KERALA HIGH COURT

V. Venugopala Varma Rajah

Vs

Controller of Estate Duty

(M Isaac and P N Pillai, JJ.)

17.10.1968

JUDGMENT

Isaac, J.

1. This is a reference made by the Madras Bench of the Income-tax Appellate Tribunal under Section 64 (1) of the Estate Duty Act, 1953 on the application of the assessee. The question referred is:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in having Included the value of the forest lands in the total value of the estate for the purpose of Estate Duty?"

2. The estate concerned in this case Is that of Smt. Jayalaksnmi Devi and Shri Madhava Rajah of Kollengode, the former having died on 6th March 1954, and the latter on 9th May 1955. They were members of a Marumakkathayam tarwad; and each of them had admittedly a one-thirteenth share in the tarwad properties on the dates of their deaths. The tarwad had large extents of forest lands situate in the erstwhile Malabar District which was part of the State of Madras till the formation of Kerala on 1-11-1956. The assessee claimed that forest lands are agricultural lands, and they were not, therefore, liable to estate duty under the Estate Duty Act, 1953. In support of this claim, reliance was made on the decision of the Madras High Court in *Sarojini Devi v. Sri Krishna*[1], which held that the expression 'agricultural lands' must be taken to include lands which are used or are capable of being used for raising any valuable plants or trees for any other purpose of husbandry. The Appellate Tribunal, by its order dated 28th July 1964 rejected the assessee's claim holding that the above decision did not lay down a definition of the expression of agricultural lands for all purposes, and that it did not apply to cases under the Estate Duty Act. The question in this reference arose out of the above order; and it came for decision before a Bench of this Court in I. T. R. Case No. 75 of 1965, which was disposed of by the order pronounced on 26th August, 1966. This Court disagreed with the view of the Tribunal, and held that the term agricultural land should be interpreted in its widest significance. In support of the

above view, reference was made by this Court to the decision of the Federal Court in *Megh Raj v. Allah Rakhia*[2], and the *Commissioner of Income tax v. Benoy Kumar*[3], *in* addition to the decision of the Madras High Court above referred to. In this view of the matter, this Court directed the Appellate Tribunal to modify the statement of the case by incorporating therein a clear finding as to whether the forest lands concerned in this case were agricultural lands. Accordingly the Appellate Tribunal has submitted a supplementary statement; and the question has, again come before us for decision in the present reference.

3. The supplementary statement and the report of the valuers which is Appendix F to this reference show that the forest lands belonging to the tarwad of the deceased on the relevant dates have an extent of 36.857 acres. Out of this, 16.640 acres are held by the State of Kerala on a 99 years lease; and the remaining 20,000 and odd acres are in the possession of the tarwad of the deceased persons. 5,000 acres out of the latter area are bare rock; and admittedly this area is neither cultivable nor useful for any purpose. This has been valued separately as non-agricultural land; and there is no dispute about it. The controversy relates only to the remaining extent of about 32,000 acres. The assessee produced a number of lease deeds before the Appellate Tribunal, and contended that the forest lands were of the same nature as taken in by the lease deeds, and were, therefore, agricultural lands. The Appellate Tribunal found that none of the lease deeds related to the forest lands in question; and it rightly held that these lease deeds cannot give any assistance in deciding whether the said forest lands are agricultural lands or not. Regarding the 15,000 and odd acres of land in the possession of the assessee's tarwad, the Appellate Tribunal stated:

> "According to the valuers, the remaining extent of 15,000 and odd acres out of the first category, has been leased by the assessee from time to time for cutting of timber and fuel wood, and has never been used by him either by himself or through lessees to bring it under cultivation for any purpose. There is no material on record from which it can be said that this area can at all be brought under cultivation for any purpose. Even if it is assumed that there is a bare possibility of this area being brought under cultivation, the assessee has not placed any material before us from which it can be said that a prudent owner would undertake any process of farming in respect of this land". Regarding the 16,000 and odd acres held by the State of Kerala under lease, the Appellate Tribunal stated:
>
> "With regard to the second category of the land of the extent of 16,000 and odd acres the report of Hie valuers does not throw any light upon the nature of this land, and the only information available is that these lands have been held by the Kerala Government under a perpetual lease on an annual rent of Rupees 5,000/-. The assessee has not shown whether this land was being cultivated by the Kerala Government or whether it was only being exploited by the Kerala Government for its timber value. On the material on record, it is not possible for these lands to come under the category of agricultural lands".

The Tribunal then concluded by saying: "We, therefore, record a finding that none of the lands in question of the total extent of 36,857.16 acres is agricultural land."

4. It is obvious from the above statement of the Tribunal that its finding is solely based on the absence of evidence or the assessee's failure to prove that the disputed forest lands are agricultural lands. The learned counsel for the assessee contended that what the assessee claims is not an exemption, but an immunity from tax liability on the ground that the lands do not fall within the ambit of the charging Section. It is not disputed that if what the assessee claims is an exemption, the burden of proving that he is entitled to the exemption is on him; and on the short ground that he has not discharged that burden, he should fail. On the other hand, if what he claims is an immunity from tax on the ground that the subject does not fall within the ambit of taxing Statute, the Revenue has to establish that the subject is taxable; and then alone it would be entitled to tax. The whole question depends upon the construction of the charging section in the Estate Duty Act, 1953. Section 5 is the charging Section; and it has undergone a small amendment by Adaptation Order 3 of 1956 issued under the States Reorganisation Act, 1956. The amendment is not very material; however, we will quote Section 5 as it stood before its amendment.

> "5. Levy of estate duty--
> (1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property settled or not settled, including agricultural land situate in the States specified in the First Schedule to this Act. which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with Section 35.
> (2) The Central Government may, by notification in the Official Gazette, add the names of any other States to the First Schedule in respect whereof reso lutions have been passed by the Legislatures of those States adopting this Act under Clause (1) of Article 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the First Schedule within the meaning of Sub-section (1)."
>
> "Estate duty in respect of agricultural land" is item 48 in List II of the Seventh Schedule to the Constitution. Henre Parliament has no power to lew estate duty in respect of agricultural lands, except in pursuance of resolutions passed by the State Legislatures as provided bv Article 252 of the Constitution. The Legislatures of some of the States had passed such resolutions for enabling the Parliament to levy estate duty in respect of agricultural lands. Accordingly, the Parliament became entitled to levy estate duty on agricultural lands within the said Slates; and these States were included in the First Schedule to the Estate Duty Act. 1953. Bv Sub-section (2) of Section 5 of the Estate Duty Act. provision was also made for including in the First Schedule in the Act. Slates in

> respect whereof resolutions adopting this Act may be passed bv their Legislatures. The Madras Legislature passed such a resolution on 2-4-1955. and pursuant to that the Government of India issued a notification, S. R. O. No. 1227 dated 6-6-1955. It reads as follows:
> "Whereas in pursuance of the provisions contained in Clause (1) of Article 252 of the Constitution a resolution has been passed bv the Legislature of the State of Madras on the 2nd April 1955, adopting the Estate Dutv Act, 1953 (34 of 1953). in so far as it relates to estate duty in respect of agricultural land situate in the said State; Now. therefore, in pursuance of the provision contained in Sub-section (2) of Section 5 of the said Act, the Central Government hereby adds the name of the State of Madras to the First Schedule thereof." Accordingly, the State of Madras was added in the First Schedule to the Act with effect from 6th June 1955; and from that date agricultural lands in this State became liable to estate dutv under the Estate Duty Act, 1953. It is also clear from Sub-section (1) of Section 5 that, unless the State is included in the First Schedule to the Act, estate duty cannot be levied under this Section. Therefore, estate dutv is not leviable before 6-6-1955 in respect of agricultural lands situate in Madras State; and the words "the principal value ascertained as hereinafter provided of all property" appearing in Section 5 of the Act should be read and understood as all property other than agricultural land situate in States not specified in the First Schedule to the Act. In other words, the charge can he imposed only on non-agricultural lands.

It appears to us, therefore, on a reading of Section 5(1). that the burden is on the Revenue to prove that the property in respect of which estate duty is sought to be levied is non-agricultural property, as Parliament's power to levy estate duty was confined only to such lands in respect of Stales not specified in the First Schedule to the Act. There is no material in this case to hold (hat forest lands concerned in this reference are non-agricultural lands; and hence the finding of the Tribunal to that effect cannot be sustained.

6. We. may also point out that, as has been held by this Court in I. T. R. Case No. 75 of 1965 and the decisions referred to therein, the question whether a land is agricultural land or not has to be determined with reference to its nature, and not to the use to which it may be put at a particular time. The (tuesfion whether the Punjab Restitution of Mortgaged Land Act. 1938 was a law falling under Entry 21 in List II in the Seventh Schedule to the Government of India Act. 1935 (which corresponds to Entry 18, List II in the Seventh Schedule of the Constitution) arose for decision before the Federal Court of India in AIR 1942 FC 27. In dealing with this question the Court had to consider the meaning of the term "agricultural land" appearing in that entry; and after referring to various decisions of the Indian High Courts, the Court laid:

> "It mav on a proper occasion be necessary to consider whether for the purpose 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 use 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 bv and descend according to laws framed under List 3."

The same question arose before the Madras High Court in AIR 1944 Mad 401 with respect to the constitutional validity of the Hindu Women's Rights to Property Act, 1937; and Patanjali Sastri J., in delivering the judgment of the court said:

"As we have already pointed out, the term "agriculture" is used in different senses and in order to ascertain in what sense it is used in the Legislative Lists in Sch. 7, Constitution Act, we must have regard to the object and purpose of Section 100 of which these lists really form part. That section deals with the distribution of legislative powers as between the Federal and Provincial Legislatures, and the Lists enumerate the "matters" in respect of which those Legislatures have or have not power to make laws. In such context it seems to us that the expression "agricultural land" must receive the widest meaning for it would be somewhat grotesque to suppose that Parliament intended that lands devoted to the production of one kind of crop should devolve according to laws passed by Provincial Legislatures, while those used for growing another kind should pass according to laws made by the Central Legislature, or that "the circumstances in which the cultivation is carried on" (per Keilly J. in ILR 54 Mad 900= (AIR 1931 Mad 659)) should determine the law which governs the devolution of the land. Nor could it have been intended that succession to such lands should depend on the degree of tillage or preparation of the soil or of the skill and labour expended in rearing and maintaining the plants. We are of opinion that for the purpose of the relevant entries in Lists II and III of Schedule 7, the expression "agricultural lands" must be taken to include lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry." The force of the expression of opinion contained in the above two decisions regarding the meaning of the term "agricultural land" w*as recognised by the Supreme Court in AIR 1957 SC 768.(Supra)* After referring to the above decisions, this Court said in its deci-sion in I. T. R. Case No. 75 of 1965:

"The test, as we have already indicated, should be whether a prudent owner would embark on an adventure in agriculture in respect of the land concerned. The prudent owner is the common man of the common law, sane and sensible, reasonable and responsible averse to gambling and speculative experiments; but none the less prepared for normal risks and legitimate expenditure".

6. It is well known that the extensive areas of different varieties of plantation that we have got in this State were once forest lands; and it is also equally well known that year after year large areas of forest lands in this State are being cleared and converted into valuable plantations. In the absence of exceptional circumstances such as the land being entirely rockv or barren for other

reasons, all forest lands in this State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes. There is no case that the forest lands concerned in this case or any part thereof are unfit for agricultural exploitation.

7. The learned counsel for the Revenue raised a new contention before us on the basis of Section 30 of the Estate Duty (Amendment) Act, 1958. This section reads as follows:
"Act not to apply to agricultural land. For the removal of doubts it is hereby declared that nothing contained in this Act shall have effect in respect of any matter enumerated in entry 48 of List II in the Seventh Schedule to the Constitution, and estate duty in respect of any estate which consists wholly or in part of agricultural land situate in the territories which immediately before the 1st day of November, 1956, were comprised in the State specified in the First Schedule to the principal Act shall continue to be governed by the principal Act as if this Act had not been passed". This section was omitted by the Estate Duty (Amendment) Act. 16 of 1960. We are not certain why such a provision was enacted, and why it was omitted. It appears to us that, in view of the amendment made to Section 5(1) of the Estate Duty Act, 1953 by Adaptation Order 3 of 1956, Section 30 of the Estate Duty (Amendment) Act, 1958 was unnecessary; and it served no purpose. Whatever it may be this section is not available in the Statute after the Estate Duty (Amendment) Act 16 of 1960; and the contention of the learned counsel is, therefore, based upon a non-existing statutory provision. This is sufficient to dismiss that contention. However, the learned counsel seriously pressed it; and we may therefore, deal with the same. Relying on Section 30 of the Estate Duty (Amendment) Act, 1958, he submitted that, before 1st day of November, 1956, Madras got included in the First Schedule to the Eslate Duty Act, 1953, and therefore the agricultural land in Madras State was liable to estate duly before the above date under Section 5 of the Estate Duty Act as it stood before the amendment of 1958. We are unable to appreciate this argument. In the first place, as we have already pointed out. Parliament had no power to levy estate duty in respect of agricultural lands in Madras until the Legislature of that State adopted the Estate Duty Act by a resolution passed under Article 252 of the Constitution, and the Central Government issued the notification under Section 5(2) of the Estate Duty Act on 6-6-1955, adding Madras in the First Schedule to the Act, Secondly, it appears to us that the contention of the learned counsel cannot also be sustained on the language of Section 30 of the Amendment Act of 1958. In clear terms, this section states that the amending Act shall not in any manner affect the power of the States to levy Estate Duty on agricultural lands; and it also states that estate duty in respect of any estate existing of agricultural land situate in territories which immediately before 1st November, 1956 were comprised in the States specified in the First Schedule to the original Act shall continue to he governed by the original Act, as if the amendment Act had not been passed. It, therefore, takes us to the provision of the original Act; and under the Original Act, the agricultural land in Madras State was not subject to estate duty until that State was included in the First Schedule to the Act by the notification of the Central Government dated 6-6-1955. It may also be stated that in the valuation made by the Assistant Controller of Estate Duty, which has been upheld by the Appellate Tribunal, agricultural lands which belonged to the deceased persons and situate in Madras have been excluded from the

valuation, obviously on the ground that such lands did not come within the ambit of the Statute on the relevant dates. The question in this reference has been drawn up on that basis; and it was also dealt with by this Court in I. T. R. 75 of 1965 accordingly. The contention raised by the learned counsel for the Revenue is devoid of any substance.

8. In the result, we answer the question referred to this Court in the negative and against the Controller of Estate Duty, except regarding 5000 acres of rocky land which have been found by the Revenue as non-agricultural land. In the circumstances of the case, the parties will bear their costs, A copy of this judgment will be forwarded to the Appellate Tribunal as required by Section 64 (4) of the Estate Duty Act, 1953.

Cases Referred.

1AIR 1944 Mad 401
2AIR 1942 FC 27
3AIR 1957 SC 768