Mrs. Khorshed Shapoor Chenai and Others

Vs

Assistant Controller of Estate Duty, Andhra Pradesh and Others

Civil Appeals Nos. 2005-2006 of 1972

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

04.12.1979

JUDGMENT

TULZAPURKAR, J. –

1. These Two appeals by certificates granted by the high court of Andhra Pradesh raise the question of legality of two notices issued by the Assistant Controller of Estate Duty, Hyderabad, One under Section 59(a) and the other under Section 61 of the Estate Duty Act, 1953 (hereinafter called 'the Act').

2. Two parcels of agricultural land (admeasuring 22 acres 24 guntas and 8 acres 23 guntas) situated in Moosapet village, belonging to one Rashid Shapoor Chenai were, during his lifetime, acquired for the Synthetic Drugs project Factory of the Indian Drugs and Pharmaceuticals Ltd. by the Andhra Pradesh government by notifications issued on June 19, 1961 and January 18, 1962 under the Land Acquisition Act. Possession of the lands was taken in January 1963 and by two separate awards both made on January 31, 1963 the Special Duty Collector of Land Acquisition awarded a total compensation of Rs. 20,000. This compensation was received by Rashid himself during his lifetime. Later two more parcels of agricultural land (admeasuring 131 acres 10 guntas and 224 acres 22 guntas) situated at Qutbillapur in Madchal Taluk belonging to Rashid were acquired for Hindustan Machine Tools, Units and I and II by the Andhra Pradesh Government by notifications on November 1, 1963 and February 1, 1964 under the Land Acquisition Act. Though the former notification was issued during his lifetime and latter after death, possession of both the lands was taken after his death by the government on December 4, 1963 and March 15, 1964 and by two separate awards made on March 12, 1965 and the special Deputy Collector awarded a total compensation of Rs. 4,29,360. This compensation was received in April 1965 by the heirs of Rashid, namely, his widow Mrs. Freny Chenai and son Shapoor Rashid Chenai on whom the estate of Rashid devolved in equal shares.

3. On the death of Rashid on November 4, 1963 Mrs. Freny Chenai (the appellant in C.A. NO. 2006 of 1972) as his widow and the 'accountable person' filed before the respondent on December 26, 1963 an account of the properties passing on the death of her husband under Section 53(3) of the Act. The estate Duty assessment was completed by the respondent on march 29, 1966. With regard to the lands acquired both during the lifetime of Rashid as well as after their values were taken at the respective figures of compensation (Rs. 20,000 and Rs. 4,29,360) awarded for them by the special Deputy Collector.

4. Unfortunately, within two years of his father's death Shapoor Rashid Chenai (the son) died on may 7, 1965. As stated earlier he had one half share in the undivided estate of his late father Rashid.

As required by Section 53 of the Act, Mrs. Khorshed Chenai (the appellant in C.A. No. 2005 of 1972) as his widow and the 'accountable person' filed before the respondent on November 6, 1965 an account of the properties passing on the death of her husband and the respondent completed the estate duty assessment on December 30, 1966. In making this assessment also the respondent as in the case of estate duty assessment in respect of the properties passing of the death of Rashid, adopted the lands acquired by the government at figures awarded by the Special Deputy Collector for those lands.

5. It appears that the legal heirs of Rashid did not accept the awards made by the Special Deputy Collector in respect of the aforesaid lands and requested the Special Deputy Collector to refer the question of compensation to civil court under Section 18 of the Land Acquisition Act. References were, accordingly made and the civil court by its order dated March 6, 1967 enhanced the compensation awarded by the Special Deputy Collector in respect of moosapet lands by Rs. 1,90,000 and by its order dated October 30, 1967 enhanced the compensation in respect of Qutbillapur lands by Rs. 20,45,000. The government did not except the decisions of the civil court and filed appeals to the High Court challenging the enhancement, which appeals are still pending in the High Court. On receipt of information that enhanced compensation was awarded by the civil court in respect of the above lands the respondent issued two notices both dated November 14, 1969, one addressed to Mrs. Khorshed Shapoor Chenai and the other to Mrs. Freny Rashid Chenai. The former notice was issued under section 59(a) of the Act calling upon Mrs. Khorshed Chenai to show cause why the estate duty assessment made on December 30, 1966 should not be reopened and revised in view of the extra compensations awarded by the civil court in respect of the lands acquired by the government, while the latter notice was issued under Section 61 of the Act requiring Mrs. Freny Chenai to show cause why the mistake apparent from the record should not be rectified and the enhanced compensation included in recipients by filling writ petitions in the High Court.

6. The notice under section 59(a) of the Act issued the reopening of the assessment completed on December 30, 1966 was challenged in Writ petition No. 54 of 1970 on two grounds : (a) that after compensation had been awarded by the Special Duty Collector under Section 11 of Land acquisition Act the heirs of the deceased Rashid had merely exercised a right to sue for further compensation might be enhanced, that such hope or chance could not be elevated to the status of an asset of property and as such no asset or property chargeable to Estate Duty had escaped assessment and (b) that even assuming that any asset or property chargeable to estate duty had escaped assessment the notice was illegal and without jurisdiction because such escapement was not due to any omission or failure on the part of the accountable person to disclose fully and truly material facts necessary for making the assessment. As regards the first ground, the High Court took the view that the right to receive compensation equivalent to market value of the lands on the dates of notifications which sprang directly from the acquisition was 'property', that no fresh or independent right "to receive extra compensation" accrued to the heirs of the deceased and that since compensation awarded by special Deputy Collector had been enhanced by Rs. 1,90,000 for the lands acquired for the Synthetic Drugs Project and by Rs. 20,45,000 for the lands acquired for the Hindustan Machine Tools by the civil court, these facts, which came into existence subsequent to the making of the original assessment, easily led to the conclusion that the values adopted by the respondent for these lands were far below their real and true market values and such property (meaning lands) chargeable to estate duty having been undervalued had escaped assessment of the duty. On the second aspect the fact that land references were filed against the awards of the Special Deputy Collector under Section 18 of the land Acquisition Act and were pending in the civil court was not disclosed by the accountable person, that the said fact was a primary and material fact and not an inferential fact and its non-disclosure amounted to omission or failure which could lead the assessing authority to a

reasonable belief that property chargeable to estate duty had escaped assessment and as such the respondent had jurisdiction to issue the notice. In this view of the matter, the High Court upheld the notice issued under Section 59 (a) of the Act and dismissed the writ petition. This decision of the High Court is being challenged before us in Civil Appeal NO. 2005 of 1972.

7. The issuance of the notice under Section 61 of the Act was challenged in writ petition No. 4059 of 1969 principally on three grounds : (i) that the accountable person had only a claim to get an extra compensation which was an inchoate right which could not be called 'property' and whether that claim amounted to right to property capable of sale in open market was a highly debatable question and a mistake which had to discovered after lengthy discussion and debate could not be said to be a mistake apparent on the record, (ii) that land acquisition proceedings and land references in civil court not being part of the assessment record a mistake discovered by reference to such other record was not a mistake apparent from the record of the case, and (iii) that the extra compensation received by the legal heirs of Rashid belonged to them and not to the deceased and hence it was not property that passed on the death of the deceased and, therefor, no property escaped assessment. In other words the guise of rectification, the enhanced compensation could not be taken into account and, therefore, the impugned notice was illegal and without jurisdiction. The High Court negatived the contentions and upheld the impugned notice. This decision is challenged in Civil Appeal No. 2006 of 1972.

8. Dealing first with C.A. No. 2005 of 1972, wherein the notice issued under Section 59(a) of the Act has been challenged, counsel for the appellant raised three contentions against the view taken by the High Court. At the outset counsel pointed out that so far as the estate duty assessment in respect of the properties passing on the death of Shapoor was concerned, the respondent as well as the High Court had proceeded on the wrong assumption that the acquired lands formed part of the estate of the deceased and passed on his death, for, it was on the such basis that the High Court held that having regard to the enhanced compensation granted by the civil court for the lands such property (meaning lands) had been undervalued in the original assessment and as such it had escaped assessment to duty. According to him the lands no longer formed part of the estate of the deceased at the date of his death, namely, on May 7, 1965, inasmuch as long prior thereto they had vested in the government, and, therefor, it was merely the right to receive compensation, which, if at all could constitute property passing on the death of the deceased, but he contended that during the lifetime of the deceased the land in question had not merely been acquired but even the compensation as determined under the awards made by Special Deputy Collector was paid to and received by the deceased and hence at the time of the death the initial right to receive compensation had already merged in those awards and the only right which the deceased had was right to agitate against the correctness of the award and nothing more and this right to claim further compensation was a precarious right, being merely a right to litigate - a chancy and dicey right, which could not be elevated to the status of any asset or the property and as such there was no question of any property having escaped the assessment to duty. It was urged such a right to further compensation would become property only when the claim would be accepted finally by the Court and till the enhanced compensation became payable by reason of final adjudication of the Court no property could be said to have come into existence and certainly it was not in existence at the date of death. It was pointed out that against the decrees passed by the city civil court appeals had been preferred by the government to the High Court's decision might be carried in further appeal to this Court and, therefore, till the claim was finally accepted by the highest court (enhanced compensation) could be said to have come into existence. Counsel urged that it would run counter to all the principles of direct taxation to regard the amount decreed subsequently by the final Court as property having come into existence retrospectively on the relevant date (being date of death under Estate Duty Act

and valuation under the Wealth Tax Act) Though, in fact, it did not exist on that date, and this behalf reliance was placed upon the decision of the Andhra Pradesh High Court in Khan Bahadur Ahmed Alladin & Sons v. C. I. T. ((1969) 74 ITR 651, 657, 658 (AP)), two decisions of the Calcutta High Court, namely, C. W. T. v. U. C. Mahatab ((1970) 78 ITR 214 (Cal)) and C. I. T. v. Hindustan Housing and Land Development Trust Ltd. ((1977) 108 ITR 380 (Cal)), two decisions of the Gujarat High Court, namely, Topandas Kundanmal v. C. I. T. ((1978) 114 ITR 237 (Guj)) and Addl. C. I. T. v. New Jahangir Vakil Mills Co. Ltd. ((1979) 117 ITR 849 (Guj)) and one decision of the Kerala High Court In M. Jairam v. C. I. T. ((1979) 117 ITR 638 (Ker)). Secondly, counsel contended that assuming that the right to receive compensation survived and it was that right which was being prosecuted by the heirs of Rashid in civil court, the impugned notice had not been issued on the ground that such right to compensation had been undervalued on the earlier occasion and required to be properly valued as at the death but the basis on which it was issued was clearly unsustainable in law inasmuch as the respondent had issued it on the assumption that there had been escapement of assessment to duty because the lands in the original assessment had been undervalued in view of the glaring enhanced compensation awarded by the civil court and the High Court's decision upholding the issuance of such notice on the wrong basis was liable to be set aside. Thirdly, counsel contended that seeking references under the Land Acquisition Act and their pendency in civil court could not be said to be primary facts non-disclosure of which could amount to an omission or failure on the part of the accountable person resulting in escapement of assessment to duty.

9. On the other hand counsel for the Revenue pressed for our acceptance the view taken by the High Court. He fairly conceded that the lands in question could not be regarded as forming part of the estate of the deceased on the relevant date inasmuch as the lands had vested in the government long prior to the death of the deceased, but he contended that upon such acquisition of lands, the right to receive compensation at market value on the dates of the relevant notifications accrued to the deceased and such right was unquestionably property which would pass on the death of the deceased. He disputed that this right to receive compensation got merged in the awards made by the Special Deputy Collector or that thereafter such right ceased to exist. According to him if the awards made by the Special Deputy Collector had been acquiesced in and accepted without any protest by the deceased or his heirs, such right would have merged in the said awards, but where as is the case here, the awards made by the Special Deputy Collector, which in law are nothing but offers made by the government to the claimant, are not accepted or are accepted under protest and the claimant seeks land reference in civil court's the right to compensation must be regarded as having survived or kept alive by the claimants and it is that property (right to compensation) which will have to be evaluated by the assessing authority as on the date of death. According to him obviously this asset or property had been correctly valued in the original assessment proceedings inasmuch as glaring enhancement had been granted by the civil courts in the land references and, therefore there was escapement of assessment to duty, and hence the notice under Section 59(a) of the Act should be regarded as having been issued properly. Counsel further contended that the High Court had rightly taken the view that seeking references under the Land Acquisition Act and their pendency in civil court were primary facts which had not been disclosed by the accountable person during the original assessment and such non-disclosure led to the reasonable belief that there was escapement of assessment to duty. The impugned notice according to him, therefore, was legal and justified.

10. As stated above, so far as the estate duty assessment in respect of the properties passing on the death of Shapoor was concerned, counsel for the Revenue fairly conceded that the lands which were the subject-matter of acquisition proceedings could not be regarded as forming part of the estate of

the deceased on the relevant date and could not pass on his death inasmuch as those lands vested in the government long prior to his death but the right to receive compensation at market value on the dates of the relevant notifications unquestionably accrued to the deceased which was property and it would be such property that would pass on the death of the deceased. That such right is property is well settled and if necessary reference may be made to a decision of this court in Pandit Lakshmi Kant Jha v. C. W. T. ((1979) 93 ITR 97 : (1974) 3 SCC 126 : 1973 SCC (Tax) 468) a case under the Wealth Tax Act, 1957 where it has been clearly held that the right to receive compensation in respect of the zamindari estate which was acquired by the government under the Bihar Land Reforms Act, 1950, even though the date of payment was deferred, was property and constituted an asset for the purpose of that taxing statute. In other words, since the lands were lost to the estate of the deceased before the relevant date, namely, the date of death, it would be the right to receive compensation under the Land Acquisition Act that will have to be evaluated under the Estate Duty Act. Counsel for the appellant did not dispute this position but he contended that no sooner the Collector (the Special Deputy Collector herein) made his awards determining the amounts of compensation payable to the claimants under Section 11 of the Land Acquisition Act the right to receive compensation must be regarded as having merged in the awards, the determination having been made by a statutory public official and what the claimants would be left with thereafter was merely a right to agitate the correctness of such determination and this right to claim further compensation being merely a right to litigate was no asset or property and further that such right would become asset or property only after the civil court finally adjudicated upon such claim. The High Court, while negativing this contention, has held that the "right to receive extra compensation" was not a separate or different right independent of "the right to receive compensation". It has observed thus :

> The right to receive compensation for the lands acquired by the government, at their market value at the date of the acquisition is one and indivisible right. There is no right to 'receive compensation' and a separate right to receive extra compensation. The only right is to receive the compensation for the lands acquired by the government, which is the fair market value on the date of acquisition.

The argument of learned counsel that the right to receive extra compensation accrued when the civil court passed order and not before, does not merit acceptance. The so-called right to receive extra compensation cannot be torn from or considered separately from the right to receive the market value of the lands acquired by the government. That right accrues to the owner of the lands as soon the lands are acquired by the government. It is therefore, difficult to accept the argument of the learned counsel for the petitioner that a fresh and independent right or 'receive extra compensation' accrues to the heirs of the deceased and that it was owned and possessed by the heirs of the deceased.

11. In our opinion the high court was right in holding that there are no two separate rights - one a right to receive compensation and other a right to receive extra or further compensation. Upon acquisition of his lands under the Land Acquisition Act the claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector under Section 11 and by the civil court under Section 26 of the Land Acquisition Act. It is true that under Section 11 the Collector after holding the necessary inquiry determines the quantum of compensation by fixing the market value of the land and in doing so is guided by the provisions contained in Sections 23 and 24 of the Act - the very provisions by reference to which the civil court fixes the valuation. It is also true that the Collector's award is, under Section 12, declared to be, except as otherwise provided, final and

conclusive evidence as between him and the persons interested. Even so, it is well settled that in law the Collector's award under Section 11 is nothing more than an offer of compensation made by the government to the claimants whose property is acquired. (Vide privy Council decision in Ezra v. Secretary of State of India (ILR 32 Cal 605 : 32 IA 93 (PC))) and this Court's decisions in Raja Harish Chandra v. Dy. Land Acquisition Officer ((1962) 1 SCR 676 : AIR 1961 SC 1500 : (1962) 1 SCJ 696) and Dr. G. H. Grant v. State of Bihar ((1965) 3 SCR 576 : AIR 1966 SC 237 : (1965) 2 SCJ 404). If that be the true nature of the award made by the Collector then the question whether the right to receive compensation survives the award must depend upon whether the claimant acquiesces therein fully or not. If the offer is acquiesced in by total acceptance the right to compensation will not survive but if the offer is not accepted under protest and a land reference is sought by the claimant under Section 18, the right to receive compensation must be regarded as having survived and kept alive which the claimant prosecutes in civil court. It is impossible to accept the contention that no sooner the Collector has made his award under Section 11 the right to compensation is destroyed or cases to exist or the award, or what is left with the claimant is a mere right to litigate the correctness of the award. The Claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in civil court. That is why when a claimant dies in a pending reference his heirs are brought on record and are permitted to prosecute the reference. This, however, does not mean that the civil court's evaluation of this right done subsequently would be its valuation as at the relevant date either under the Estate Duty Act or the Wealth Tax Act. It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of relevant notification) as on the relevant date (being the date of death under the Estate Duty and valuation under the Wealth Tax Act). Under Section 36 of the Estate Duty Act the assessing authority has to estimate the value of this property at the price which it would fetch if sold in the open market at the time of the deceased's death. In the case of the right to receive compensation, which is property, where the Collector's award has been made but has not been accepted under protest and a reference is sought or is pending in civil court at the date of the deceased's death, the estimated value can never be below the figure quantified by the Collector Because under Section 25(1) of the Land Acquisition Act civil court cannot award any amount below that awarded by the Collector; the estimated value can be equal to the Collector's award or more but can never be equal to the tall claim made by the claimant in the reference nor equal to the claim actually awarded by the civil court inasmuch as the risk or hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of this property as on the date of the deceased's death. The assessing authority will have to estimate the value having regard to the peculiar nature of the property, it's marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date. The first contention of counsel for the appellant, therefore, fails.

12. The second contention urged by the counsel for the appellant, however appears to us to be well founded and the impugned notice issued under Section 59(a) of the Act will have to be quashed on that ground. As we have said above, since in the instant case the awards made by the Special Deputy Collector were not accepted by the heirs of the deceased and land references were sought by them and the same were pending in civil court at the relevant date (being the date of Shapoor's death), the notice under Section 59(a) would have been valid if the same had been issued on the basis that such right to compensation had been undervalued on the earlier occasion and required to be properly valued as on the date of the death, but what we find is that the said notice was issued by the respondent on the wrong assumption that the acquired lands still formed part of the estate of the deceased and that having regard to the glaring enhanced composition granted by the civil court for

the lands, the said lands had been undervalued in the original assessment and as such the same had escaped assessment to duty. In the notice issued to the appellant under Section 59(a) of the Act a bald statement was made by the respondent to the effect that he had reason to believe that property chargeable to estate duty (a) had escaped assessment and (b) had been under-assessed, and, therefore, the appellant was called upon to deliver a further Statement of Account. By her Chartered Accountant's letter dated December 15, 1969 the respondent was called upon to give the basis for his aforesaid belief, to which the respondent replied on January 1, 1970 thus :

> The extra compensations received by you in O.P. No. 325/65, O.P. No. 364/65, O.P. No. 29/64 and O.P. No. 30/64 relating to the Land acquired by the government escaped assessment. In view of your failure to disclose full particulars to Department regarding the land acquisition proceedings in the Account filed by you, reassessment proceedings have been initiated under Section 59(a) of the Estate Duty Act.

The aforesaid communication clearly brings out the fact that in the respondent's view the extra compensation (meaning the enhanced amounts) received by the appellant under the civil court decrees in land references had escaped assessment in the earlier assessment proceedings and since escapement was due to the appellant's failure to disclose full particulars regarding the land acquisition proceedings, reassessment proceedings were being initiated. In other words, the assessment was being reopened for the purpose of including the enhanced amounts received by the appellant in the principal value of the property passing on the death and assessing the same to duty and for the purpose of evaluating the right to compensation which had been undervalued on the earlier occasion.

13. Further, as regards the basis on which the impunged notice had been issued the High Court took the following view while the issuance of the notice :

> Then, the next question that arises is whether such non-disclosure resulted in an undervaluation of the properties included in the account, and consequently there was an escapement of the property chargeable to the estate duty from assessment ? The compensation awarded by the Special Deputy Collector has been enhanced by Rs. 20,45,000 in the case of lands acquired for H.M.T. and by Rs. 1,90,000 for the lands acquired for the synthetic Drugs Project. Those facts which came into existence subsequent to the making of the assessment, lead to the conclusion that the values adopted by the Assistant Controller of estate Duty for those lands were far below their real and true market value.

In the instant case, the enhancement by the city civil court of the compensation awarded by the Special Deputy Controller was so large that no reasonable person could say that the values adopted by the Assessment Controller of Estate Duty of those lands on the basis of the awards made by the Special Deputy Collector, represented their true and correct market values. No attempt has ever been made by the accountable person to show that the values adopted by the Assistant Collector of Estate Duty represented their true and correct market values. In those circumstances, an inevitable conclusion flows that there was undervaluation of the properties which were included in the account.

The aforesaid observation of the High Court as well as the contents of the communication sent by the respondent to the appellant's representative on January 9, 1970, clearly suggest that the impunged notice had been issued on the basis that the acquired lands still formed part of the estate

of the deceased which passed on his death, that the valuation for those lands adopted on the earlier occasion which was on the basis of compensation awarded by the Special Deputy Collector did not represent their correct value which was clear from the glaring enhanced compensation that was awarded by the civil court under its decrees in land references and, therefor, such property had escaped assessment to duty. In other words, the reassessment was intended to be undertaken with a view to include the enhanced amounts received by the appellant in the principal value of the property on death and bringing the same to duty. We were informed at the bar by counsel for the appellant that in the reassessment which was made pursuant to the impunged notice, the quantum of extra compensation decreed by the civil court was included in the assessment and brought to duty. Obviously, the impugned notice which was issued on a wrong basis and with the aforesaid objective and the subsequent reassessment made in pursuance thereof would be clearly illegal and unsustainable inasmuch as the extra compensation awarded by the civil court taken with the original compensation awarded by the Special Deputy Collector cannot be regarded as proper evaluation of the right to receive compensation as on the date of the death of the deceased proposed as well as actual inclusion of such extra compensation awarded by the civil court in the principal value of the estate passing on the death of the deceased would be manifestly wrong for more than one reason. In the first place the said property, namely, the enhanced composition was not in existence at the date of the death of the deceased. Secondly, such extra compensation awarded by the City Civil Court was liable to verification in the appeals that were pending in the High Court. Thirdly, as discussed above, such extra compensation awarded by the Special Deputy Collector could not be regarded as the proper valuation of the right to compensation as on the relevant date (the date of the deceased's death). In our view, therefore the very issuance of the notice under Section 59(a) which was done on a basis clearly unsustainable in law is liable to be quashed on this ground. Consequently, reassessment which has been made by the respondent, is also liable to be quashed.

14. In view of the aforesaid conclusion, it is unnecessary for us to deal with the last contention urged by the appellant that seeking of land references and their pendency in civil court were not primary facts but inferential facts and non-disclosure thereof would not amount to failure or omission on the part of the accountable person to disclose full particulars leading to escapement of assessment to duty.

15. In the result of the appeal allowed and the impugned notice issued under Section 59(a) of the Act as also the subsequent reassessment made are quashed. The revenue will pay the costs of the appeal to the appellant.

16. Turning to Civil Appeal No. 2006 of 1972, counsel for the appellant challenged the impunged notice issued under Section 61 of the Act on two grounds : (a) it was case of change of opinion as regards the valuation of lands acquired and not a case of mistake apparent from the record and as such the impunged notice was issued under Section 61 with a view to get over the bar of limitation under Section 73-A, which would otherwise be applicable to a notice under Section 59(a) of the Act and (b) that for purposes 61 the land acquisition proceedings and land references in the civil court could not be regarded as part of the assessment record and the so-called mistake discovered by reference to such other record was a mistake apparent from the record of the case and as such the impunged notice was liable to be quashed. In our view, the first ground is sufficient to dispose of the appeal.

17. The impunged notice dated November 14, 1969 in terms recites that the assessment in this case was completed on March 29, 1966 on a net principal value of Rs. 23,53,064 (which included the value of the acquired lands at rates fixed by the Land Acquisition Officer) with a duty worked out at

Rs. 5,07,919.20, that it was then learnt that in respect of the acquired lands the civil court had enhanced the compensation fixed by the Land Acquisition Officer and had ordered payment thereof with interest at 4% (particulars whereof were specified) and that, the respondent proposed "to rectify the assessment under Section 61 as mistake apparent from the record and adopt the above enhanced compensation awarded by the Court". It is thus clear that the rectification is being undertaken on the ground that the initial valuation adopted in respect of the acquired lands was based at rates fixed by the Land Acquisition Officer, that such valuation was obviously wrong in view of the enhanced compensation awarded by the civil court and, therefore, the enhanced compensation was sought to be included in the principal value of the estate by undertaking the rectification proceedings. In substance it cannot be said to be a case of rectification of any mistake apparent from the record but the respondent is really seeking to change his opinion about the valuation of the acquired lands because some other authority, namely, the civil court has valued the same differently. Now, for the purpose of enhancing the value of the acquired lands on the basis of their value as determined by the civil court the respondent must resort to provisions of Section 59 and proceed to make reassessment but such reassessment has to be done within the period of three years from the date of the original assessment under Section 73-A of the Act. It seems to us that in the instant case the respondent resorted to Section 61 because the rectification of any mistake apparent from the record could be done at any time within five years from the date of the original assessment.

18. In Ethel Rodrigues v. Asstt. Controller of Estate Duty ((1963) 49 ITR (ED) 128 (Mys)), on similar facts when the Assistant Controller of Estate Duty, Bangalore had issued a notice purporting to act under Section 61 of the Act on the ground that the estate had been valued at an enhanced figure in the probate proceedings and had in proceedings undertaken pursuant to such notice enhanced the valuation of the estate in accordance with its valuation placed on the estate in the probate proceedings and consequently enhanced the estate duty, this Court quashed the order of rectification. The principle enunciated by this Court in that case has been succinctly summarised in the head-note thus :

> Where the controller has made his own valuation of the state of deceased person under Section 36 of the Estate Duty Act, 1953, he has no jurisdiction to rectify the assessment under Section 61 on the ground that the estate has been taken at an enhanced value in the probate proceedings. By taking the enhanced value put upon the estate in the probate proceedings he cannot be said to rectify any mistake apparent from the record of the estate duty assessment but he be changing his opinion about the valuation of the estate because some other authority has valued the estate differently. For the purpose of Section 61, the only record that the assessing authority can look into is the record relating to the estate duty and not any other record such as the record in the probate proceedings which is not relevant.

For the purpose of enhancing the value of an estate on the basis of the value taken in the probate proceedings, the Controller has to invoke the provisions of Section 59 and proceed to reassess and for such a reassessment the bar provided in Section 73-A will operate.

19. In our view, the facts of the instant case clearly come within the ratio of the aforesaid decision. The High Court has attempted to distinguish the above decision by stating that in the instant case the respondent had merely accepted the value of the acquired lands as determined by the Special Deputy Collector in his award and the accountable person had no objection to this course and, therefore, the respondent himself did not estimate the market value of the lands on the date of death of Rashid and

as such it was not case a change of opinion on his part as regards the correct valuation of the lands. It is difficult to accept this view. It cannot be disputed that when the original assessment was made it was the duty of the respondent after scrutinizing the account filed and examining the materials produced before him, to value the estate of the deceased property under Section 36 of the Act and when he accepted the compensation fixed by the Special Deputy Collector as the proper valuation he must be deemed to have adopted that valuation as his own estimated value of the lands which he wanted to enhance by relying upon the valuation made by the other authority, namely the city civil court. To such a case Section 59 is clearly attracted but obviously with a view to avoid the bar of Section 73-A he purported to issue the impugned notice under Section 61 and therefore the same is liable to be quashed. The aforesaid decision seems to lend support to the second ground urged by counsel for the appellant for quashing the impunged notice but we would like to base our decision on the first ground discussed above. In this case also we are told that the rectification proceedings have been completed pursuant to the impugned to the impugned notice, which also must be quashed.

20. In the result, the notice under Section 61 of the Act and the rectification order passed in pursuance thereof are quashed. The Revenue will pay the cost of the appeal to the appellant.

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