(1979) 12 AP CK 0009

In the Andhra Pradesh High Court

Case No : Case Referred No. 182 of 1976

Controller of Estate Duty APPELLANT

Vs

Estate of Late Mohd. Sultan RESPONDENT

Date of Decision : 26-12-1979

Acts Referred:
Estate Duty Act, 1953 — Section 36

Citation : (1981) 127 ITR 277

Hon'ble Judges : P.A. Choudhary, J;Madhava Reddy, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; None, for the Respondent

Judgement

Madhava Reddy, J.—One Mohd. Sultan owning about Acs. 109 of land at Premavathipet died on December 16, 1964. Even during his lifetime the State Government issued a notification on February 7, 1964, under the Land Acquisition Act for compulsorily acquiring this land for a public purpose. The deceased claimed compensation for this land at Rs. 5 per square yard. The total compensation payable at that rate would amount to Rs. 26,62,000. The value of the land was estimated by the authorities for the purpose of acquisition at Rs. 10,000 per acre. The Assistant Controller of Estate Duty determined the principal value of the estate at the amount claimed by the deceased as compensation for the land under the Land Acquisition Act. He also imposed penalty u/s 60(1)(c) of the E.D. Act for deliberate understatement of the value of the estate. The accountable person preferred an appeal before the Appellate Controller. The Appellate Controller held that the only right the deceased had at the time of his death was right to receive compensation and not the property acquired. During the pendency of the appeal, an award was made valuing the entire extent of land compulsorily acquired together with the trees thereon at Rs. 55,510. Since the land was in the occupation of protected tenants, the deceased was declared entitled only to 40% of the compensation. The rest was held payable to the protected tenants. Thus, a sum of Rs. 22,204 was awarded as compensation for the property of the deceased which was compulsorily acquired before his death. It was claimed before the Appellate Controller that this sum of Rs. 22,204 should be substituted for Rs. 26,62,000 as the value of the estate of the deceased in respect of that item of property. The heirs of the deceased, however, not satisfied with the compensation awarded by the court on reference, preferred a further appeal and that appeal was still pending when the Appellate Controller disposed of the appeal preferred by the accountable person. The Appellate Controller held that what is includible in the estate is only the compensation receivable by the estate for the lands already acquired by the Government, and as the matter was still pending in the appellate court and had not become final, he directed the Assistant Controller to take the exact amount of compensation that the appellant will receive on its final determination as the principal value of the estate in place of Rs. 26,62,000. The Appellate Controller accordingly allowed the appeal in part. The accountable person carried the matter in appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal on a consideration of the relevant authotities on the point held that "any amount reasonable therefor, or which is awarded by a competent authority cannot be regarded as anything other than the market value of the property which is the measure for the purpose of valuation of a property u/s 36 of the E.D. Act. It is clear law that only assets existing on the date of death and the value of these assets as on the date of death should be included in the estate passing. If any of the assets increased in value subsequent to the death or on account of efforts of the legal descendants, neither this asset nor the enhanced value could be regarded as assets passing on the death of the deceased ". As the land was acquired on September 15, 1964, and the deceased died on December 16, 1964, the Appellate Tribunal took the market value on these two dates to be more or less the same and accordingly determined the principal value of the property at Rs. 22,204 which was the sum awarded by the acquisition authority immediately after the death of the deceased-estate-holder and directed the substitution of that figure for the figure adopted by the Assistant Controller. Thus, the claim of the accountable peson was accepted and the appeal was allowed in part. On these facts, at the instance of the reveue, the question referred u/s 64(1) of the E.D. Act, 1953, for consideration is :

"Whether, on the facts and in the circumstances of the case, the value of the property, viz., the right to receive compensation for the land acquired could be put at Rs. 22,204, the value fixed by the Governmental authorities who were entrusted with the award of the market value for the lands acquired under the Land Acquisition Act or it should be put at any higher figure ? "

2. The land in question was compulsorily acquired by a notification u/s 4(1) of the Act on February 7, 1964. The deceased made a claim on November 5, 1964, for compensation at the rate of Rs. 5 per square yard which would work out to Rs. 26,62,000. The deceased died on December 16, 1964. From these facts, it is clear that the deceased ceased to be the owner and possessor of this property long before he died. The land as such vested in the Government free of all the

encumbrances. As a result thereof the deceased was only entitled to receive; compensation. The.com-pensation for the land acquired was to be determined by the Collector, Land Acquisition, in accordance with the provisions of the Act and the criteria for determining the compensation in accordance with the principles laid down in ss. 23 and 24 of the Land Acquisition Act. These principles are intended to determine the market value of the land as on the date of the acquisition. In addition to the market value, 15% solatium has to be awarded as also interest from the date of taking possession of the land acquired. The principles enunciated in ss. 23 and 24 are intended to arrive at the market value of the land taking into account a willing seller and a purchaser in open market and solatium is awarded for compensating compulsory acquisition of the land. This is done having regard to the consideration paid for the purchase or sale of land similarly situated and with similar advantages and potentialities. Invariably the claim for compensation is rather made in exaggerated terms, for, neither the Collector, Land Acquisition, nor the court on reference made u/s 18 or 30 of the Act, can award anything more than what is claimed by the claimant himself. It is not uncommon to find that the award itself is far below the market value of the land, for, it is generally based on an average rate of land arrived at having regard to the sales of the land within three years of the date of notification. In almost all cases the claimant seeks reference to the court and the compensation is determined depending on the facts and circumstances of each case.

3. Where land is notified for acquisition before the death of the estate-holder, what passes on to the legal heirs of the deceased-estate-holder is not the land itself but the right to receive compensation. The value of the land proposed to be acquired is determined and prevaluation statements are prepared. While the compensation awarded would never be less than the said amount that can hardly bind the parties, for, it is an ex parte determination. The Act itself envisages an enquiry by the Land Acquisition Collector after notice to the persons interested in the land acquired. The Act further makes provision for the persons interested seeking a reference to the court against the award made by the Collector. The award of the Collector is, however, made binding on the acquisition authorities and the compensation as determined under the award is payable to the claimants found to be entitled. That is the minimum payable for the estate of the deceased. If the matter rests at that and no reference is sought to the court then that would undoubtedly be the surest basis for determining the value of the estate where the land is acquired within a few months of the death of the deceased-estate-holder. But where there is a long interval of time between the date of acquisition, the death of the deceased and the passing of the award, what has to be valued for the purpose of determining the liability of estate duty, is not the value of the land but the right to receive compensation for the land already acquired. Section 5 of the Act directs that:

"In the case of every person dying after the commencement of this Act, there shall,... be levied and paid upon the principal value ascertained... of all property...which passes on the death of such person...."

"Property" is defined in Section 2(15) as follows :

" ''Property'' includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method.

Explanation.--The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression ''property'' shall include the debt or right created.

Explanation 2.--The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression ''property'' shall include the benefit conferred by the extinguishment of the debt or right."

4. Section 2(16) defines "property passing on the death" as follows :

" ''Property passing on the death'' includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and ''on the death'' includes ''at a period ascertainable only by reference to the death''."

5. In view of these two definitions the right to receive compensation for the property acquired during the lifetime of the deceased would be "property passing on the death" which is liable to estate duty. There is no dispute in this regard and we are not called upon to examine the same. Section 36 of the E.D. Act lays down as to how the principal value of any property shall be estimated for the purposes of the Act in the following words :

" 36. (1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased''s death.

(2) In estimating the principal value under this Section the Controller shall fix the price of the property according to the market price at the time of the deceased''s death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price."

6. The factor which determines the principal value is the price which it would fetch if sold in the open market at the time of the deceased''s death,. This price

has to be estimated by the Controller. For a property such as the deceased possessed there may be a ready market or not, but yet the principal value has to be determined with reference to the time of the deceased''s death. Since there will be no ready purchasers for the entire property in an open market, this determination has largely to be by way of an estimate. Yet since what has to be estimated is the price, a notional open market has to be envisaged and the principal value arrived at. In the case of compulsory acquisition of immovable property under the provisions of the Land Acquisition Act, since any amount less than what was awarded by the Collector under ss. 9 and 10 read with Section 12 cannot be given to the person interested, that can certainly form a valid basis for arriving at the value of the right of the deceased to receive compensation. The deceased or his legal heirs may not be satisfied with the compensation so awarded and are given the right to seek a reference to the court. Certainly, therefore, their right to receive compensation at a higher rate would also be a factor which should be taken into account in determining the value of this right. None the less as the claim is invariably put at a higher side and may not always be awarded and even if it be awarded, the whole of the said claim cannot be said to be the sole determining factor for assessing the value of the right to receive compensation which alone passes on the death of the estate-holder. Further, if any amount determined by way of compensation by the Collector has to be enhanced, steps are required to be taken by the persons interested or in the event of their death by the legal representatives of the estate-holder before the court to which it is referred and further before the appellate court. Any enhancement would, therefore, depend upon various other variable factors, the efforts of the deceased and his legal representatives, the evidence available and the ultimate determination of the court. Further, the fact that the determination of this enhanced amount of compensation itself would take a very long time and the subsequent deposit of this amount and the actual realisation of the same by the heirs of the deceased would take a considerable period of time are again factors which cannot be ignored in determining the value of the right to receive compensation which alone passes on the date of the death of the estate-holder. A Bench of this court in Controller of Estate Duty Vs. Estate of Late Rani Ranganayakamma (by accountable persons), has held with reference to the compensation determined payable under the abolition of jagirs which devolved on the accountable persons as follows (Headnote):

"That under the provisions of the Hyderabad (Abolition of Jagirs) Regulations, 1358F., and the Hyderabad Jagirs (Commutation) Regulations, 1359F., the right to get compensation devolved on the accountable persons only as heirs of the deceased and they have no other right, title or interest in the commutation sum. u/s 2(16) of the Estate Duty Act, passing of the property need not necessarily be immediately on the death of the deceased person; passing can take place even after an interval. It need not even pass certainly ; it may pass contingently as well. The enhancements made subsequent to the death of the deceased were clearly as per provisions of the Commutation Regulations and in respect of the jagir and the right to get compensation therefore owned and left by the deceased person. Though they were made at the instance of the heirs, they are referable to the right of the deceased person to receive the commutation amount for the jagir which belonged to her and which right devolved on the heirs under the Abolition Regulations. The enhancements cannot be called an improvement made by the heirs or an enhancement on account of the changes in the market value. It, therefore, follows that estate duty is leviable on the basis of the commutation sum fixed finally on October 9, 1961. Section 36 of the Act has no application inasmuch as the enhancement in the instant case was not made on account of the changes in the market values but only with reference to the provisions of the Commutation Regulations.

Whether the entire amount of compensation was fixed and later altered or only a part of it was fixed and the other part was fixed later, the question is whether the deceased was entitled to the entire compensation amount on the date of death."

7. The final amount that was determined as payable to the estate-holder or his legal representatives was held to be the basis for determining the liability for tax under the E.D. Act. Leave against this judgment was granted by this court. In Mrs. Freny Rashid Chenai Vs. Assistant Controller of Estate Duty, , which is also a matter referred to this court in respect of land acquired under the Land Acquisition Act where the accountable person refused to accept the award made by the Special Deputy Collector as final and sought a reference to the civil court for enhancement of compensation and the civil court enhanced that compensation. The court held that "the right to receive the compensation for the lands acquired by the Government was a valuable right which could be sold in open market. Therefore, it was property which passed on the death of the deceased. It cannot be contended that the accountable person had received the compensation in her own right as it was received in respect of lands belonging to the deceased ". The enhanced compensation awarded by the court on appeal was made the basis for rectifying the assessment of estate duty and when notice was issued the same was challenged before this court. The court held (p. 46):

"By the nature of acquisition proceedings under the Land Acquisition Act, the owner of the lands acquired by the Government gets a right to receive compensation for those lands at their market value on the date of acquisition. The right of the owner, whose lands have been acquired by the Government, springs directly from the acquisition of the lands by Government. It is an indivisible right. There are no two rights, one to receive the compensation and the other to receive extra compensation."

8. In that view it held that it is this property which passed on the death of the deceased and in view of the large discrepancy between the award made by the Special Deputy Collector and the civil court, there was a mistake apparent from the record which the assessing officer had jurisdiction to rectify i u/s 61 of the Act and it accordingly held that the notice issued as to why the assessment should not be rectified was valid and legal. The assessee carried the matter in

appeal which was allowed by the Supreme Court in Civil Appeal No. 2205/72 (Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others,) holding that this was not a case in which the power to rectify the assessment u/s 61 could be exercised. In the course of that decision the Supreme Court held (p. 30):

"...the lands which were the subject-matter of acquisition proceedings could not be regarded as forming part of the estate of the deceased on the relevant date and could not pass on his death inasmuch as those lands had vested in the Government long prior to his death but the right to receive compensation at market value on the dates of the relevant notifications unquestionably accrued to the deceased which was property and it would be such property that would pass on the death of the deceased. That such right is property is well settled...since the lands were lost to the estate of the deceased before the relevant date, namely, the date of death, it would be the right to receive compensation under the Land Acquisition Act that will have to be evaluated under the E.D. Act......Once the award is made (at p. 31) "the right to receive compensation must be regarded as having merged in the awards, the determination having been made by a statutory public official and what the claimants would be left with thereafter was merely a right to agitate the correctness of such determination and this right to claim further compensation being merely a right to litigate was no asset or property and further that such right would become asset or property only after the Civil Court finally adjudicated upon such claim."

9. The Supreme Court approved the High Court''s observation that there are no two separate rights, one a right to receive compensation and the other, a right to receive extra or further compensation. The Supreme Court went on to repel the contention that after the award is made the right to compensation is destroyed or ceases to exist or is merged in the award or what is left with the claimant is a mere right to litigate the correctness of the award, and held (p. 32):

"The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in a Civil Court....When a claimant dies in a pending reference his heirs are brought on record and are permitted to prosecute the reference ...It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of relevant notification) as on the relevant date (being the date of death under the Estate Duty Act and valuation date under the Wealth Tax Act). u/s 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, the 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 or 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."

10. The Supreme Court finally held (pp. 32 & 33):

"The assessing authority will have to estimate the value having regard to the peculiar nature of the property, its marketability and the surrounding circumstances including their risk or hazard of litigation looming large at the relevant date."

11. 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 receive 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 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 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 the market for sale on the date of death. These are all factors which have to be taken into account. The Appellate Tribunal while determining the principal value of the estate u/s 36 at Rs. 22,204 has not taken into account the fact that the right to receive enhanced compensation, though not at the rate at which it is claimed but, at least at some higher amount than what is actually now awarded on reference by the civil court, has to be taken into account and that has been ignored. There is no dispute that the land being in the possession of protected tenants they are entitled to 60% of the compensation that is awarded or that may be found awardable in future and only 40% thereof is payable to the accountable persons. That would undoubtedly have to be taken into account along with other factors referred to above. The determination of the right to receive compensation for the land put at Rs. 22,204, in the circumstances of the case, has to be revised having regard to the several factors referred to above. These factors have to be taken into consideration while determining the enhanced compensation payable to the accountable persons and on that basis the principal value of the property that has passed to the accountable persons determined. This question is answered accordingly in favour of the revenue and against the assessee as indicated above.

