

Mahant Sri Srinivas Ramnuj Das

Vs

The Agricultural Income Tax Officer, Puri and Another

Civil Appeal No. 1770 of 1972

(P. N. Bhagwati, V. D. Tulzapurkar, R. S. Pathak JJ)

12.09.1978

JUDGMENT

TULZAPURKAR, J. :-

1. The short question raised in this appeal by special leave is whether Section 8(1) of the Orissa Agricultural Income-Tax Act, 1947, suffers from the vice of discrimination and as such is hit Article 14 of the Constitution ?
2. The petitioner is the Mahant of Emar Math at Puri, which is an ancient public Hindu Religious Trust. The trust owns considerable endowed properties both agricultural and non-agricultural. After the passing of the Orissa Agricultural Income-Tax Act, 1947 (hereinafter called 'the Act') the petitioner as a trustee has been assessed in the status of an 'individual' under the Act for the assessment years 1948-49 to 1967-68 in respect of the income derived from agricultural lands owned by the trust. It appears that these assessments have been made after granting the exemption under Section 8(1) of the Act which provides that "any sum derived from land held under such trust and actually spent for the said purpose (charitable or religious purposes) shall not be included in the total agricultural income of such assessee". By a Write petition 48 of 1968, filed under Article 226 and 227 of the Constitution, the petitioner challenged the constitutional validity of Section 8(1) of the Act under which the assessments were made principally on the ground that Section 8(1) was discriminatory and hit by Article 14 of the Constitution inasmuch as under said provision in respect of non-Muslim public trusts created for religious or charitable purposes the exemptions contemplated therein was confined to such agricultural income as was actually spent for the public purposes of charitable or religious nature while in the case of Muslim trusts (wakfs) the entire agricultural income, whether spent for charitable or religious purposes or not, was exempt from the operation of the Act under Section 9 of the Act. The contention was refuted on behalf of the respondents. On an examination of the provisions of Section 8 and 9 in the context of the scheme of the Act the Orissa High Court negatived the said contention and dismissed the writ petition on November 30, 1971. The petitioner has come up in appeal to this Court.
3. Since Counsel for the appellant raised the self-same contention before us in support of the appeal it will be desirable to set out the provisions of Sections 8 and 9 of the Act in order to appreciate his submissions on the point. Section 8 runs thus :
8. Exemptions of charitable or religious trusts. - (1) Where the assessee is a trustee and trust under which he holds the property is a trust, created for public purposes of a charitable or religious nature, any sum derived from land held under such trust and actually spent for the said purpose, shall not be included in the total agricultural income of such assessee.

(2) In this section purposes of a charitable nature include relief of the poor, education, medical relief and advancement of any other object of general public utility.

Section 9 runs thus :

9. Exemption of wakf-alal-aulad. - All agricultural income of Muslim trusts referred to in Section 3 of the Musalman Wakf Validating Act, 1913, created before the commencement of this Act, shall be excluded from the operation of this Act :

Provided that the share of a beneficiary under a trust under the aforesaid Act, commonly known as wakf-alal-aulad, shall not be exempted and the tax may be realised from the mutawali and the basis of taxation shall be the share of each beneficiary.

Explanation. - For the purposes of the section, a beneficiary means the settler, his family, children and descendants.

Since Section 9 refers to Muslim trusts 'referred to in Section 3 of the Musalman Wakf Validating Act, 1913', it would be proper to set out the provisions of Section 3 of the Musalman Wakf Validating Act, 1913. Section 3 of that Act runs as follows :

3. Power of Mussalmans to create certain wakfs, - It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes -

(a) for the maintenance and support wholly or partially of his family, children or descendants, and

(b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his life-time or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

4. Mr. Mukherjee for the appellant contended that the exemption contemplated by Section 8(1) of the Act is confined only to such part of the income derived from agricultural lands held under a public charitable or religious trust as is actually spent for the charitable or religious purposes while under Section 9 all agricultural income of Musalman trusts (wakfs) irrespective of whether the same is spent on public purposes of charitable or religious nature or not is exempt from the operation of the Act; in other words in the matter of granting exemption, between the agricultural income of two types of public trust created for charitable or religious purposes, the Act has practiced hostile discrimination against agricultural income of non-Muslim public trusts, the classification having no reasonable nexus with the object sought to be achieved by the statute which is to tax agricultural income derived from lands and to exempt the income so derived by a public charitable or religious trust. According to him though Section 9 refers to all agricultural income of Muslim trusts "referred to in Section 3 of the Musalman Wakf Validating Act, 1913 (Act VI of 1913)", the wakfs contemplated by Section 3 of the said Act (Act VI of 1913) includes not merely wakf-alal-aulad but

also other wakfs where property has been permanently dedicated for any purposes recognized by the Musalman Law as religious, pious or charitable and this, he argued, becomes clear from sub-clause (a) of Section 3 which speaks of wakf created by a Muslim for the maintenance and support wholly or partially of his family, children or descendants; in other words, according to Mr. Mukherjee, Section 9 of the Act is not confined to Muslim trusts known as wakf-alal-aulad but is applicable to all wakfs and, therefore, in case of wakfs other than wakf-alal-aulad the exemption granted by Section 9 of the Act which is in respect of all agricultural income must be regarded as discriminatory as against the exemption granted by Section 8(1) of the Act. He, therefore, urged that Section 8(1) which grants a limited exemption would be violative of Article 14 of the Constitution. On the other hand, the learned Attorney-General appearing for the respondents contended that Section 9 is confined to Muslim trusts commonly known as wakf-alal-aulad and all other Muslim trusts are covered by Section 8(1) of the Act with the result that to all such Muslim trusts, other than wakf-alal-aulad, the limited exemption is applicable. He urged that wakfs-alal-aulad do stand in a class by themselves and as such have been dealt with by Section 9 in keeping with the objective of the Act. He further urged that Sections 8(1), 9 and 16 showed the scheme of the Act and if these provisions were considered in light of the main objective of the enactment it was clear that Section 8(1) could not be held to be discriminatory or violative of Article 14.

5. Before considering the rival contentions touching the constitutional validity of Section 8(1) of the Act it would be proper to keep in mind the main objective as well as the scheme of the Act particularly in regard to the charging provision and the provisions dealing with exemptions contained therein. The Act, as its preamble would indicate, has been put on the statute book with the object of imposing a tax on agricultural income derived from lands situated in the State of Orissa. Section 2(a) defines the expression "agricultural income" comprehensively. The charging provision is Section 3 which provides that agricultural income tax at the rate or rates specified in the Schedule shall be charged for each financial year in accordance with and subject to the provisions of this Act on the total agricultural income of the previous year of every person; the proviso, however, states that no agricultural income tax shall be charged on the agricultural income of the Central Government or any State Government or any local body. Section 5 prescribes limits of taxable income while Section 6 prescribes the method and manner of determining the agricultural income of every assessee. Then come the two material provisions dealing with exemptions, namely, Sections 8 and 9 which have been reproduced above. The other material section which deals with exemption is Section 16 which provides that agricultural income tax shall not be payable by an assessee in respect of any amount actually spent by him out of his total agricultural income for the benefit of the people of the State or for charitable purposes, but this exemption is subject to the proviso that agricultural income tax shall be payable on the remainder of the total agricultural income of such assessee at the rate which would have been applicable if such deduction had not been made. It is unnecessary to refer to other provisions as they are not material for our purposes. The scheme of the Act, as disclosed by the aforesaid provisions, is that under the charging provision agricultural income of the previous year of every assessee subject to the exemptions which have been provided for under Sections 8, 9 and 16. It is also clear that whereas the exemption in regard to the amount actually spent for charitable purpose under Section 8(1) is in relation to the agricultural income of a public charitable trust, the exemption of similar nature and extent contemplated by Section 16 is in regard to the agricultural income of any assessee who may not be a trustee owning lands under a public charitable trust; in other words, in either case the exemption is confined to such part of the agricultural income which is actually spent by the assessee for charitable purposes. The legislative intent of granting such a limited exemption having been thus clearly brought out by Sections 8(1) and 16 of the Act, the question would be whether by enacting Section 9 the Legislature really

intended to accord or has actually accorded favorable treatment to Muslim trusts in the matter of granting exemption in the manner suggested by counsel for the appellant ?

6. Having regard to the submissions made by counsel for the appellant the question raised for determination may be formulated thus : whether Sections 8 and 9 while providing for exemption to charitable or religious trusts discriminate between agricultural income derived from lands held under non-Muslim public trusts and those held under Muslim trusts and accord to the latter a favourable treatment as against the former by confining the exemption in the former case to such income as has been actually spent for public purposes of charitable or religious nature ? In other words is Section 8(1) which confers a limited exemption as compared to Section 9 hit by Article 14 ? It has not been disputed before us that Muslim trusts known as wakf-alal-aulad constitute a distinct class from other types of wakfs but the discrimination complained of is founded upon plea that Section 9 of the Act covers all Musalman wakfs and not merely wakfs known as the wakf-alal-aulad and, therefore, it will be necessary to examine the provisions of Section 9 in order to ascertain whether the plea that it covers all Musalman wakfs is warranted or not. Section 9 in terms says that the exemption thereunder is confined to Muslim trusts 'referred to in Section 3 of the Musalman Wakf Validating Act, 1913' and the question is what wakfs are referred in Section 3 of the Musalman Wakf Validating Act, 1913 (hereinafter called 'the Validating Act'). The Validating Act, as we shall indicate presently, was enacted only for the purpose of validating wakfs in the nature of wakf-alal-aulad. As has been pointed out by this Court in *Fazlul Rabbi Pradhan v. State of West Bengal* (AIR 1965 SC 1722 : (1965) 3 SCR 307 : (1965) 2 SCJ 833), wakfs (which were primarily family settlements) in which the benefits to charity or religion were either illusory or postponed indefinitely while the property so dedicated was being enjoyed from generation to generation by the family of the wakif were regarded as opposed to the rule against perpetuity as contained in the Indian Succession Act and the Transfer of Property Act. The leading decision of the Privy Council in that behalf rendered in *Abul Fata Mahomed Ishak v. Russomoy Dhur Chowdry* (22 IA 76 : ILR 22 Cal 616 : 6 Sar 572), caused considerable dissatisfaction in the Muslim community in India resulting in a representation being made to the Government of India and consequently the Validating Act came to be enacted with the primary object of removing the difficulties created by that decision. The preamble of the Act makes this very clear. Section 3 declares the right of a person professing Musalman faith to create a wakf (which in all other respects is in accordance with the provisions of Musalman law) for the maintenance and support wholly or partially of his family, children or descendants and in the case of a Hanafi Musalman also for his own maintenance and support during the life time or for payment of his debts out of the rents of the property dedicated provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Musalman law as a religious, pious or charitable purpose of a permanent character. Section 4 also declares that no such wakf as is referred to in Section 3 shall be deemed to be invalid merely because of remoteness of benefit to charity. In fact, Section 3 is declares of a right of a Muslim to create a valid wakf of the type described therein and the proviso makes it clear that but for the reservation of ultimate benefit to charity that has to be made, such family settlement (private wakfs) would be invalid. It is conceivable that a deed or instrument of wakf may be a composite one partly incorporating public wakf and partly private wakf but Section 3 of the Validating Act unquestionably refers to that part of the instrument which incorporates a private wakf - Wakf- alal-aulad, the validity of which must depend upon whether in that part of the instrument the ultimate benefit is expressly or impliedly reserved for charitable or religious purposes or not. It is thus clear that Section 3 of the Validating Act refers only to Muslim trusts which are in the nature of wakf-alal-aulad. The exemption in Section 9 of the Act, therefore, clearly applies only to Muslim trusts which are in the nature of wakf- alal-aulad. This is also clear from the marginal note to

Section 9 as well as the proviso to the section. If that be so then all other wakfs would squarely fall under Section 8(1) and to all such wakfs the limited exemption contemplated therein would apply. Even if the instrument of wakf is a composite one partly incorporating a public wakf and partly private wakf that part which deals with public wakf will fall under Section 8(1) and the other part will be covered by Section 9, for the language of Section 8(1) is wide enough to include such a deed to the extent that it incorporates a public wakf. In other words, Muslim trusts, i.e. wakfs other than wakf-alal-aulad would be covered by Section 8(1) and to such wakfs the limited exemption contemplated by Section 8(1) would apply. If that be so, the gravamen of complaint that all wakfs (Muslim trusts) other than wakf-alal-aulad are receiving favourable treatment as against non-Muslim public charitable trusts must fall to the ground.

7. As regards Muslim trusts which are in the nature of wakf-alal-aulad which alone are covered by Section 9, the proviso clearly shows that the share of the beneficiary under such a trust far from being exempted is brought to tax and the tax is made realisable from the mutawali and read with the proviso the main provision really confines the benefit of exemption only to ultimate illusory or remote public charitable or religious purpose and is thus completely consistent with the object and scheme of the Act.

8. In the result, we are clearly of the view that Section 8(1) of the Act is free from the vice of discrimination under Article 14 of the Constitution and the said provision is perfectly valid and constitutional. The appeal is, therefore, dismissed with costs.

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