

(1961) 06 KL CK 0028

In the High Court Of Kerala

Case No : O. P. No's. 520 and 587 of 1958

Arithottatk Moopil Swamiyar Thirumumpu

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 28-06-1961

Acts Referred:

General Clauses Act, 1897 — Section 6
States Reorganisation Act, 1956 — Section 5

Citation : (1961) KLJ 1219

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : D. Narayanan Potti, for the Appellant;

Final Decision : Dismissed

Judgement

M.A. Ansari, C. J.

1. Though different persons have filed these two petitions, they raise legal issues that can be decided by a common judgment. The petitioner in O. P. 520/58 is the head of Trikkaiatt Mutt, which has twelve appurtenant temples with lands in various amsons in Cannanore, Kozhikode and Palghat Districts. The lands had been for a very long time under the, management of persons appointed by the Madras Hindu Religious Endowments Board in pursuance of a scheme settled by it, which has been continued under the Madras Hindu Religious and Charitable Endowments Department. In June, 1957, the petitioner had obtained the possession of the properties etc. and on April 25, 1958, received notice of provisional assessment under the Madras Land Revenue Surcharge Act, 1954, hereafter referred to as the Act. That notice shows provisional assessment of the surcharge for fasli 1365 and invited objections against the assessment. On May 2, 1958, another notice of provisional assessment for the 1364 fasli year was received calling for similar objections. The complaint is that sufficient time was not given to file the objections having regard to the writ petitioner having become manager only in June, 1957, and final assessments were made, which

were followed by demand notices for the surcharge levied for the aforesaid fasli years. Thereafter, the petitioner came to this court on August 12, 1958. The karnavan and Manager of a Mana in Ernad Taluk, before it was divided in 1957, is the petitioner in O. P. 587/58, and complains against the assessments under the Act. The relevant facts in this writ petition are that the petitioner on April 22, 1958, received notices of provisional assessment for 1365 and 1366 fasli years, calling for objections within 15 days. The petitioner in May, 1958, sent a statement containing objection though the period given in the notice was insufficient, and on August 22, 1958, detailed objections were filed through an advocate, but the final demand notices dated August 23, 1958, were received after considering the objections filed in May, 1958, alone and not later.

2. The aforesaid writ petitions challenge the assessments on the ground of the Act, under which the assessments had been made, having been earlier repealed. This was done by the Travancore-Cochin Land Tax Amendment Act, 1957, whose Section 10 provides as follows:

Repeal-The Madras Land Revenue (Surcharge) Act, 1954 and the Madras Land Revenue (Additional Surcharge) Act, 1955, as in force in the Malabar District referred to in Sub-section (2) of Section 5 of the States Reorganization Act, 1956 (Central Act XXXVII of 1956) are hereby repealed.

The repealing Act under its Section 1(2) was to come into operation on such date as the Government in the Gazette notify; and it is common ground that Government had appointed such a date in September 1957. It is, therefore, clear that the assessments in both the writ petitions had been made on the dates after the Act had been repealed, and the objections against the assessments are that the surcharges u/s 3 of the Act have been levied after the authority to levy had ceased to be operative. In other words, the argument urged before us is that the Act's repealment having wiped out the liability, the subsequent assessment proceedings are without jurisdiction.

3. The next ground is that the directions given by Rule 5 of the Rules framed under the Act have not been complied with, and the writ petitioners have not received any Form IV information containing final assessments, which makes the assessments invalid. With respect we find no force in either argument, with which we will deal seriatim.

4. It is not disputed that Section 6 of the State Interpretation and General Clauses Act, No. VII of 1125, saves any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed and any legal proceeding may be continued or enforced as if the repealing Act had not been passed. The question therefore, is whether the liability u/s 3 of the Act would be saved by the aforesaid Interpretation Act, and whether the assessments challenged would be the legal procedure within the meaning of Section 6 of the Interpretation Act. The petitioners learned advocate has urged that the liability under the Section is not created till the steps under the aforesaid rule 5 are

completed. The Rule reads as follows:

5. (1) On receipt of the declaration in Form II, the assessing authority shall, if he is satisfied that it is correct and complete according to the information then available, assess the surcharge on the landholder on the basis of such declaration and communicate a copy of the order of the assessment to the landholder in Form IV.

(2) Where a declaration has been submitted before the time specified and it appears to the assessing authority that "the declaration is incorrect or incomplete, the assessing authority shall hold such inquiry as he considers necessary to determine the correct amount of land revenue and surcharge payable by the landholder. He shall then make a provisional assessment of the surcharge and issue a notice to the landholder in Form III either to prove the correctness and completeness of the declaration or to show cause why the proposed assessment should not be made, After considering the landholder's objection, if any, the assessing authority shall pass an order fixing the surcharge payable subject to such modifications as may be found necessary after the accounts for the fasli are finally settled and communicate a copy of the order to the landholder in Form IV.

(3) In computing the assessment payable by a land-holder in respect of lands held by him in a joint patta, the actual assessment that the landholder has to pay for his share in the joint patta should be taken into account.

(4) The amount fixed as surcharge shall be paid along with, and in installments applicable to, the land revenue kist.

(5) The surcharge payable by a landholder shall be finally determined after the accounts for the fasli are settled. If it is found that the amount of surcharge already collected is in excess or short of the amount finally determined, then the excess or short collection shall be refunded or recovered as the case may be. A notice of the final assessment shall be issued to the landholder in Form V.

5. We think Rule 5 provides for the quantification of the liability that arises u/s 3, that reads thus:

3. Every landholder who is liable to pay a sum exceeding rupees five hundred for a fasli as land revenue to the Government in respect of lands held by him in the State shall pay to the Government for that fasli a surcharge on the land revenue payable by him in respect of all the lands held by him, at the following rates.

6. In other words, the liability to meet the surcharge is created by Section 3 and the quantification is done by Rule 5. We are further of the view that the repealment of the Act would not, in the absence of any clear indication by the repealing Act itself, which we do not find in the case, discharge the liability, that had arisen before the later Act had come into operation, so that the liability can be enforced and the tax recovered notwithstanding the repealment. This view is supported by *Abramai v. Commissioner of Sales Tax* (1958 K.L.J. 376) where the

liability under the Sales Tax Act was held to be enforceable after the enactment had been amended by a subsequent enactment. In that case, Mr. Justice Vaidialingam has held that the liability to pay the sales-tax had been imposed by the charging section 4 of the Act, and other provisions of issuing the notice and of making the assessment were for quantifying the liability. He has further held that whenever there be repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act would follow, and the liability of the assesses would be enforceable notwithstanding the repeal. We need not cite the authorities, on which the aforesaid decision rests, as we agree with the conclusions reached therein, which is well supported by the pronouncements of the Supreme Court in *State of Punjab v. Mohar Singh* (A. I. R. 1955 S. C. 84) and *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, . Therefore, the liability u/s 3 of the Act, would continue unless we are prepared to accept the argument that the provision concerning quantification of the tax does not amount to legal procedure. We feel the word "procedure" is wide enough to cover all the rules that are part of the adjective law for enforcing liability or for giving effect to the right, which either judicial or quasi-judicial authorities must follow. Therefore, the provisions of Rule 5, which we have quoted above clearly amounts to procedure, and the first ground fails. Perusal of the Rule shows that Form IV, which the writ petitioners complain not to have received, is intended for such cases, where the final accounts of the fasli year had not yet been made, and on such account being concluded information by Form V would be dispatched. Therefore, it would be reducing the Rule to absurdity were we to hold that even where the fasli accounts are made up, notice of the assessment in Form V should be postponed by earlier notice in Form IV. The accounts for the fasli years had been concluded, and the writ petitioners then received their final notice assessment in Form V. Therefore, there is no force in the second ground as well. Accordingly these writ petitions fail, which are dismissed with costs. Advocate's fee Rs. 100/- each.