

Dr. Karan Singh

Vs

State of Jammu and Kashmir and Another

Civil Appeal No. 5720 of 1985

(V. D. Tulzapurkar, R. S. Pathak JJ)

20.12.1985

ORDER

1. Leave granted.

2. Heard counsel for the parties as also for CBDT and Wealth Tax Officer.

3. The short question raised in this appeal is whether inspection of the jewellery and other valuable article of personal use contained in six boxes lying in Srinagar Toshakhana - which boxes are at present kept under lock and seal of the Commissioner appointed by the J & K High Court under its order dated June 22, 1984 - was improperly declined by the learned Single Judge by his order dated July 20, 1985 pending disposal of the main Writ Petition No. 122 of 1984. The learned Judge has rejected the appellant's prayer for inspection by observing thus :

Be that as it may, at this stage without speculating on the merits of the petition, I find that no useful purpose will be served by granting relief to the petitioner which he has prayed in the present CMP.

4. Accordingly to the appellant there were two matters before the Government of India (i) whether the appellant was the owner of the jewellery or other valuable articles of personal use lying in those boxes on the ground that the properties are heirlooms and (ii) whether exemption in respect of such items of properties as heirlooms under Section 5(1)(xiv) of the Wealth Tax Act in wealth tax assessment proceedings of the appellant as HUF was available to him or not and for both these matters it was necessary to have an inspection of the items by experts to establish whether the properties are heirlooms or not. In fact the prayer for inspection was made by him on the basis of two letters one dated February 12, 1985 and the other dated June 13, 1985 issued from the Ministry of Finance, Central Board of Direct Taxes, particularly the former wherein, in the context of the appellant's application for exemption under Section 5(1)(xiv), it was suggested by the CBDT that the appellant should arrange for the physical inspection of the items in question by the Member (WT & J) who would be accompanied by some experts such as Director-General, Archaeological Survey of India; Director Antiques, Director National Museum and approved valuers of jewellery and others for that purpose. Even then the prayer for such inspection was rejected.

5. The relevance and necessity of such inspection in the context of the two matters that are pending before the Government of India cannot be disputed, for, the main issue arising between the parties is whether the jewellery and other valuable articles of personal use contained in the six boxes lying in Srinagar Toshakhana are heirlooms of the appellant and his family as claimed by him or not and such inspection by experts will unquestionably facilitate its determination. We, therefore, fail to appreciate how the learned judge felt that no useful purpose will be served by the inspection sought

by the appellant.

6. Counsel for the Union of India as well as the learned Advocate-General of J & K appearing for the State strenuously urged before us that the appellant's claim of ownership or title to these items has been refuted in the counter-affidavit that have been filed in the main writ petition where the property has been claimed to be State property and in this behalf reference was also made to one of the preliminary objections raised by the Union of India to the maintainability of the writ petition on the ground that at the time of the settlement arrived at between the acceding ruler Maharaja Hari Singh and Government of India no such claim was made and that under Article 363(1) of the Constitution neither covenant merger agreement nor any dispute or obligation arising therefrom is justiciable and therefore the writ petition deserves to be dismissed. It was, therefore, urged that unless the appellant shows some prima facie title to the property in question inspection would be premature and uncalled for. Questions of maintainability of the writ petition and appellant's title to the property in question would undoubtedly be gone into at the final hearing of the writ petition but it cannot be gainsaid that the inspection by experts which will have a bearing on the nature and character of the property in question will be useful for determination of the appellant's title to the property in case the preliminary objection fails and at this stage no one can proceed on the assumption that the preliminary objection will necessarily be upheld. But apart from this, on prima facie title, the claim for exemption under Section 5(1)(xiv) of the Wealth Tax Act (under both the limbs of the provision) was pending before the wealth tax authorities and we are now informed that for the three assessment years, 1978-79, 1979-80, 1980-81 assessment orders under the Wealth Tax Act have been passed by the Wealth Tax Officer, 'A' Ward, Jammu wherein the estate belonging to the appellant's family lying in the Srinagar Toshakhana has been valued at a considerably enhanced figure over and above the value returned by the appellant in his returns, and the exemption claimed by him under Section 5(1)(xiv) of the Wealth Tax Act in respect of the heirlooms has been declined and his estate has been assessed. The relevant portion in each of the assessment orders in this behalf runs thus :

2. The assessee has claimed exemption of this estate (estate lying in Srinagar Toshakhana) under Section 5(1)(xiv) of the WT Act, 1957. However, I have been given to understand that the CBDT has not given recognition to the claim of the assessee. Therefore, the estate is assessed.

The appellant has challenged these assessment orders in appeals which are pending. These assessment orders, though made on protective basis and subject to the final valuation of the assets, clearly show that the wealth tax authorities, and the CBDT, Revenue Department, Ministry of Finance, Government of India are treating the estate lying in the Srinagar Toshakhana as property belonging to the appellant's family.

7. Having regard to the aforesaid facts the impugned order dated July 20, 1985, in our view, is clearly erroneous and the inspection sought ought to have been granted.

8. We, therefore, direct that the six boxes containing the jewellery and other valuable articles lying in Srinagar Toshakhana under the lock and seal of the Commissioner of the High Court shall be opened for the purposes of inspection by the Member, Central Board of Direct Taxes (WT & J) who will be accompanied by the Director-General of Archaeological Survey of India, Director Antiques, Director National Museum and approved valuers of jewellery for determining the true nature and character of the same and whether any and if so what items constitute heirlooms or articles of personal use of the appellant and his family. Such inspection will be taken in the presence of the

appellant's representative as also a representative of the State Government but such representatives shall not work on the panel of the Inspection Committee but may render such assistance as may be necessary to the members of the panel. The Inspection Committee will complete the inspection and submit its report to the High Court within three months from the commencement thereof. The parties are directed to obtain further directions in the matter of such inspection from the High Court.

9. Appeal is allowed. No costs.

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