Controller of Estate Duty, Kerala

Vs

V. Venugopala Varma Rajah

Civil Appeals Nos. 2000-2001 of 1969

(CJI A.N. Ray, M.H. Beg, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

24.08.1976

JUDGMENT

BEG, J. -

1. Civil Appeals 2000-2001 of 1969 from the judgment and order of the Kerala High Court are by grant of special leave by this Court filed on the ground that these appeals raise a question of wide general importance. This question was thus framed, in a reference made by the Madras Bench of the Income-tax Appellate Tribunal under Section 64(1) of the Estate Duty Act, 1953 :

> Whether on the facts and in the circumstances of the case, the appellate tribunal was correct in law in having included the value of the forest lands in the total value of the estate for the purpose of estate duty ?

2. The assessee had claimed that large tracts of forest land, covered with wild and natural forest growths, situated in the erstwhile Malabar district, were "agricultural" lands not liable to estate duty under the Estate Duty Act of 1953 (hereinafter referred to as 'the Act'). According to the Revenue, duty had become leviable on the death of the former owners, Smt. Jayalakshmi Devi, who died on March 6, 1954, and Shri Madhava Rajah of Kollengode, who died on May 9, 1955, each owning 1/13th share in the Tarwad properties on the dates of their deaths.

3. No question as to the effect of any amendment of the law upon liability of agricultural land to estate duty was referred by the tribunal to the High Court. Nevertheless, it seems to have been considered by reason of the general nature of the question referred involving a determination of the correctness of the inclusion of the value of "forest land in the total value of the estate". We may observe here that the question framed seems to rest on the assumption that the land under consideration was "forest land". However, the general nature of the question framed and the questions argued and decided by the appellate tribunal as well as the High Court indicated that the real contest was about the very nature of the land involved in order to determine whether it was liable to estate duty.

4. The High Court had observed that the tribunal's findings that land, to the extent of 36,857.16 acres, was not agricultural land was "solely based on the absence of evidence or the assessee's failure to prove that the disputed forest lands are agricultural lands".

5. The High Court had also mentioned the basis of this finding relating to two types of land about which it had disagreed with the appellate tribunal while agreeing with the tribunal that 500 acres of rocky land was non-agricultural land. This basis was given by quoting the following two passages

from the judgment of the appellate tribunal :

> (1) According to the valuers, the remaining extent of 15,000 and odd acres out of the first category, has been leased by the assessee from time to time for cutting of timber and fuel wood, and has never been used by him either by himself or through lessees to bring it under cultivation for any purpose. There is no material on record from which it can be said that this area can at all be brought under cultivation for any purpose. Even if it is assumed that there is a bare possibility of this area being brought under cultivation, the assessee has not placed any material before us from which it can be said that a prudent owner would undertake any process of farming in respect of this land.
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> (2) With regard to the second category of the land of the extent of 16,000 and odd acres, the report of the valuers does not throw any light upon the nature of this land, and the only information available is that these lands have been held by the Kerala Government under a perpetual lease on an annual rent of Rs. 5,000. The assessee has not shown whether this land was being cultivated by the Kerala Government or whether it was only being exploited by the Kerala Government for its timber value. On the material on record, it is not possible for these lands to come under the category of agricultural lands.

6. The High Court had set out the provisions of Section 5 of the Act as they stood before a slight amendment in 1956. It read :

5. Levy of estate duty. - (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property settled or not settled, including agricultural land situate in the States specified in the First Schedule to this Act, which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with Section 35.

> (2) The Central Government may, by notification in the official Gazette, add the names of any other States to the First Schedule in respect whereof resolutions have been passed by the Legislatures of those States adopting this Act under clause (1) of Article 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the estates so added shall be deemed to be States specified in the First Schedule within the meaning of sub-section (1).

7. After pointing out that agricultural land falls under item 48 of List II or the State List in the Seventh Schedule of the Constitution, the High Court held that estate duty on the land under consideration would become leviable provided it was agricultural land on the passing of resolutions by the legislature of the State of Madras as provided by Section 5(2) set out above. These resolutions having been passed on April 2, 1955, the State of Madras was added in the First Schedule to the Act with effect from June 6, 1955. Hence, the High Court held that the estate duty was not leviable under the Act on agricultural land before June 6, 1955, in the Madras State to which the land under consideration had belonged at the time when it was said to have become subject to a levy of estate duty. Thus, the principal question which arose was : What is the meaning of "agricultural land" as that term is used in the Act ?

8. The High Court of Kerala, which had to deal with this reference, decided the question on two grounds : firstly, that, according to the views expressed in Sarojini Devi v. Sri Kristna (AIR 1944 Mad 401 : ILR 1945 Mad 61 : (1944) 1 MLJ 361) and Megh Raj v. Allah Rakhia (AIR 1947 PC 72 : 74 IA 12); and C.I.T., West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy ((1957) 32 ITR 466 : 1958 SCR 101 : AIR 1957 SC 768), the words "agricultural land" should be "interpreted in their widest significance"; and, secondly, that although the burden rested upon an assessee to establish an exemption from liability to estate duty in respect of any part of his estate, yet, if he claimed immunity on the ground that the subject-matter does not fall within the ambit of the taxing power of the legislature imposing the duty, the Revenue had to establish that the subject-matter involved is taxable. It then gave its opinion in the following terms :

> It is well-known that the extensive areas of different varieties of plantation that we have got in this State were once forest lands; and it is also equally well-known that year after year large areas of forest land in this State are being cleared and converted into valuable plantations. In the absence of exceptional circumstances such as the land being entirely rocky or barren for other reasons, all forest lands in this State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes. There is no case that the forest lands concerned in this case or any part thereof are unfit for agricultural exploitation.

9. So far as the correct interpretation of the term "agricultural land" in a taxing statute, such as the one before us, is concerned, we have already dealt with the question in our judgment in Commissioner of Wealth-tax, Andhra Pradesh v. Officer-in-Charge (Court of Wards) Paigah ((1976) 3 SCC 864 : 1976 SCC (Tax) 411), where we have said :

> We think that it is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is that we have to endeavour to find out the exact sense in which the words have been used in a particular context. We are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms used. We are to avoid absurd results. If we were to give the widest possible connotation to the words 'agricultural land', as the Full Bench of the Andhra Pradesh High Court seemed inclined to give to the term 'agricultural land', we would reach the conclusion that practically all land, even that covered by buildings, is 'agricultural land' inasmuch as its potential or possible use could be agricultural. The object of the Wealth Tax Act is to tax surplus wealth. It is clear that all land is not excluded from the definition of assets. It is only 'agricultural land' which could be exempted. Therefore, it is imperative to give reasonable limits to the scope of the 'agricultural land', or, in other words, this exemption had to be necessarily given a more restricted meaning than the very wide ambit given to it by the Andhra Pradesh Full Bench.

10. Learned Counsel for the respondents had sought to rely strongly upon State of Kerala v. Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. ((1974) 1 SCR 671, 682 : (1973) 2 SCC 713), where the question under consideration was whether the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971, purporting to acquire forest lands held on janman right, without payment of compensation, for implementing a scheme of agrarian reforms by assigning lands or leasing them to poor sections of rural agricultural population, was acquiring "agricultural land", for purposes stated in the preamble to the Act before this Court for interpretation. This Court interpreted the preamble

as having the effect of an earmarking by legislature of certain forest lands for conversion into land meant for agriculture.

11. We do not think that the forest land involved in Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd.'s case, which had become linked up with agricultural purposes and earmarked for them, by reason of a special statute for special purposes, can bear comparison with forest land with "spontaneous" or natural and wild growths of forest, which is involved in the case now before us. The decision in Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd.'s case obviously depended upon the special facts of that case and the character of provisions to be interpreted. This court keeping in view the special features of that case, in the context of certain judicial pronouncements mentioned in the statement of objects and reasons for the statute to be interpreted, observed there (at p. 683) :

> It is, therefore, manifest that when the Legislature stated in the preamble that the private forests are agricultural land, they merely wanted to convey that they are lands which by and large could be prudently and profitably exploited for agricultural purposes.

12. It seems clear to us that this Court, by explaining why, for certain special reasons and in an unusual context, certain land described as "forest land" was to be treated as though it had become "agricultural", implied that ordinarily that is not so. In Raja Anand Brahma Shah v. State of U. P.((1967) 1 SCR 373, 379, : AIR 1967 SC 1081) this Court held forest land to be non-arable which meant "non-agricultural". We think that, without evidence to show that such land had been cleared and prepared or earmarked for agricultural purposes, it must be treated as prima facie non-agricultural land.

13. Learned Counsel appearing for the respondent stated before us that the lands under consideration had also been subsequently acquired by the Government and put to agricultural use. There is, however, no finding or evidence before us to that effect. Apparently, the learned Counsel meant that forest land subsequent to the levy of estate duty had been acquired by the State to be converted and used for agricultural purposes. There being no evidence or finding of such a character before the events which attracted the estate duty, we cannot take notice of such a statement by Counsel. It is irrelevant for the purpose of the cases before us.

14. So far as the question of burden of proof is concerned, we think that to proceed on the assumption that all land is prima facie capable of cultivation, so that the State must prove that it is non-agricultural in order to establish that it could be the subject-matter of legislation which was within Parliament's legislative competence, and, therefore, covered by the Act, is to mix up the question of legislative competence and that of taxability of what is, on the face of it, taxable as part of the estate or property of the assessee within the meaning of Section 5 of the Act set out above. Indeed, the question of legislative competence of Parliament was neither in issue nor part of the question referred even if such a question could have been referred at all by a tribunal functioning under the Act. We think that the burden of establishing the exemption lay upon the assessee respondent as was rightly held by the High Court. We think that the High Court was not correct in placing the burden upon the Department, after it was admitted that it was "forest land", on the ground that the further question of an immunity of the subject-matter from taxation by Parliament arose here and that, therefore, the onus lay on the Department. Even if there could be such an onus here, it was, we think, sufficiently discharged by the admission that this was "forest land" covered with natural or wild growths. After that, at any rate, the assessee had to prove change of its

character.

15. In Commissioner of Wealth Tax, Andhra Pradesh v. Officer-in-Charge (Court of Wards) Paigah (supra), in which we heard arguments together with arguments in the case no before us, we found that there was some evidence of the agricultural character of land in the shape of entries in revenue record. We do not find what could similarly constitute evidence of agricultural character of the land involved in this case. On the other hand, the assessee's admission that the land under consideration was "forest land", covered by wild and natural growth of forests, constituted evidence to the contrary. We think that, unless there was evidence that such lands had been, in some way, set apart or earmarked for or linked up with an agricultural purpose by their owners or occupiers, it could not be held that they are agricultural lands.

16. We think that the view of the Kerala High Court, that "all forest lands in this State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes", is too wide. It is erroneous for the reasons we have already set out in our judgment in the case from the Andhra Pradesh High Court. The question has to be decided on evidence of actual or intended user for which land may have been prepared or set apart.

17. In the case before us now, the tribunal said in its referring order :

> The tribunal permitted the accountable person to raise the contention that the value of the forest lands has to be excluded as they were agricultural lands. So far as this contention was concerned, the following facts were not in dispute; viz. that the forest consisted of trees of spontaneous growth; that no operations in the nature of forest development were being carried on; and the only operations in the nature of exploitation of the forest were being conducted. The accountable person, however, contended that these land were capable of being brought under cultivation at a future date and that therefore they must be deemed to be agricultural lands. Reliance was sought to be placed upon the decision of the Madras High Court in Sarojini Devi v. Shri Kristna (supra) in which it was held that the expression 'agricultural lands' must be taken to include lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry. The tribunal was, however, of the view that in the said decision their Lordships did not intend to lay down a definition of the expression 'agricultural lands' for all purposes, and that, on the other hand, they clearly indicated that the expression admits of different interpretations and that it was only from the context of the particular enactment in which this expression is used that its meaning has to be inferred. The Tribunal observed that the very wide definition of the expression 'agricultural lands' laid down in the above cited decision was not applicable to cases under the Estate Duty Act. The tribunal, therefore, negatived the contention of the accountable person that the forest lands had to be excluded from the value of the assessable estate of the deceased.

18. Thus, it is clear that the assessee, after having been given due opportunity to lead evidence to show that what was prima facie non-agricultural land, in the sense that it was covered by the spontaneous or natural growth of forests, was really agricultural land, had led no such evidence. It was not shown that the assessee or his predecessor in interest did anything to develop the forest in the sense that any particular trees were planted deliberately. It appears that the nature of exploitation of the forest lands was simply to give contracts for cutting of the trees. The assessee not having led

any evidence of any intention to prepare or appropriate or earmark the land for any agricultural use or purpose, but, on the other hand, having contended that mere possibility of using such land for agricultural purposes in future was enough, could not be said to have discharged his onus of proof. After the assessee's admission that it was "forest land", which presumably prevented cultivation, no evidence was led, as we have already observed, to indicate any change of character of this land or its conversion into agricultural land. We, therefore, think that the appellate tribunal was correct in expressing the view it had taken and the conclusions it had recorded. And, no case is made out for sending the case back to the tribunal for any fresh decision.

19. Consequently, we allow these appeals, set aside the judgment and orders of the High Court. The parties will bear their own cots.

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