

MYSORE HIGH COURT

Sri Krishna Rao L. Balekai

Vs

Third Wealth Tax Officer

Writ Petns. Nos. 915 and 919 of 1961

(K.S. Hegde and Ahmed Ali Khan, JJ.)

09.08.1962

JUDGMENT

K.S. Hegde, J.

1. The petitioner who is assessed to Wealth Tax during the assessment years 1957-58 and 1958-59, has filed these petitions challenging the validity of the assessments made on him. Two contentions were urged in support of these petitions. They are (i) the Parliament had no competence to enact any law imposing tax on the capital value of the land; and (ii) on a proper appreciation of the material on record, the "land", that is in dispute in these petitions is an "agricultural land".

2. Sri. S. S. Venkataramiah, the learned Counsel for the assessee, contended that the Parliament could not have enacted any law levying tax on the capital value of "land", be it agricultural or otherwise. According to him, "land" is included in Entry 49 of list II of the VIIth Schedule of the Constitution and therefore the Parliament could not have enacted any law imposing tax on the capital value of "land". We do not think that there is any force in this contention. The Wealth Tax Act was enacted evidently on the basis of the power conferred on the Parliament under Entry 86 of List I of the VIIth Schedule, which Entry reads :

"Taxes on capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."

It cannot be denied, nor has it been denied before us that the word "asset" includes within its fold "land" as well. If that be so, then "land" other than "agricultural land" comes within the scope of Entry 86. It is trite to say that every Entry found in the Seventh Schedule is a topic of legislation. The same will have to be given the widest possible connotation. Hence we are clearly of the opinion that the Parliament had competence to enact the law in question.

3. In support of his contention that the Parliament had no legislative competence to enact any law imposing tax on "land". Sri Venkataramiah tried to rely on the decision of this Court, to which

one of us was a party, in *D. H. Nazareth v. The Ind Gift Tax Officer*¹, we do not think that any support is available from that decision for the contention advanced on behalf of the petitioner. In that case this Court had to consider whether the Parliament was competent to enact the Gift Tax Act. Therein it was conceded that there was no specific Entry in List I authorizing or empowering the Parliament to enact the Gift Tax Act. The question for decision was whether the Gift Tax Act could be justified on the basis of the residuary powers. This Court came to the conclusion that so far as "lands and buildings" are concerned, the legislative power to levy Gift Tax vests with the State Legislature, and therefore the Parliament was not competent to enact the Gift Tax Act under the residuary powers. The ratio of that decision is not applicable to the facts of the present cases.

4. This takes us to the next question whether the "land" with which we are concerned in those cases could be considered as "agricultural land". It is conceded by both the sides that if the land with which we are concerned in these cases are considered as "agricultural land" then no tax can be levied on the net value of the land on the basis of the Wealth Tax Act. Therefore, the question that has to be decided is whether the land in question is an "agricultural land". It is not denied that at one time this land was "agricultural land". That was requisitioned by the Government sometime in the year 1944 or 1945 for the purpose of locating a Military Aerodrome. We are told that the land in question has now been levelled and an air strip constructed thereon. For the last over 15 years this land has been used as an air strip. But, Sri Venkataramiah contended that the fact that at present it is utilised for a non-agricultural purpose is irrelevant while deciding its basic character and what is relevant is its general characteristic. "Agricultural land" has not been defined either in the Constitution or in the Wealth Tax Act. Therefore, we have to take into consideration the ordinary meaning attached to that expression. Normally when we say that a land is an "agricultural land", we mean that that land is used or is capable of being used for "agricultural purpose". It is not what use it can be put to by changing its character. In the instant cases, as mentioned earlier, for well over 15 years this land has been used for non-agricultural purpose. It may be that at some future time the Government may derequisition the land and thereafter the owner of the land may take steps to convert it into an "agricultural land." But that is not a relevant consideration. We have to see its present characteristics. The learned Counsel for the petitioner invited our attention to Section 63 of the Mysore Land Revenue Code which imposes some restrictions on the owners of "agricultural lands" in the matter of their utilization. We do not think that that provision is of any assistance in finding out the true meaning of the expression "agricultural land".

5. Next our attention was invited by Sri Venkataramiah to the observations of the Federal Court in *Megh Raj v. Allah Rakhia*², Therein Their Lordships, in passing made some observations as regards the meaning of the expression "agricultural land" found in the Government of India Act, 1935. After examining the decisions rendered by various Courts Their Lordships observed thus :

"In this state of the authorities, it seems to us best to refrain from deciding the precise scope of the expression "agricultural land" or the propriety of

¹ W.P. No. 1077 of 1959 : AIR 1962 Mys 269

² AIR 1942 FC 27

excluding land on which a grove has been planted from the category of agricultural land. It may on a proper occasion be necessary to consider whether for the

purposes of the relevant entries in Lists 2 and 3 Constitution Act, it will not be right to take into account the general character of the land (as agricultural land) and not the case to which it may be put at a particular point of time. It is difficult to impute to Parliament the intention that a piece of land should, so long as it is used to produce certain things, be governed by and descend according to laws framed under list 2, but that when the same parcel of land is used to produce something else (as often happens in this country), it should be governed by and descend according to laws framed under List 3."

But it must be remembered that in the instant case the land in question has been converted into an airfield an act which is totally different from planting a grove. It has long ceased to be an "agricultural land"; and it can be only reconverted into an "agricultural land" by expending considerable labour and money. We do not think that the Federal Court intended to convey the idea that once a "land" is an "agricultural land" it shall always remain an "agricultural land". If that be the true position most of the lands on which our Cities are built will have to be considered as "agricultural lands"; and that for all times. The observations of the Federal Court must be read in the context in which they were made. While we do not attempt to define the expression "agricultural land" yet we have no hesitation in holding that the "land" with which we are concerned in these cases, is not an "agricultural" land within the meaning of that expression found either in the Constitution or in the Wealth Tax Act.

6. It was next contended by Sri E. S. Venkataramiah, that his client was compelled to hand over possession of the "land" as it was requisitioned and therefore he was not a willing party for its conversion. We fail to see any relevancy in this contention. We are not concerned with the question as to how the land became (sic-ceased to be?) an "agricultural land". Requisitioning was done according to law. Therefore it cannot be said that there was any illegal conversion. The fact remains that it has ceased to be an "agricultural land" and the change effected cannot be ignored in law.

7. For the reasons mentioned above, these petitions fail and they are dismissed. But there will be no order as to costs.
Petitions dismissed.