
(1988) 09 AP CK 0008

In the Andhra Pradesh High Court

Case No : Case Referred No. 80 of 1984

Controller of Estate Duty

APPELLANT

Vs

Abbas Yar Jung and Others

RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Citation : (1989) 175 ITR 447

Hon'ble Judges : M.N. Rao, J;A. Seetaram Reddy, J

Bench : Division Bench

Advocate : M.S.N. Murthy, for the Appellant; Y. Ratnakar, for the Respondent

Judgement

M.N. Rao, J.—The question referred for the decision of this court at the instance of the Revenue is :

"Where the final valuation of the asset is known, on the date of determination of the value of the asset which, of course, has to be determined as on the date of death of the deceased and where the valuation as on the date of death is determined by applying Parks" formula or the relevant principles of valuation, as the case may be, is there any scope or warrant for introducing the theory or risk and deducting a further amount on account of such risk ?"

2. With the consent of both sides, we have reframed the question as follows :

"Where, after the final valuation of the asset is known, in the determination of the value of such asset as on the date of death of the deceased and after such valuation is determined by applying Parks" formula or the relevant principles of valuation, as the case may be, whether there is any scope or warrant for introducing the theory of risk, thereby deducting a further amount on account of such risk ?"

3. The Government of Andhra Pradesh acquired an extent of acres 143.35 land situated in Malkajigiri in Hyderabad belonging to the late Nawab Turab Yar Jung. The notification u/s 4(1) of the Land Acquisition Act was issued on November 24,

1960, and possession was taken by the Government on May 6, 1961. The owner of the lands, Nawab Turab Yar Jung died on January 10, 1968. The Special Deputy Collector passed the award on March 26, 1973, fixing the compensation at the rate of Rs. 1,300 per acre after deducting 40% of the compensation amount in respect of acres 42.26 guntas of land which was in the possession of protected tenants. The delay in passing the award was due to the disputes between the owner of the land and the protected tenants. The award was not accepted by the legal heirs of Nawab Turab Yar Jung and at their instance, a reference was made to the civil court u/s 18 of the Land Acquisition Act in O.P.No. 304 of 1973. The civil court decided the matter on September 30, 1975, enhancing the compensation to Rs. 10,000 per acre for acres 101.09 guntas subject to the 40% compensation payable to the protected tenants in respect of acres 42.26 guntas. The Government did not accept the award and preferred an appeal to the High Court in C.C.C.A.No. 203 of 1976, which was decided on August 28, 1978, whereby the compensation was reduced to Rs. 7,170 per acre subject to the right of the protected tenants. The Assistant Controller of Estate Duty fixed the value of the right to receive compensation as on the date of death of the deceased at Rs. 17,32,008 as determined by the civil court on September 30, 1975. The Appellate Controller, following the decision of the Tribunal in respect of the wealth-tax matters pertaining to Nawab Turab Yar Jung, adopted 50% of the compensation amount excluding solatium and thus determined the amount at Rs. 5,15,000. On further appeal, the Income Tax Appellate Tribunal took into consideration the fact that the litigation with the tenants continued even after the death of the deceased and the same came to an end by a final judgment of the High Court on November 10, 1971. Applying Parks' Principles of Valuation, the Tribunal determined the value of the right in respect of receiving the compensation for these lands as on the date of death of the deceased, i.e., January 1, 1968, at Rs. 3,87,009 and after deducting 20% of the same, fixed the value of the right to receive the compensation at Rs. 3,09,609.

4. The reasoning adopted by the Tribunal was :

"Though there is no measure ascertain the nature of risk involved in such matters, we are of the view that it would be reasonable to allow a discount of 20 per cent. on the value fixed according to the principles laid down in Parks' on Valuations in order to arrive at the market value of the right to receive compensation as on the date of death of the deceased."

5. The Revenue filed a reference application in this court in respect of the entire valuation disputing the adoption of Rs. 3,87,009. But, this court declined to direct a reference on the question relating to the valuation fixed at Rs. 3,87,009 but directed the Tribunal to refer the question pertaining to reduction of 20% on the amount of Rs. 3,87,009. That is how the question stated supra (pp. 448, 449) came to be referred for the decision of this court.

6. Sri M.S.N. Murthy, learned counsel for the Revenue, contends that when Parks' Principles of Valuation take into account the risk involved in the

ascertainment of the value of the right to received compensation, there was no justification whatever for the Tribunal to effect a further reduction of 20% on the ground that there were hazards in the form of pending litigation between the landlord and the protected tenants. On the other hand, Sri Ratnakar, learned counsel for the assessee, contends that when the value of the right to receive compensation has to be fixed with reference to the date of death of the deceased, namely, January 10, 1968, the crucial aspect that must be taken into consideration was that there was no determination or even prospect of determination of any definite amount by way of compensation. What a willing purchaser would pay to buy the right to receive the compensation must be decided taking into account the surrounding circumstances, the long delay in the finalisation of the award proceedings and the litigation that ensued between the owner and the tenants.

7. The lands in question on the date of death of Nawab Turab Yar Jung did not form part of his estate; they were already acquired and possession was taken nearly seven years prior to his death. The only right he had was the right to receive compensation at the market value. That right was inherited by the accountable persons. The Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, , dealing with this aspect, observed (p. 32) :

"Under section 36 of the Estate Duty Act, the assessing authority has to estimate the value of this property at the price which it would fetch if sold in the open market at the time of the deceased's death. In the case of the right to receive compensation, which is property, where the Collector's award has been made but has not been accepted or has been accepted under protest and a reference is sought or is pending in a civil court at the date of the deceased's death, estimated value can never be below the figure quantified by the Collector because u/s 25(1) of the Land Acquisition Act, the civil court cannot award any amount below that awarded by the Collector, the estimated value can be equal to the Collector's award or more but can never be equal to the tall claim made by the claimant in the reference nor equal to the claim actually awarded by the civil court inasmuch as the risk of hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of this property as on the date of the deceased's death. The assessing authority will have to estimate the value having regard to the peculiar nature of property, its marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date. The first contention of counsel for the appellate, therefore, fails."

8. A Division Bench of this court in *Controller of Estate Duty Vs. Estate of Late Mohd. Sultan*, , following the aforesaid ruling of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, , stated the legal position thus (p. 286) :

"Having regard to the above dicta of the Supreme Court, it must be held that

while the amount awarded by the Collector is a safe index for determining the value of the right to received the compensation and such value can never be less than the said amount, that is not final nor is the claim of the estate-holder or his legal heirs for enhanced compensation final. Neither the ultimate compensation that is awarded by the final court of appeal nor the compensation determined by the court subsequent to the death of the deceased estate-holder can be deemed as final for the purpose of arriving at the principal value of the estate u/s 36. These are all factors to be taken into account. In a given case not merely the amount of compensation but even the right to receive compensation may be in dispute. That against is a factor to be taken into account. For litigating with a view to earn the enhanced compensation, the time spent and the expenditure likely to be incurred are all factors which would weigh with any person if the right to receive compensation were to be put in the market for sale on the date of death. These are all factors which have to be taken into account."

9. In Commissioner of Wealth-tax Vs. G.M. Omar Khan, , the same Division Bench held (p. 548) :

"In a given case, not merely the amount of compensation but even the right to receive compensation may be in dispute. That again is a factor to be taken into account. For litigating with a view to earn the enhanced compensation, the time spent and the expenditure likely to be incurred are all factors which would weigh with any person if the right to receive compensation were to be put in the market for sale on the date of death. Hence, those factors are also relevant even for the purpose of determining the value of the wealth of the assessee for the purpose of assessing the wealth-tax. The Appellate Tribunal was, therefore, right in assessing the value of the wealth of the assessee at rupees fourteen lakhs odd which was paid to him on April 2, 1970. As there is a prospect of the said amount being reduced and there is no prospect of the amount being paid in the near future in the circumstances, no further addition could be made to that amount."

10. Again, in the case of Commissioner of Wealth-tax, Andhra Pradesh Vs. Amatul Kareem, , a Division Bench of this court, after reviewing the case law on the subject, expressed the view that 50% of the entire amount of compensation awarded by the High Court in land acquisition proceedings could be computed as the net wealth of the accountable person; the reasoning adopted was (p. 558) :

"Further, the amount payable under the Land Acquisition Act is subject to appeal to the High Court. Even the right to receive the compensation may be disputed. The time taken for the completion of these proceedings may vary from case to case. Hence, no hard and fast rule could be laid down as to what percentage of the total amount of compensation should be taken as the proper percentage for determining the net wealth of an assessee in a case where the net wealth comprises of the right to receive the compensation. That must necessarily depend, as observed by the Supreme Court, on a consideration of all the relevant factors and circumstances of the case."

11. From the aforesaid rulings, it is clear that there cannot be any hard and fast rule in fixing the value of the right to receive compensation. From the decision of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, , emerges the guiding principle that the risk or hazard of litigation is a factor to be taken into account in fixing the value of the property as on the death of the deceased. Applying the aforesaid principle, we are inclined to think that the view taken by the Tribunal is not unreasonable. By the date of death of Turab Yar Jung, January 10, 1968, the award was not passed; it was passed only five years later on March 26, 1973. But, possession was taken as far back as on May 6, 1961. What is the willing price a person would pay to purchase the value of the right to receive compensation on January 10, 1968 ? By the date of death of the assessee, there was no certainty or even an approximate idea as to how much compensation the Government would fix for the lands acquired. The acquisition had taken place seven years prior to the death of the deceased. Only five years later, the award came to be passed. Different considerations would definitely arise in a case where there was a certainty of the receipt of a definite amount. Parks' principles were worked out only on the basis that there was certainty of receiving a definite amount. The compensation as fixed by this court came to Rs. 12,02,005 (vide its judgment dated August 28, 1978). This amount, by application of Parks' formula, works out to Rs. 3,87,009 as on January 10, 1968. In the determination of the figure at Rs. 3,87,009, no risk factor pertaining to the hazards of litigation was included. That is the reason why the Tribunal allowed a discount of 20% observing that :

"What we have to take into account is what an intending purchaser would pay on the date of death of the deceased to received the final compensation of Rs. 12,02,005 fixed by the High Court by its judgment dated August 28, 1978. It is no doubt true that any intending purchaser would consider the various risks involved in purchasing this right, particularly when the rights of the protected tenants are involved. If these factors are taken into account, we are of the view that it would not be reasonable to fix the value of the right to receive compensation at Rs. 3,87,009 according to the principles laid down in Parks' on Valuations. Though there is no measure to ascertain the nature of risks involved in such matters, we are of the view that it would be reasonable to allow a discount of 20 per cent. on the value fixed according to the principles laid down in parks' on Valuations in order to arrive at the market value of the right to receive compensation as on the date of death of the deceased."

12. This view, we are inclined to think, is reasonable in the circumstances of the case. Not only the hazards of litigation but also the long time-lag between the date of the acquisition and the date of the finalisation of award proceedings culminating in the judgment of the High Court on August 28, 1978, are all factors that must be taken into account in deciding the market value of the right to receive the compensation as on the date of death of the deceased.

13. For the foregoing reasons, we answer the question in favour of the assessee and against the Revenue. No costs.