
(1982) 07 BOM CK 0026
In the Bombay High Court
Case No : Wealth-tax Refn. No. 9 of 1973

Commissioner of Wealth Tax, Poona

APPELLANT

Vs

H.V. Mungale

RESPONDENT

Date of Decision : 16-07-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 2(e)(1)(i), 27(1)

Citation : (1984) MhLj 56

Hon'ble Judges : M.N. Chandurkar, J; M.H. Kania, J

Bench : Division Bench

Advocate : R.J. Joshi with S.V. Naik, for the Appellant; D.J. Pandit with P.J. Pandit, for the Respondent

Judgement

M.N. Chandurkar, J.—The question which has been referred in this reference at the instance of the Revenue u/s 27 (1) of the Wealth Tax Act, 1957 is as follows:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the land Survey No. 699 Hissa No. 1 situated on the outskirts of Poona City measuring about 30 gunthas owned by the assessee was agricultural land within the meaning of section 2 (e) (1)(i) of the Wealth Tax Act, 1957 on the valuation date and as such the value thereof was not includible in computing the net wealth of the assessee for the assessment years 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70 ?

2. The assessee is admittedly the owner of a piece of land bearing survey No. 699 Hissa No. 1 situated on Poona Satara Road and was purchased by the assessee in the year 1955. In the course of the assessment proceeding under the Wealth Tax Act the assessee claimed that the property in question was agricultural land for which land revenue was being paid, and that it was liable to be excluded for the purposes of computation of wealth of the assessee having regard to the provision in section 2 (e)(1) (i) of the Act. The valuation report of the property was accepted by the Wealth Tax Officer who declined to exclude the value of the land while computing the net wealth of the assessee.

3. In appeal the Appellate Assistant Commissioner also took the same view. He found that having regard to the situation of the plot and other surrounding circumstances the land could not be said to be agricultural land. In appeal by the assessee the Tribunal held that the land was agricultural land and was, therefore, not liable to be included in the net wealth of the assessee. The Revenue being aggrieved by the decision of the Tribunal had sought the reference of the question reproduced above. On facts there is no dispute in this case. It has been established that Survey No. 699 Hissa No. 1 is recorded in the revenue records as agricultural land; it is assessed to land revenue; it is situated on the outskirts of Poona City; and there are permanent structures in the form of bungalows adjacent to this plot of land. It is also not in dispute that there are temporary corrugated sheds in one of which the assessee himself is staying and part of it is occupied by an unauthorised tenant. One shed is used for storing, articles and the other for cattle. In another shed which is made of stones and mud the servants are staying. The land was cultivated upto 1963 when the assessee was growing some inferior type of bajri known as nilva but it has remained uncultivated thereafter.

4. Mr. Naik appearing on behalf of the Revenue has on the basis of the decision of the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , contended that the mere fact that the land was capable of being used for agricultural purposes was not enough to treat the land as agricultural land for the purposes of section 2 (e) (1) (i) of the Act. The learned counsel wants to point out that the decision of the Full Bench 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, , relying on which the Tribunal held in favour of the assessee that the land in question was agricultural land has now been reversed and secondly having regard to the decision of the Supreme Court referred to above in which the Full Bench decision of the High Court has been reversed, the land in question, could not be described as agricultural land. The learned counsel pointed out that the land in question, is situated within the limits of the Poona Municipal Corporation and having regard to its location and surroundings the land could not be treated as agricultural land and the value thereof was liable to be included in the net wealth of the assessee.

5. Mr. Pandit appearing on behalf of the assessee has, however, contended that the land in question, did not cease to be agricultural land merely because it was not used for agricultural purposes and according to the learned counsel as long as the land was not converted to non-agricultural purposes, it must be treated as agricultural land.

6. Section 2(e) (1)(i) of the Act provides that the assets include property of every description movable or immovable but does not include "agricultural land and growing crops, grass or standing trees on such land". If the land is an agricultural land it cannot be included as an asset for the purposes of assessment

under the Wealth Tax Act. For deciding whether a land is an agricultural land or not no difficulty will normally arise where the land is actually being used for agricultural purposes. But in the case where the land which is in fact recorded as an agricultural land but is not under the actual cultivation of the owner and is lying fallow for one reason or the other including it being uneconomical to cultivate the land, the question would arise whether the land should continue to be treated as agricultural land. According to the Revenue the test for deciding whether the land is agricultural land or not has been laid down by the Supreme Court in the *Court of Ward's* case referred to above. It is, therefore, necessary to deal in some detail with that decision. The property involved in that case was known as "Begumpet Palace" Hyderabad. The buildings in that property were valued at Rs. 8,81,336 and the extent of the surrounding vacant land was 108 acres. The entire plot of land was enclosed in a compound wall and the property was situated within the limits of the Hyderabad Municipal Corporation. The vacant land was never used for agriculture in the sense that it had never been ploughed or tilled. The property was situated adjacent to the tank known as "Hussain Sagar" on the southern side and there were two wells in the said land. It was found as a fact that the land was capable of being used for agriculture and land revenue was assessed and paid in respect of the said lands. The Wealth Tax Authorities as well as the Tribunal took the view that as no agricultural operations were carried on in the sense of ploughing and tilling the land and raising any crop thereon at any time and that the lands were situated within the limits of the Hyderabad Municipal Corporation, the presumption would be that the lands were not agricultural lands.

7. The matter was taken to the High Court of Andhra Pradesh since there was a conflict between the views, one of the Madras High Court in *T. Sarojini Devi Vs. T. Sri Kristna*, and the other of the Andhra Pradesh High Court in 1963 ITR 534, the matter was referred to a Full Bench. The Full Bench of the Andhra Pradesh High Court considered the cases of various High Courts and took the view that a wide connotation must be given to the words "agricultural land" used in the taxing statute and further that the entry of the large tract of vacant land in the Begumpet Palace in revenue records as assessable to land revenue raised a presumption of its agricultural character. The conclusions were stated in the form of propositions by the Full Bench as follows :

- (1) The words "agricultural land" 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, 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 indicia 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 buildings 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 the 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 purposes of husbandry;

(8) the situation of the land in a village or in an urban area is not by itself determinative of its character.

Having regard to the above conclusions the Full Bench took the view that the large extent of 108 acres of land possessed all the characteristics of agricultural land and that it was capable of being put to agriculture and the further fact that the land had been admittedly assessed to land revenue as "agricultural land" strongly indicate that the land in question was agricultural land. The correctness of this view of the Full Bench was challenged before the Supreme Court.

8. The Supreme Court did not approve of the proposition that as wide a meaning as possible to terms used in a statute should be given simply because the statute does not define an expression and pointed out that the correct rule is "..... we have to endeavour to find out the exact sense in which the words have been used in a particular context". The Supreme Court pointed out that it was imperative to give reasonable limits to the scope of the "agricultural land" and the exemption had to be necessarily given a more restricted meaning than the very wide ambit given to it by the Full Bench of the Andhra Pradesh High Court. The Supreme Court approved conclusions No. 6 to 8 stated above and observed that they were only negative in character and merely indicated what could not be conclusive in deciding whether the land was agricultural. The Supreme Court pointed out that conclusion No. 5 seems to have been the real or positive test, based on entries in revenue records, actually adopted by the Full Bench for determining the nature of the land and it was further pointed out that the attempted application of the principles laid down by the Full Bench showed that what were treated as tests were really presumptions arising from the following facts: firstly, that the area was 108 acres abutting Hussain Sagar tank; secondly, that this land had two wells in it; thirdly, that it was capable of being used for agricultural purposes; fourthly, that it had not been actually put to any use which could change the character of land by making it unfit for immediate cultivation; and, fifthly, that it was classified and assessed to land revenue as "agricultural land" under the provisions of the Andhra Pradesh Land Revenue Act 8 of 1317 Fasli perhaps on the assumption that it could be used for agriculture. Analysing

the test laid down by the Andhra Pradesh High Court the Supreme Court observed that the first four indicia were based on the absence of any user for non-agricultural purposes and were therefore, inconclusive. The Supreme Court took the view that the decision of the Full Bench was mainly based on the entries in the revenue records because the Supreme Court observed that "... The Full Bench of the Andhra Pradesh High Court has held these entries to be "strong prima facie evidence", and it practically decided the case on the basis of these entries..." The Supreme Court pointed out that the entries raised only a rebuttable presumption and some evidence would, therefore, have to be led before the taxing authorities on the question of intended user of the land under consideration before the presumption could be rebutted. The Supreme Court clearly pointed out that the burden to rebut the presumption would be on the Revenue. The following observations of the Supreme Court may be reproduced:

...It has, however, to be remembered that such entries could raise only a rebuttable presumption. It could, therefore, be contended that some evidence should have been led before the taxing authorities of the purposes or intended user of the land under consideration before the presumption could be rebutted. If the "prima facie" evidence of the entries was enough for the assessee to discharge his burden to establish an exemption, as is seemed to be, evidence to rebut it should have been led on behalf of the department....

According to the Supreme Court this aspect of the question had not been examined by the Full Bench from a correct angle because no finding was recorded that the conclusion reached by the taxing authorities that the land was never intended to be used for an agricultural purpose rested on no evidence at all. Further the Full Bench had not given its reasons for rejecting this finding of the Tribunal. The Supreme Court also held that the Full Bench was not correct in adopting the view expressed in *Sarojini Devi's* AIR 1944 Madras 401, case by the Madras High Court where it was held that it was enough to show that the land under consideration was capable of being used for agricultural purposes and this erroneous view, according to the Supreme Court, seemed to have affected the conclusion of the Full Bench on what was essentially a question of fact and this had led the Full Bench into giving excessive weight to considerations which had a bearing only on potentialities of the land for use for agricultural purposes, in the *Court of Ward,s* case the Supreme Court has taken the view that the determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case and what is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It was pointed out that "... It is not the mere potentiality which will only affect its valuation as part of "assets", but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax. ... If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural

purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence." On the facts of that case the Supreme Court found that the relevant considerations were not kept in view by the taxing authorities in deciding the question of fact and, therefore, according to the Supreme Court the High Court should have sent the case back to the assessing authorities for deciding the question of fact after stating the law correctly. The decision of the Full Bench was set aside and the matter was remanded to the Tribunal for a proper decision of the case in accordance with law. The only ratio which can be carved out from this decision of the Supreme Court is that it is not the mere potentiality for being used for agricultural purposes that is relevant for the purpose of deciding whether the land is an agricultural land or not but that what is to be determined is the character of the land according to the purpose for which it was meant or set apart and can be used. Even according to the Supreme Court entries in revenue records are good prima facie evidence with regard to the character of the land and the purpose for which it is intended to be used and the burden is on the Revenue to rebut this presumption.

9. Having analysed the decision of the Supreme Court it is difficult for us to see how this decision can be of assistance to the Revenue. The Tribunal has not in the instant case treated the land in question, as agricultural land on the ground that at some future date it can be used as agricultural land. The decision of the Supreme Court has to be read in the light of the fact that the Supreme Court had to deal with an exclusive piece of land which was a part of the palace estate which had never been used as agricultural land or for the purpose of agriculture and the mere possibility that it can be used for agriculture was treated as insufficient to qualify it as agricultural land.

10. In the instant case, the facts show that the land was used for agriculture till 1963. It has been so recorded in the revenue records and the land is assessed as agricultural land. No evidence has been led on behalf of the Revenue to rebut this presumption. Merely because it remained fallow after 1963 the land did not cease to be agricultural land.

11. Mr. Naik appearing on behalf of the Revenue argued that the matter should be sent back to the Tribunal for recording a fresh finding. We see no reason to accept this argument. When admittedly the land has been described as agricultural land in the revenue records and was used for agriculture till 1963 the Revenue should have taken the necessary steps to rebut the presumption arising from the revenue records if it really wanted to do so. We see no reason to allow the whole issue now to be reopened in assessment proceedings which are now more than 15 years old. We have, therefore, declined to grant the request for the matter being sent back to the Tribunal.

12. We may also refer to a Division Bench decision of this Court in *The Commissioner of Wealth-tax, Bombay City I v. The Podar Mills Ltd.* Wealth-tax Reference No. 5 of 1964 decided on 4th December 1973 by Vimadalal and Desai,

JJ. One of the questions which fell for consideration before the Division Bench was whether the lands held by the assessee at Ghatkopar were agricultural lands within the meaning of section 2 (e)(i) of the Wealth-tax Act. On the facts of that case the lands were held to be agricultural lands. What we are concerned with is the proposition which was set out by the Division Bench after reference to the several cases. The Division Bench has made the following observations:

..... In a given case agricultural land may or may not yield agricultural income. If there is land which was once cultivated or put to agricultural use but is now fallow or barren, it would not merely by reason of such fact cease to be agricultural land. Conversely what is patently non-agricultural land may in extraordinary circumstances be used for a purpose to which agricultural land is usually put and may therefore, yield agricultural income. However, merely by reason of the yield it cannot be designated as agricultural land.....

In the same decision it was pointed out by the Division Bench that "..... where the land is being assessed as agricultural land, then, normally, although it is not being put to actual agricultural use, it may be presumed that it continues to be agricultural land, unless it can be shown that it has been in fact put to some non-agricultural use, or there is some relevant circumstance to indicate that it cannot be properly regarded as agricultural land....."

13. We may also point out that the land which is recorded as agricultural land in the revenue papers cannot be used for a non-agricultural purpose by the owner unless the land is allowed to be converted to non-agricultural purposes by the Collector under the provisions of the relevant Land Revenue Act or the Land Revenue Code. This is a circumstance which must necessarily be taken into account while determining the character or the nature of the land.

14. Having regard to the discussion made above, we must answer the question referred in the affirmative and in favour of the assessee. The assessee to pay the costs of this reference.