parties in this connection and also in view of the fact that the matter had been fully argued before it by learned counsel for the parties. Eventually the High Court said that the issue as to discrimination had been fully argued on both sides and the department had sufficient opportunity to meet the objection under article 14 and it, therefore, finally proceeded to consider the same. The main contention under this head before the High Court was that the Act though it subjected Hindu undivided families to a tax under section 3 thereof made no provision for Muslim Mopla tarwads which were also undiv

4. We have come to the conclusion that these cases must be remanded to the High Court for further

consideration after giving parties an opportunity to place full facts in connection with the application of article 14 before it. The High Court itself pointed out that there was no averment on behalf of the writ petitioners before the High Court (now respondents before us) on the lines on which the argument finally developed at the hearing. It is true that some adjournments were granted by the High Court in this connection; but we are not satisfied that the case for the application or otherwise of article 14 was properly put before the High Court by either side. We should like also to point out that the High Court seemed to take the view that it was for the State to show that article 14 was not applicable. This is not correct, for it is for the property who comes forward with the allegation that equality before the law or the equal protection of the laws is being denied to him to adduce facts to prove such denial.

5. Appeals allowed.