P. V. G. Raju Garu

Vs

State of Andhra Pradesh

Civil Appeal Nos. 804-05 of 1975

(Sabyasachi Mukharji, P.B. Sawant, K. Jayachandra Reddy JJ)

24.01.1990

JUDGMENT

SAWANT, J. -

1. The present appeals arise out of the proceedings for the determination of the claims of the creditors and directions to pay them on abolition of the Estates of the Vizianagaram and taking over of the same by the State Government under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as 'the Act').

2. Under the provisions of the said Act, on September 7, 1949 the Gosha hospital at Vizianagaram which was till then manned by the hereditary landlord and zamindar of the impartible Estate of Vizianagaram (hereinafter referred to as 'the Estate') was handed over to the State. The late Maharani Appalakondayamba otherwise popularly known as "Rani of Rewa" had executed a Will on December 14, 1911 creating a permanent endowment of a sum of Rs. 1,00,000 for the maintenance to the said hospital. This amount was kept in deposit with the Estate. Since the government had taken over the hospital by its Application No. TOP 123/58 to the Estates Abolition Tribunal and District Judge, Vishakhapatnam, the government claimed the recovery of the said amount with interest at the rate of 6 per cent per annum and also claimed a priority over the other creditors. The Tribunal by its order dated December 15, 1962 allowed the claim for the amount, but rejected dated the claim for priority. The Tribunals also directed the payment of Rs. 36,695 to the government out of the total amount of compensation which as then deposited with it. The government filed an appeal against the said order being STA No. 1/64 in the High Court, but the same was dismissed. It appears that subsequently, another sum of compensation being Rs. 11,78,581.09 was deposited, and hence the government filed another application, viz. TOP 5/69 for payment of the balance of Rs. 63,305 with interest thereon at the rate of 6 per cent per annum from July 1, 1949 till the date of payment. In this application, the appellant did not dispute the government's claim for Rs. 63,305 but contended that no interest on the sum of Rupees one lakh or on any part thereof was payable since according to him the Tribunal had rejected the claim for interest by its earlier order of December 15, 1962 in TOP 123/58. The Tribunal accepted the appellant's contention and held that the claim for interest was rejected earlier and disallowed the same. Against the said order, the government preferred an appeal to the High Court being STA 1/71.

3. The late Rani of Rewa of her same Will had also deposited another sum of Rupees one lakh with the Estate with the direction that the interest thereon should be utilised in feeding Telugu Brahmin Students studying advanced Sanskrit Literature and Shastras at Banaras. The said fund will hereinafter be referred to as the Banaras Charities Fund. It appears that sufficient number of Telugu Brahmin student were not available and hence the Executor of the Will had applied for utilisation of

the said amount for the Gosha hospital, and in that application, the High Court had directed that out of the accumulated surplus interest of Rs. 47,897 in the said Banaras Charities Fund, a sum of Rs. 30,000 be capitalised and deposited with the estate and the interest thereon at the rate of 3 per cent per annum be utilised to meet the recurring annual expenditure of the Gosha hospital. After the abolition of the Estate, the government filed before the Tribunal a claim application being TOP No. 124/58 for recovery of the said sum of Rs. 30,000 with interest at the rate of 6 per cent per annum. The government also claimed priority over the other creditors for the said amount as well. The Tribunal by its same order of December 15, 1962 allowed the government's claim for the amount, but rejected the claim for priority. The Tribunal also directed that a sum of Rs. 11,008.50 be paid to the government from out of the amount of compensation which was then deposited. Against the said order, the government preferred an appeal to the High Court being STA No. 2/64 which was dismissed. On the subsequent deposit of further compensation, the government preferred another application being TOP 6/69 for the balance of Rs. 18,991.50 and for interest thereon at the rate of 6 per cent per annum from July 1, 1949 till the date of payment. The appellant did not dispute the claim for the payment of the balance amount of Rs. 10,991.50, but resisted the claim for interest, firstly on the ground that there was no provision for payment of interest in the Act and secondly on the ground which was urged in the other appeal, viz, that in TOP 124/58 it was rejected by the Tribunal earlier. The Tribunal accepted the appellant's contention and disallowed the claim for interest. Against the said order, the government preferred an appeal to the High Court being STA No. 3/71.

4. Thus before the High Court the only question in both the appeals was whether the Tribunal by its earlier order of December 15, 1962 in TOP 123 and 124/58 has allowed or rejected the claim for interest ? The High Court by its common order dated December 28, 1973 held that the Tribunal by its earlier order of December 15, 1962 had not only allowed the claim for the principal endowed amounts of Rupees one lakh and Rs. 30,000 respectively, but also interest therein, and directed the payment of interest thereon from July 1, 1949 as claimed. It is this order which is challenged by the appellant by these two separate appeals.

5. Civil Appeal No. 804 is against the order of the High Court in STA NO. 1/71 arising out of TOP 5/69 (corresponding to earlier TOP 123/58) and Civil Appeal No. 805 is against the order in STA No. 3/71 arising out of TOP 6/69 (Corresponding to earlier TOP 124/58).

6. Mr. Bhandare, learned counsel appearing for the appellant in both the appeals contended firstly, that the Tribunal while disposing of TOPs 123 and 124 of 1958 should be deemed to have rejected the claim for interest because in the operative part of the order, the Tribunal did not state that it was granting interest, but only mentioned that it was granting the amounts which were claimed in the application. The expression 'amount' claimed in the application should be construed to mean the principal amount only and not interest. He also tried to derive support to this submission from the fact that while directing the payment of specific amounts, the Tribunal had considered only the principal amounts in both cases as is evident from the orders of the Tribunal in that behalf. Hence he submitted that the issue with regard to the interest was barred by res judicata and the interest could not have been claimed by the government in its subsequent applications. His second contention was that assuming without admitting that there was a direction given by the Tribunal to pay the interest, such direction was without jurisdiction because there was no provision in the Act for payment of interest. Thirdly, he submitted that in any case it would be inequitable to ask the Estate to pay interest when the compensation which was paid to the Estate did not bear any interest. Fourthly, he contended that in any event, the appellant personally cannot be held liable to pay the interest since the endowment amounts were always a part of the Estate which was abolished, and the

compensation which was paid and later on distributed among the sharers of the Estate, covered the said endowed amounts. The interest, according to him, therefore, has to come out of the shares of all the sharers and the appellant alone cannot be directed to pay the same. Fifthly, his contention was that assuming without admitting that the appellant as an Executor had retained the said amounts and applied them to purposes other than the objects of the endowment, he cannot be penalised for the for the same under the Act by making him pay the interest on them. At the most he may be liable for misfeasance as a trustee under the appropriate law. Lastly, he submitted that in any case since other sharers are not made parties to the present proceedings, no direction can be given in the present proceedings for payment of interest which has to come out of the compensation received by all the sharers.

7. As regards the first contention, namely, that the Tribunal had not directed the payment of interest in TOPs 123 and 124/58, it may be pointed out that in the application made by the State Government to the Tribunal for the recovery of the two endowed amounts, the government had in clear terms claimed that they were entitled to the said sums with interest @ 6 per cent per annum from July 1, 1949 till the date of payment, and that the government was entitled to this amount after the compensation was deposited. The government had also made a further claim that it was entitled to the payment of the said amount in priority over the claims of all other persons. Pursuant to these averments, the Tribunal had framed issue No. 2 in TOP 123/58 and issue No. 3 in TOP 124/58 in identical terms as follows :

> "Whether the government is entitled to claim the said amount with interest from the date of abolition .... ?"

While recording its finding in both the TOPs, the Tribunal had in paragraph 21 stated as follows :

> "Under these circumstances, I had under point 3 that the government is entitled to get entitled to get payment of the amounts claimed in TOPs 123-24/58."

The Tribunal further reiterated the said finding in paragraph 29 as follows :

> "It is not in dispute that the amount of these two lakhs of rupees continue to be with the Samsthanam and the Samsthanam was paying interest on those amounts for the purpose of the endowments ..... From that time onwards all along these two amounts have been treated as debts payable by the Samsthanam. The amounts claimed under TOPs 123-24/58 relate to this amount of Rupees two lakhs and interest accrued thereon. Under these circumstances I hold that the amounts claimed under the said petitions are debts payable from and out of the assets of the impartible Estate."

Again later in the paragraph, it is stated as follows :

> "Under these circumstances I hold under point 15 that the amounts claimed in TOP ..... 123-24/58 .... are debts to be paid from and out of the assets of the impartible Estate of Vizianagaram and therefore they are debts which come under the category of debts contemplated under Section 45(3) of the Abolition Act and those debts are liable to be paid from out of the compensation amount before any division of it can be made between the sharers and maintenance holders."

In paragraph 32, the Tribunal has observed as followed :

> "From the above discussion it is clear that out of the amount of Rs. 3,63,007 in dispute concerned, in the first instance the State Government is entitled to payment of the amount due to it under TOP 122/58 and out of the balance remaining the amounts payable under TOP ... 123-24/58 .... should be paid."

It is, therefore, more than clear that the Tribunal had by its order in question given a finding that the government was entitled to the entire amount claimed by it, namely, the principal endowed amount and also interest claimed thereon.

8. The contention that because the Tribunal had not reiterated the word 'interest' in the next sentence of its direction and had only mentioned "the amount" payment under the TOPs and, therefore, it should be held that the Tribunal had rejected the claim for interest is too facile to be accepted. For the same reason, we are also not impressed by the argument that since the Tribunal had while directing the payment of specific amounts only referred to a part of the principal amounts it should be held that the Tribunal had rejected the claim for interest. Under the scheme of the Act itself, the Tribunal was required to apportion the amounts according to the priorities depending upon the amount of compensation deposited at the time of the giving of the direction in question. It was, therefore, only to be expected that the Tribunal would first give directions with regard to the payment of the principal amounts and defer the payment of interest to a future date. That is exactly what the Tribunal had done in the present case and, hence, in the second set of applications made by the government, the government had not only claimed the balance of the principal amounts but also interest on the entire of the said amounts from July 1, 1949. The High Court was, therefore, right in holding that the Tribunal by its order of December 15, 1962 had allowed the claim for interest. In the circumstances, the issue with regard to the claim for interest in the subsequent applications, namely, applications TOPs and 5/69 and 6/69 was not barred by res judicata, as contended by Shri Bhandare.

9. The second contention that the Tribunal could not have directed the payment of interest because there was no jurisdiction to do so is also misconceived, for the simple reason that in the Will in question, both the said amounts were deposited by the testator with with Estate and the beneficiaries of the endowment, namely, Gosha hospital and the Banaras Charities Fund were to be financed from the interest accruing ton the said two amounts respectively. It was was not in dispute that these two amounts were lying deposited with the Estate and the Estate was paying interest @ 6 per cent per annum on the amount of Rupees on lakh which was meant for Gosha hospital and @ 5 per cent per annum on the amount meant for the Banaras Charities Fund. Hence, all that the Tribunal had done was to direct the Estate to pay the amounts in question to the government together with interest at the admitted rate, which interest was in any case payable towards the endowment objects. Under the Act, the Tribunal had, among other things, to determine the liability of the Estate. The endowment amounts together with the interest admittedly accruing thereon formed the total liability of the Estate. The interest, further was a recurring one and the objects of the endowment were to be financed from out of the said interest. When, therefore, the Tribunal directed the payment of interest together with the principal amount it did nothing more than direct the Estate to honour its liability.

10. As regards the third contention that it was inequitable for the Tribunal to ask the Estate to pay the interest since the compensation paid to the Estate did not bear any interest, we are afraid that the submission is beside the point. In the first instance, under the scheme of the Act the amount of compensation was deposited. Secondly, whether the Estate was paid or not paid the interest on compensation due to it, has nothing to do with the Estate's liability towards the endowments. The interest directed to be paid by the Tribunal was not interest oven and above the endowment

amounts. It is the principal amount together with the interest accruing thereon which constituted the total endowed amounts at the time of the abolition of the Estates.

11. The next three contentions can be dealt with together. There is no doubt that the amounts were deposited with the Estate, and it was the Estate which was paying interest to the beneficiary or beneficiaries under the endowments. Hence, as observed by the Tribunal, in the first instance, the endowment amounts together with the interest accruing thereon had to be set apart, from out of the compensation payable to the Estate, and it is the balance which had to be distributed among the sharers or the creditors of the sharers as the case may be. As we read the Tribunal's order of December 15, 1962 as well as the impugned order of the High Court, we see no direction to the appellant to pay the said amount personally, as indeed no such direction could have been given, since the facts show, that both the amounts were lying with the Estate and not with the appellant in his individual capacity. What is recorded in the Tribunal's order is that it is the Estate-holder who had not made over the two amounts to the government on the date of its taking over. Hence, the direction of the High Court to pay the said amount will have to be read as a direction to the appellant to do so in his capacity as the Estate-holder and not in his individual capacity. If the final amounts are already distributed among all the sharers and/or the creditors, the government has to look for the amount of interest to all the shares and/or their creditors including of course the appellant. All the shares will be liable to contribute towards the the payment of the amount of interest in proportion to their share in the compensation. That is how the impugned order of the High Court and the earlier order of December 15, 1962 passed by the Tribunal will have to be read and construed. In the circumstances, it matters not whether all the shares were parties to the proceedings. The proceedings were essentially against the Estate, and the present appellant in his capacity as an Estate-holder represented the Estate and all the shares. The order passed in the proceedings is, therefore, binding on all the shares in the Estate notwithstanding the fact that all the shares were not parties to the proceedings. We, therefore, find no substance in the contention that the present proceedings were bad in law because all the shares were not made parties to the same.

12. In the result, both the appeals fail. In the circumstances, however, there will be no order as to costs.

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