

Commissioner of Wealth Tax, Andhra Pradesh

Vs

Raja Velugoti Sarvagna Kumar Krishna Yachendra Bahadur and Others

Civil Appeals Nos. 1628, 1631 to 1647 of 1970

(K.S. Hegde, H.R. Khanna JJ)

07.03.1973

JUDGMENT

HEGDE, J. -

1. These appeals by certificate raise a common question of law, namely, whether the compensation distributed to the junior members in a zamindari family under Section 45 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, as adopted by Andhra Pradesh (to be hereinafter called "the Act"), can be taken into consideration in computing the net wealth of the family ? For the purpose of deciding that question it would be sufficient if we refer to the facts in Civil Appeal No. 1628 of 1970.

2. In this case we are concerned with the net wealth of the family of the former zamindari of Venkatagiri, for the assessment year 1957-58. The Wealth-tax Officer, while completing the assessment for the year in question included in the assessment the amount of final compensation receivable from the Government not only by the holder of the estate but also by his sons. The amount of compensation as per data sheet made available to the Wealth-tax Officer worked out to Rs. 6,16,416. From this amount the Wealth-tax Officer deducted one-sixth which was payable to the maintenance-holders and brought the balance of Rs. 4,93,133 as the net wealth of the assessee Hindu undivided family, to tax. The holder of the estate contended that the compensation payable to his sons under Section 45 of the Act cannot be considered as the wealth of the Hindu undivided family. But, that contention was rejected by the Wealth-tax Officer. The order of the Wealth-tax Officer was reversed by the Appellate Assistant Commissioner. The Appellate Assistance Commissioner came to the conclusion that the compensation payable to the sons of the holder cannot be considered as the wealth of the assessee. The order of the Appellate Assistant Commissioner was affirmed by the Tribunal. At the instance of the Commissioner of Wealth-Tax, Andhra Pradesh, the Tribunal submitted the following three question to the High Court of Andhra Pradesh :

"1. Whether, on the facts and in the circumstances of the case, Appellate Tribunal was correct in law in holding that the compensation amount of Rs. 4,93,133 due to the family on the valuation date for the assessment year 1957-58, under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, did not form part of the wealth of the joint family of Rajah Velugoti Sarvagna Kumar Krishna Yachendra Bahadur, Rajah of Venkatagiri, Venkatagiri ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the compensation amount of Rs. 90,000 due to the

family on the valuation date for the assessment year 1957-58 under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, did not form part of the wealth of the joint family of Rajah Velugoti Sarvagna Kumar Krishna Yachendra Bahadur, Rajah of Venkatagiri, Venkatagiri ?

3. Whether, on the facts and in the circumstance of the case, the Appellate Tribunal was correct in law in holding that the amount of Rs. 5,74,158 was the liability of the Hindu undivided family of Rajah Velugoti Sarvagna Kumar Krishna Yachendra Bahadur, Rajah of Venkatagiri, Venkatagiri ?"

3. The High Court answered all these questions in favour of the assessee. Thereafter, these appeals have been brought, as mentioned earlier, after obtaining certificates from the High Court.

4. The Venkatagiri zamindari was an "estate" within the meaning of the Act. Under the customary law, though the estate belonged to the family of the holder, the holder for the time being was fully entitled not only to deal with the income of the estate but also with its corpus. The junior members had no right to claim any share either in the income or in the corpus. Their right to maintenance, if any, was regulated by customary law. The only right the junior members had in such an estate was the right of succession by survivorship in the event of the holder dying without alienating the estate. The nature of such an estate has been considered by this Court in Sri Rajah Velugoti Kumara Krishna Yachendra Varu v. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu ((1970) 3 SCR 88 : (1969) 3 SCC 282.), as well as in V. T. S. Thyagasundaradoss Thevar v. V. T. S. Sevuga Pandia Thevar (AIR 1965 SC 1730 : (1965) 2 SCJ 434.). The same has been elaborately considered in a judgment of the High Court of Andhra Pradesh in Commissioner of Expenditure-tax v. S. R. Y. Sivarama Prasad Bahadur ((1970) 78 ITR 622 : AIR 1970 AP 197 : ILR 1970 Andh Pra 197.). There is not dispute as to the nature of the estate. The only question for consideration is whether the compensation payable by the Government to the sons of the holder can be considered as payments due to the family of the holder. The contention of the revenue is that the payments to which the sons of the holder are entitled under Section 45 of the Act are really moneys belonging to the family of the holder and, therefore, the same are liable to be taken into consideration in computing the net wealth of the family of the holder. For deciding this question it is necessary to refer to certain provisions of the Act. Section 45 of the Act provides :

"(1) In the case of an impartible estate which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the following provisions shall apply.....

* * * *

(6) the balance of the aggregate compensation shall be divided among the shares, as if they owned such balance as a joint Hindu family and a partition thereof had been effected among them on the notified date."

5. To summarise the effect of Section 45, though the estate belonged to the holder exclusively, the Act deems it as the estate belonging to the family of the holder and further that the holder as well as his legitimate sons are considered as the sharers in that estate. The section provides that after making the disbursements prescribed in that section, the balance of the compensation amount will be distributed among the holder and his legitimate sons in accordance with the provisions contained in the Act. Section 49 of the Act provides for a contingency where a sharer might have died during

the pendency of the proceedings and compensation might have to be paid to his heirs or successors or the right may have devolved on others by act of parties. This is what Section 49 says :

"Where it is alleged that the interest of any person entitled to receive payment of any portion of the compensation has devolved on any other person or persons, whether by act of parties or by operation of law, the Tribunal shall determine whether there has been any devolution of the interest, and if so, on whom it has devolved."

6. Reading Section 45 and Section 49 together, there is no doubt that the compensation paid or payable to the sons of the holder is the absolute property of those sons. For that amount the holder has no right whatsoever. We asked Mr. S. T. Desai, learned counsel appearing for the revenue, whether the holder could call upon his sons to reimburse him the compensation paid to them. He rightly conceded that he could not do so. We have no doubt that the compensation paid to the sons is their absolute property and in that compensation the holder has no right whatsoever. Hence, it is impossible to say that the compensation paid or payable to the sons can be considered as a wealth of the holder or his family. Mr. Desai contended that it is not the case of the holder that there was any partition wholly or partly in his family and, therefore, we should proceed on the basis that the compensation paid or payable to the sons is the compensation paid or payable to their family. That contention is wholly unacceptable. Section 45 proceeds on the basis that there is a statutory partition between the father and the sons in so far as the payment of compensation is concerned and the amount paid or payable to the sons is their exclusive property. Whether there was partition in respect of the other properties or not, so far as the compensation amount is concerned, we must proceed on the basis that there was a partition between the father and the sons. It is true that Section 45 proceeds on the basis that the holder and his sons constituted a joint family and the estate belonged to the joint family, but this is only for the purpose of the Act. It is true that a fiction created for a particular purpose cannot be extended beyond that purpose. This is a well accepted position in law. But, that principle of law is no assistance to the revenue. Therein, as mentioned earlier, when the compensation amount is paid or is made payable to the sons, the same became their absolute property. Therefore, there is no question of extending the fiction provided in Section 45. We see no merit in these appeals. In the result these appeals fail and they are dismissed with costs. Three sets of hearing fee.

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