
(1970) 03 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No. 54 of 1966

Commissioner of Wealth-tax

APPELLANT

Vs

Smt. Sheela Devi

RESPONDENT

Date of Decision : 18-03-1970

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1970) 77 ITR 693

Hon'ble Judges : Mehar Singh, C.J;R.S. Narula, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; Jagan Nath Kaushal and Ashok Bhan, for the Respondent

Judgement

R.S. Narula, J.—The circumstances in which the following question of law has been referred to this court by the Income Tax Appellate Tribunal, Delhi Bench "A", at the instance of the Commissioner of Wealth-tax, Punjab, Patiala, u/s 27(1) of the Wealth-tax Act (27 of 1957) (hereinafter called "the Act"), may first be noticed :

"Whether, on the facts and in the circumstances of the case, the two lands in question were agricultural lands within the meaning of Section 2(e)(i) of the Act on the valuation date ?"

2. Shrimati Sheela Devi, respondent, hereinafter referred to as the assesses, owned two plots of land on either side (one on the east and the other on the west) of the central plot which originally belonged to her but had been sold by her earlier to the Government for establishment of Government postal colony. The relevant assessment year is 1961-62, and the relevant valuation date is March 31, 1961. The pivotal question around which the present dispute revolves is whether on the valuation date these two plots of land were or were not agricultural land within the meaning of Section 2(e)(i) of the Act. If those were agricultural land, as held by the Tribunal, they would be exempt from payment of wealth-tax. If on the other hand they did not fall within that expression, the

assessee would be liable to pay wealth-tax in respect of the same. The relevant facts found by the Tribunal with which both sides are bound, and on the basis of which we have to answer the question referred to us are these:

3. The lands in dispute were not within any municipal area. These lands did not fall within any town planning area. Till 1958, these lands were actually under cultivation. Right up to the valuation date, these lands were classified as agricultural lands in the relevant revenue records, and were assessed to payment of land revenue. In 1958, the husband of the assessee, who used to cultivate the land, died and thereafter actual cultivation had not been done in these lands up to the valuation date in question. The husband of the assessee left behind him, besides the assessee, a minor son and some unmarried daughters. The Tribunal has also observed that the assessee did not take any steps to secure permission for using these lands for non-agricultural purposes, but this appears to have been stated on account of some misapprehension as we have not been shown any provision of law applicable to this part of the country (Ludhiana) requiring such permission being taken for putting agricultural lands to non-agricultural use. This observation appears to have been made by the Tribunal on account of such legal provision being on the statute book of some other States. The Tribunal has then held that the assessee had done nothing to disable herself from cultivating these lands and she did not intend to give up cultivation of these lands in future. The lands were subjected to land revenue till after the valuation date. The assessee never gave up the idea of cultivating the land though cultivation was temporarily discontinued for two years and the lands were still capable of being put to agricultural use. The assessee had offered these lands for sale to the Government on December 29, 1960, for the construction of residential flats for the officers of the Income Tax department, but no agreement for sale had been reached between the assessee on the one hand and the Government on the other up to the valuation date though such an agreement was in fact arrived at after the valuation date which resulted in the ultimate sale of the lands to the State.

4. By his order, dated February 28, 1963 (annexure "B"), the Wealth-tax Officer, "B" Ward, Ludhiana, held that the lands had become non-agricultural and were, therefore, liable to be included as an asset of the assessee. In the assessee's appeal to the Appellate Assistant Commissioner (annexure "C"), it was ground No. 5 that these lands were not liable to wealth-tax as they were agricultural lands and as such should have been excluded out of the taxable wealth of the assessee. This contention did not find favour with the Appellate Assistant Commissioner. Vide his order (annexure "D"), the Appellate Assistant Commissioner held that "the expression 'agricultural land' 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". He, however, refused to recognise the lands as agricultural as the plots which had been offered for sale on December 29, 1960, to the Income Tax department for the construction of the flats for its officers had since been purchased for that

purpose, though after the valuation date. On further appeal to the Appellate Tribunal (copy of the grounds of appeal is annexure "E"), it was held by the Tribunal that the expression "agricultural land", not having been defined in the Act, must be construed in its normal and grammatical sense. After referring to the expression "agricultural land" which appears in entry No. 21, List II of Seventh Schedule of the Government of India Act, 1935, and the judgment of the Federal Court in *Megh Raj v. Allah Rakhia*, AIR 1942 F.C. 27. and of the Madras High Court in *T. Sarojini Devi Vs. T. Sri Kristna*, . , the Tribunal held, as a result of the consideration of the facts and circumstances of the case, and the Tribunal's findings of fact to which reference has already been made, that the lands in dispute were agricultural lands within the meaning of Section 2(e)(i) of the Act. It was held that putting of the surrounding lands to non-agricultural use was not relevant, and unless the land in dispute itself had ceased to be capable of being used for agricultural purposes, it could not be said to be non-agricultural land. On an application of the Commissioner of Wealth-tax, however, the above quoted question has been referred to this court.

5. Though the expression "agricultural land" has not been defined in the Act, it occurs in the definition of "assets" contained in Section 2(e) of the Act in the following context:

""Assets" includes property of every description, movable or immovable, but does not include,--

(1) in relation to the assessment year commencing on the 1st day of April, 1969, or any earlier assessment year-

(i) agricultural land and growing crops, grass or standing trees on such land; . . ."

6. Mr. D.N. Awasthy, learned counsel for the revenue, first referred to the judgment of a Division Bench of the Patna High Court in *Syed Rafiqur Rahman Vs. Commissioner of Wealth Tax*, .. While holding that the land in dispute in that case was not agricultural land for purposes of the Wealth-tax Act, the learned judges held that it is only when the integrated activity of agriculture is undertaken and performed on any land that it can be called agricultural land, and that the mere presence of trees on the land would not make it agricultural especially when the land is situate in the heart of a town and is surrounded by residential buildings. The learned judges further observed that the question whether a certain piece of land is agricultural or not does not depend upon the intention of the owner to use the land for purposes of agriculture. It was observed that the criterion must be something more definite and more objective, something related to the nature or character of the land. In that case the relevant valuation date was March 31, 1962. The plot in dispute measuring 1 bigha 9 kathas 17 dhurs was situate at Bhattacharjee Road in the heart of the town of Patna, within the residential area inside the municipal limits of Patna. It had got buildings on all its four sides. It had been sold in July, 1962, for Rs. 1,50,000. Wealth-tax was assessed on this land for the first time in the year

1962-63. It was, observed that though it must always be difficult to draw a line, yet unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes. After referring to certain decided cases under the Income Tax Act where the question was whether certain income accruing from land could or could not be said to be agricultural income, the learned judges of the Patna High Court laid down the test to which reference has already been made. With great respect to the learned judges we have not been able to agree with the narrow test laid down by them in Syed Rafiqur Rahmans case, for determining whether a particular piece of land is or is not agricultural land for purposes of the Wealth-tax Act. Different considerations apply to the determination of the question whether income from a certain piece of land is or is not agricultural income, and the same considerations cannot be applied to the determination of the question before us. In the ultimate analysis, the question whether a particular piece of land is or is not agricultural land within the meaning of the Act is a question of fact to be decided, in the circumstances of a given case, and no hard and fast rule or inviolable test can, in our opinion, be laid down for determining this question generally. We have no doubt that, on the facts and in the circumstances of Syed Rafiqur Rahwan's case, the learned judges came to a correct decision of the question in issue. But if the legislature had intended that it is only such land which should be treated as agricultural land for purposes of the Act which is actually under cultivation, there would be no difficulty in making a provision to that effect. It is indeed open to the legislature to indicate that actual user of the land on the valuation date should be the basis of the decision, but no such provision has been made. In a case where land has been admittedly put to agricultural use till a day or a month or few months before the valuation date, the land would not cease to be agricultural, merely because it does not happen to be under the plough on the valuation date. Particularly, in a case of the type before us when it is admitted or proved that the land in dispute was agricultural land for a long time, till about two years before the valuation date in the instant case, it would be presumed to continue to remain as agricultural land unless something definite has in the meantime happened to make it non-agricultural. Till the user of the land is actually changed, or other definite indications to the contrary are available in a given case, it is safe to presume that a property would normally continue to be put to the use to which it has been put all along for a long time.

7. I do not consider it necessary to deal at any length with the following two cases to which Mr. Awasthy referred in support of his argument because, both these cases deal with what is "land used for agricultural purposes" within the meaning of the Income Tax Act:

Mustafa Ali Khan v. Commissioner of Income Tax (1948) 16 ITR 330 (P.C). and Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, ,.

8. In neither of these cases was it being considered as to whether any land was agricultural land or not. The cases related to exemption u/s 2(1)(a) or Section 2(1)(b) of the Income Tax Act, and therefore, the primary condition that had to be satisfied was that the land in dispute was or was not being used for agricultural purposes, and, therefore, income from it could or could not be said to be agricultural income. It is significant that the Income Tax Act specifically states that agricultural income would be such as accrues from land used for agricultural purposes. No such criterion has been provided by the legislature in the Wealth-tax Act. Similarly, the question before the Supreme Court in Raja Benoy Kumar Sahas Roy's case was also as to whether the income in question was agricultural income or not. It was in the course of that judgment that their Lordships observed as follows :

"It was also pointed out that taxes on agricultural income formed a head of legislation specified in item 46 of List II of the Seventh Schedule to the Constitution and should be liberally construed, with the result that agriculture should be understood in the wider significance of the term and all agricultural income derived from agriculture or so understood should be included within the category. There was authority for the proposition that the expression "agricultural land" mentioned in entry No. 21 of List II of the Seventh Schedule to the Government of India Act, 1935, should be interpreted in its wider significance as including lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry.

While recognizing the force of the above expressions of opinion, we cannot press them into service in favour of the assessee for the simple reason that "agricultural income" has been defined in the Constitution itself in Article 366(3) to mean agricultural income as defined for the purposes of enactments relating to Indian Income Tax and there is a definition of "agricultural income" to be found in Section 2(1) of the Indian Income Tax Act. We have therefore got to look to the terms of the definition itself and construe the same regardless of any other consideration, though, in so far as the terms "agriculture" and "agricultural purposes" are concerned, we feel free, in view of the same not having been defined in the Act itself, to consider the various meanings which have been ascribed to the same in the legal and other dictionaries."

9. It appears to us that the above-quoted passage from the judgment of the Supreme Court is more in favour of the assessee than the revenue for purposes of the present case. Their Lordships of the Supreme Court fully recognised the force of the expression of opinion of the Federal Court in *Megh Raj v. Allah Rakia* and of the Madras High Court in *T. Sarojini Devi v. T. Sri Krishna*, both of which cases related to the meaning of the expression "agricultural land". The Supreme Court, however, declined to press the law laid down in those cases into service for the simple reason that "agricultural income" has been defined in the Constitution itself in Article 366(1) though agricultural land has not been defined anywhere. This means that had their Lordships been construing the expression

"agricultural land", they would have adopted the tests laid down by the Madras High Court in T. Sarojini Devi's case. In fact it appears that the Supreme Court has "while recognising the force of the above opinions" implicitly approved of those tests for the purpose of construing what is meant by "agricultural land".

10. The next case to which Mr. Awasthy referred is the judgment of the Gujarat High Court in Rasiklal Chimanlal Nagri v. Commissioner of Wealth-tax, [1965] 56 I.T.R 608 (Guj.). That was a case under the Wealth-tax Act. The learned judges held that whether a land is agricultural land or not cannot depend on the fluctuating or ambulatory intention of the owner of the land, and that the criterion must be something more definite and more objective, something related to the nature or character of the land and not varying with the intention of the owner as to the use to which he wants to put the land at a particular point of time. At the same time, the learned judges of the Gujarat High Court made it clear that they must not be understood to mean that the intention of the user of the land is altogether an irrelevant consideration as it is certainly a factor which would bear on the nature or character of the land, though it does not afford a sole or exclusive criterion for determining whether a land is agricultural one or not. Where the land is actually put to use, there is usually not much difficulty in ascertaining the nature or character of the land, but, observed the Gujarat High Court, the test of actual user may not always furnish a correct answer, for there may be cases where land admittedly non-agricultural, such as a building site, may be used temporarily for agricultural purposes and vice versa. It was in that case that reference was made to some law prevalent in Gujarat under which it was necessary to obtain permission for non-agricultural use of agricultural land and reference was made to no such permission having been taken. The following passage from the judgment of the Gujarat High Court appears to be instructive:

"Whether a particular land is agricultural land or not must depend on the general nature or character of the land, and various factors would have to be taken into account. The development and use of the lands in the adjoining area and the surroundings and situation of the land would be an important factor which would have a bearing on the question whether the land is agricultural land or not. This factor may affect the land and its capacity of being used for agriculture and would also indicate the purpose for which the land would ordinarily be likely to be used. The physical characteristics of the land would be another factor to be taken into account. The physical characteristics may show the general nature or character of the land particularly in regard to its adaptability for being used for agricultural purpose. Then the intention of the owner as gathered from all the relevant circumstances would also have a bearing on the general nature or character of the land. Of course, as we pointed out above, the intention of the owner of the land to put it to a particular use at any given point of time cannot be the determining factor. But the intention of the owner in regard to the user of the land would certainly be a relevant factor which would have to be taken into account. Where, for example, as in the present case, the land has not been used for agricultural purposes for over a number of years without any particular

reason, it would certainly indicate that the land is no longer meant for agricultural purposes, but is meant for being used for non-agricultural purposes and cannot, therefore, be regarded as agricultural land. The fact that the land is assessed for agricultural purposes would also be a relevant consideration and due effect would have to be given to this factor in arriving at the conclusion whether the land is agricultural land or not. But we cannot agree that the capacity of the land for being put to agricultural use is a determinative factor in deciding whether the land is agricultural land or not. If that were the correct test, even building sites assessed for non-agricultural purpose would be agricultural lands so long as they are not actually put to non-agricultural use, since it would always be possible to say of them, that they are capable of being used for agricultural purposes. As a matter of fact, all land which has not actually been put to non-agricultural use would be liable to be regarded as agricultural land if this test were the correct test."

11. The land which was declared by the Gujarat High Court to be not agricultural land comprised of plots situate in a wholly residential area with numerous residential buildings around the plots which were situate in an area in respect of which a town planning scheme was in force since about 1945. Three out of the four plots had been cultivated up to about 1934-35, but had ceased to be cultivated since then, and no agricultural operations were carried on in those plots for about 21-22 years prior to the valuation date. No special reason was available for cultivation having been stopped by the assessee on those plots. The fourth plot was purchased by the assessee in December, 1951, at the rate of about Rs. 20 per square yard, and had not been put to agricultural use since the purchase. This plot was also situate in the midst of a highly developed residential area, and the only circumstance on which reliance was placed to bring the land within the expression "agricultural land" on behalf of the assessee was that the plots were assessed for agricultural purposes, and the assessee had not applied for and obtained permission of the revenue authorities to make non-agricultural use thereof. Once again, on the facts of that case, we have no doubt that the land could not be held to be agricultural one.

12. The last case under the Wealth-tax Act to which reference was made by Mr. Awasthy is the Full Bench judgment of the Andhra Pradesh High Court in Officer-in-charge (Court of Wards) Paigah, Vicar-ul-umra, Hyderabad Vs. The Commissioner of Wealth-tax, Andhra Pradesh, Hyderabad, .. The following tests were laid down by the Full Bench for determining whether certain land is agricultural land within the meaning of Section 2(e)(i) of the Act or not :

"(1) the words "agricultural and" occurring in Section 2(e)(i) of the Wealth-tax Act should be given the same meaning as the said expression bears in entry 86 of List I and given the widest meaning;

(2) the said expression not having been defined in the Constitution or in the Wealth-tax Act, it must be given the meaning which it ordinarily bears in the English language and as understood in ordinary parlance;

(3) the actual user of the land for agriculture is one of the indications for determining the character of the land as agricultural land ;

(4) land which is left barren but which is capable of being cultivated can also be "agricultural land" unless the said land is actually put to some other non-agricultural purpose, like construction of building or an aerodrome, runway, etc., thereon, which alters the physical character of the land rendering it unfit for immediate cultivation ;

(5) if land is assessed to land revenue as agricultural land under the State revenue law, it is a strong piece of evidence of its character as agricultural land ;

(6) mere enclosure of the land does not by itself render it a non" agricultural land;

(7) the character of land is not determined by the nature of the products raised, so long as the land is used or can be used for raising valuable plants or crops or trees or for any other purpose of husbandry ;

(8) the situation of the land in a village or in an urban area is riot by itself determinative of its character. "

13. Whereas Mr. Awasthy states that, according to tests Nos. 3, 7 and 8, the land of the assessee in the case before us should not be held to be agricultural land, it appears to us that the land in dispute clearly fulfils tests Nos. 4 and 5, and therefore, even if the judgment of the Full Bench of the Andhra Pradesh High Court is applied to the case, the tests laid down by the Tribunal and the decision of the Appellate Tribunal in the present case were correct.

14. The argument of Mr. Awasthy about barren land not being land within the meaning of Section 4(1) of the Punjab Tenancy Act as held by a Division Bench of this court in *Shri Nemi Chand Jain v. Financial Commissioner* [1964] 66 P.L.R. 278 (Punj.). for purposes of Sections 2(8) and 5 of the Punjab Security of Land Tenures Act (10 of 1953) is of no use to him in this case, as it has nowhere been stated in the Wealth-tax Act that the expression "land" used in the phrase "agricultural land" in Section 2(e)(i) of the Wealth-tax Act shall have the same meaning as is assigned to it in Section 4(1) of the Punjab Tenancy Act.

15. After a careful consideration of the matter, we are inclined to think that, though it is neither proper nor safe to lay down any hard and fast rule in this respect, the tests laid down by their Lordships of the Federal Court in *Megh Raj v. Allah Rakkia*, and by the Madras High Court in *T. Sarojini Devi v. T. Sri Krishna*, both of which have been impliedly approved for purposes of defining agricultural land in the course of the judgment of their Lordships of the Supreme Court in *Commissioner of Income Tax v. Raja Benoy Kumar Sahas Roy*, still hold the field and are correct tests. In the case of *Megh Raj*, the Federal Court was considering the meaning of the expression "agricultural land" in entry No. 21 of List II of the Seventh Schedule to the Government of India, Act, 1935. After referring to the narrower as well as the wider sense in which the expression "agricultural land"

had been interpreted in various different contexts, their Lordships of the Federal Court observed that no reason had been suggested by the appellant why "agricultural land" mentioned in entry No. 21 of List II of the Seventh Schedule should be limited to what had been described in the case as the narrower meaning of the expression. In T. Sarojini Devi's case, the Madras High Court expressly laid down that the expression "agricultural land" in entry No. 21 of List II and entry No. 7 of List III of the Seventh Schedule to the Government of India Act, 1935, "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 purposes of husbandry". The tests laid down by the Andhra Pradesh High Court in the case of Officer-in-Charge (Court of Wards), are also helpful subject to the over-all consideration which weighed with the Madras High Court in T. Sarojini DEVI'S, case, though as already stated, the question whether a particular piece of land is or is not "agricultural land" within the meaning of Section 2(e)(i) of the Wealth-tax Act is necessarily a question of fact to be decided in the circumstances of a given case depending on the nature and character of the land, its environment; the use to which it has been previously put or is capable of being put, sometimes possibly the intention of the owner, its assessment or non-assessment to the land revenue, its situation within a municipal or a town planning area, its potential value, and various other relevant factors.

16. In the instant case, the Income Tax Appellate Tribunal had, in our opinion, no option but to hold, on the findings of fact recorded by it, that the disputed lands of the assessee were "agricultural lands" within the meaning of Section 2(e)(i) of the Act, as both the pieces of land not only satisfied the test laid down by the Madras High Court in T. Sarojini Devi's case, which was approved by the Supreme Court in Raja Benoy Kumar Sahas Roy's case, but also satisfied most of the tests laid down by the Andhra Pradesh High Court in the case of Officer-in-Charge (Court of Wards).

17. For the foregoing reasons we answer the question referred to us in the positive, i.e., against the revenue and in favour of the assessee. The revenue shall pay the costs of the assessee which are assessed at Rs. 250.

Mehar Singh, C.J.

18. I agree.