(1975) 09 MAD CK 0029

In the Madras High Court

Case No : Tax Case No. 293 of 1969 (Reference No. 107 of 1969)

Controller of Estate Duty APPELLANT

Vs

G. Parthasarathy Reddiar and Others RESPONDENT

Date of Decision : 02-09-1975

Acts Referred:

Estate Duty Act, 1953 — Section 11, 11(1), 2(15), 40, 7
Land Acquisition Act, 1894 — Section 4(1)

Citation : (1975) ILR (Mad) 319 : (1977) 106 ITR 873

Hon'ble Judges : V. Sethuraman, J;V. Ramaswami, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

Sethuraman, J.—This is a reference u/s 64(1) of the Estate Duty Act relating to the inclusion of two amounts of Rs. 1,27,653 and Rs.

10,663 in the principal value of the estate of the deceased. One Govinda Reddiar died on 5th June, 1963. The aforesaid two amounts relate to

two properties covered by a partition deed executed on 7th May, 1960, between the said Govinda Reddiar and his three sons, Jayarama,

Balarama and Parthasarathy. The circumstances relating to this partition have been set out in the partition deed itself and we may briefly refer to

them.

2. Govinda Reddiar started in the early part of this century a business, which prospered in the manufacture and sale of bricks, tiles, etc., at

Ekattuthangal and other places. The business was treated as a joint family business and from the income of the business, various items of

immovable properties were acquired. On account of advancing age and loss of eye-sight, Govinda Reddiar was unable to attend to the business

completely and he, therefore, constituted a partnership in 1940 with his sons for conducting the said business. This partnership continued up to

June, 1954, when, because of differences among the parties, it was dissolved. The parties were given liberty to carry on their separate businesses

thereafter. The parties had then agreed in writing to effect division of the immovable properties belonging to the family. The parties thus became

divided in status in 1954 and started living separately and were since then enjoying the joint family properties as separated members. There were

differences among the parties regarding the actual division of the properties. Parthasarathy filed O.S. No. 752 of 1957 in the City Civil Court for

taking accounts of the dissolved partnership. He filed also O.S. No. 2793 of 1959 for setting aside the sale of a property in Maharaja Surya Road,

Pithapuram Nagar, Alwarpet, Madras, effected in 1959 by Govinda Reddy on the footing that it was his (Govinda Reddy''s) self-acquired

property. Parthasarathy''s stand was that it was joint family property. It was in the midst of these disputes considered to be prudent and beneficial

in the interests of the welfare of all the members of the family that they (these disputes) should be settled amicably. The terms so amicably agreed

to were reduced to writing and formed the partition deed of 7th May, 1960.

3. Under the partition, Govinda Reddiar was allotted the properties described in schedule ""A"". One of the properties allotted to him under

schedule ""A"" consisted of the family bungalow in Saidapet. Clause 3 of the partition deed relating to it ran as follows:

3. The first party shall be entitled to possess and enjoy the family bungalow described in part 3 of schedule ''A'' hereto together with all the

outhouses and superstructure standing within the compound wall. He shall be entitled to let the whole or any portion of the said property, to collect

the rents therefrom and to appropriate the net income to his own use and benefit, If during the lifetime of the first party the said property is acquired

by the Government or any public or local authority the net compensation amount which may be awarded for the same shall be divided into four

equal shares and each of the parties hereto shall be entitled to an absolute interest in the one-fourth of the compensation amount and to receive the

same. If the said property is not so acquired during the lifetime of the first party, the said property shall be taken by the second to fourth parties in

three equal shares after the lifetime of the first Party with absolute rights therein. None of the second to fourth parties shall be entitled to reside in

the said property during the lifetime of the first party. They shall deliver possession of the portions of the said property which is now in their

occupation or possession within a period of four months from this date. If they fail to do so the first party shall be entitled to take possession of the

same and the other party do hereby agree not to obstruct him in taking possession of the same. The first party shall also be entitled to take

necessary legal proceedings to obtain possession of the same from the other parties hereto. If any one of the parties 2 to 4 is permitted by the first

party to occupy a portion of the bungalow, the other parties will be entitled to occupy similar portions of the bungalow.

4. This clause is reproduced in extenso as the controversy between the parties in this reference depends to some extent on the construction of the

clause and its legal effect. In part 3 of schedule ""A"" the description of this property is given. This property is bounded on 3 sides by other

properties belonging to the same parties which had been acquired by the Government at that time. This property will, hereafter, be referred to as

the Saidapet property for convenience.

5. It may be seen that in Clause 3 extracted above, there is reference to the consequence of the acquisition of the property by the Government. It

is provided that if, during the lifetime of Govinda Reddiar, the said property was acquired by the Government or any public or local authority, the

net compensation amount, which might be awarded for it, should be divided into four equal shares, and each of the parties would be entitled to an

absolute interest therein. The apprehension of the parties was justified by the later events. As regards this property a notification u/s 4(1) of the

Land Acquisition Act was published on 23rd May, 1962. Declaration u/s 9 of that Act was notified on 5th November, 1962, and an award was

passed u/s 11 on 29th July, 1963. In the award the compensation awarded was Rs. 1,30,343''89. As the parties here failed to deliver possession

voluntarily, police help was sought. At the time of taking possession, it was noticed that certain items of structures were found missing. The

compensation awarded was for the building with all the doors and windows, etc., remaining intact. The value of the items that had been tampered

with was estimated at Rs. 2,526.03. This amount was deducted from the compensation awarded and it is the balance after deducting this amount

from Rs. 1,27,653.06 that was deposited in the court under sections 30 and 32(2) of the Land Acquisition Act.

6. Govinda Reddiar had made a statement to the Land Acquisition Officer on 7th December, 1962, that the entire compensation due from the

property had to be divided into four equal shares and that he was entitled to receive one of the shares. The three sons, Balarama, Jayarama and

Parthasarathy, also gave statements to the Land Acquisition Officer saying that each of them was entitled to one-fourth of the entire compensation.

They wanted the respective payments being made to them. Accordingly, the sum was apportioned and paid to Govinda Reddiar and his three sons

in equal shares.

7. The Assistant Controller of Estate Duty went into the question as to whether the sum of Rs. 1,27,653.06 was dutiable. He found that the

property was acquired only after the death of Govinda Reddiar and that he continued to enjoy the life interest over the entire property. He,

therefore, held that there was a passing of the property by virtue of the provisions of Section 7 of the Act. As the interest of the deceased extended

to the entire income from the property, in accordance with the provisions of Section 40 of the Act, he included the entire value and that is how he

took Rs. 1,27,653 for assessment.

8. Before proceeding further about this item, we would set out the facts relating to another property allotted to Govinda Reddiar on partition. That

was known as Reddithottam and Clause 4 of the partition deed dealing with this property ran as follows :

4. The property known as'' Reddithottam'' and described in part 4 of schedule ''A'' hereto shall be in the possession and enjoyment of the first

party (Govinda Reddy) during his lifetime. After his lifetime it shall be taken by the second to fourth parties (sons) in three equal shares with

absolute rights therein.

9. The dates of the proceedings preceding the award are not available on record, but they are not really material. The award in this case under the

Land Acquisition Act was made on 14th September, 1962, fixing a sum of Rs.

10,662.90. It may be seen that this date fell within the lifetime of

Govinda Reddiar, the deceased.

10. It was clear to the Assistant Controller that the deceased had an interest for life over this property known as ""Reddithottam"" and that the life

interest extended to the compensation amount also. He considered that ""the distribution of this amount in September, 1962, amongst the three sons

of the deceased was clearly caught by the provisions of Section 11 of the Act which roped in limited interest disposed of within a certain period

before death.

11. The accountable person appealed against the inclusion of these two amounts, viz., Rs. 1,27,653 and Rs. 10,663 relating to the Saidapet and

Reddithottam properties in the estate duty assessment. The Appellate Controller confirmed the inclusion of the aforesaid two amounts by reference

to sections 7 and 11, respectively. On further appeal, it appeared to the Tribunal that the Saidapet property had been left undivided by the parties

at the time of partition in 1960 and that as it was the joint family property, only one-fourth share in it could be deemed to pass u/s 7 of the Estate

Duty Act. As regards Reddithottam, the Tribunal''s view was that though in the partition deed it was contemplated that the deceased was to be in

possession and enjoyment of the said property during his lifetime, the conduct of the parties when he was alive evidenced a modification of the

arrangement regarding this property.

12. Against the order of the Tribunal, the Controller of Estate Duty has obtained a reference of the following two questions :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that only one-fourth share in the

compensation amount received in respect of the property at Saidapet was includible in the dutiable estate of the deceased ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that no part of the compensation

received in respect of Reddithottam property was includible in the dutiable estate of the deceased ?

13. We shall deal with each of the questions separately. As regards Saidapet property the submission for the Controller was that the property itself

was acquired after the lifetime of the deceased and that the contingency of the acquisition during the lifetime involving the consequences of division

of the compensation in four equal shares did not arise. It was contended that the material date for this purpose was either the date of the award

under the Land Acquisition Act or the taking over of possession by the authorities concerned which would ordinarily be after the award, and that in

this case the award and necessarily taking of possession was after the lifetime of the deceased, so that his rights tinder the partition deed with

reference to this property were unaffected. The learned counsel for the accountable person submitted that even from the time of the notification u/s

4 or the declaration u/s 6, the contingency contemplated in the partition deed had come into effect so that the deceased had lost his exclusive

interest in the property. The submission was that after the acquisition proceedings had started the deceased could only look to the one-fourth share

of the compensation amount and that the share in the compensation amount alone was dutiable.

14. A brief reference may now be made to the relevant provisions and the proceedings under the Land Acquisition Act. Section 4 of the Act

contemplates publication of preliminary notification whenever it appeared to the appropriate Government that land in any locality was needed or

was likely to be needed for any public purpose. On such notification any officer either generally or specially authorised in this behalf had power to

enter upon and survey the property, to dig or bore into the sub-soil and to do all other acts specified in Section 4(2) of the Act. In this case, the

State Government considered the lands covered by the Saidapet property to be needed for an industrial estate. Any person interested in any land

notified u/s 4(1) may object to the acquisition of the land or of any land in the locality to the Collector. The Collector would then submit a report

after making due enquiry. The decision of the Government on such a report is final (see Section 5-A). When the appropriate Government is

satisfied after considering the report u/s 5-A that any particular land is needed for any public purpose, then a declaration is to be made to that

effect u/s 6. The Collector can thereupon be directed to make an order for acquisition of the land u/s 7. Section 8 contemplates the Collector

causing the land to be marked out and measured and a plan being made. u/s 9 the Collector has to give public notice stating that the Government intended to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 contemplates

an enquiry and an award being made by the Collector. u/s 12, such award filed in the Collector''s office is to be taken as final and conclusive

evidence, as between the Collector and the persons interested, of the true area and value of the land, and of the apportionment of the

compensation among the persons interested. Section 16 provides for the Collector taking possession of the land when he had made an award u/s

11. On his taking possession, the property will vest absolutely in the Government free from all encumbrances. By Section 17 in case of urgency,

power is given to take possession before the award of compensation by the Collector and power is also given to dispense with the enquiry u/s 5-A

of the Act. Any person interested in the property may require u/s 18 that the matter regarding the compensation be referred for determination of

the court. Section 48 authorises the Government to withdraw from the acquisition of any land of which possession had not been taken.

15. The question as to the effect of the provisions of the Land Acquisition Act and the rights of the owners of the property acquired has been the

subject of consideration by the Supreme Court. In dealing with the effect of an award the Supreme Court observed in Dr. G.H. Grant Vs. State of

Bihar, as follows :

An award by the Collector is strictly speaking an offer made to the person interested in the land notified for acquisition : the latter may accept the

offer, but is not bound to accept it. He may ask for a reference to the court for adjudication of his claim for adequate compensation. The person

interested may even accept the compensation under protest as to the sufficiency of the amount and ask for a reference. It is also open to the

Government, even after the award is made, but before possession is taken, to withdraw from acquisition of any land in exercise of the powers

conferred by Section 48 of the Land Acquisition Act. It is, therefore, not the award of the Collector which is the source of the right to

compensation ; the award quantifies the offer of the appropriate Government, which is made because the Government has taken over, or intends to

take the land of the owner under the authority conferred by the Land Acquisition Act."" (Underlined by us).

16. In Sarju Prasad Saha Vs. The State of U.P. and Others, , the Supreme Court again observed as follows :

The scheme of the Act is that after notifying that land is needed or likely to be needed for a public purpose, the Government directs the Collector

to hold an enquiry into the objections which may be raised by persons interested in the land notified, and it is after the enquiry is made and the

objections of persons interested in the land are considered, that the notification that the land is needed for a public purpose may issue. The right of

the owner of the land is extinguished when Government takes possession of the land after an award of compensation is made."" (Underlining ours).

17. This court in State of Madras v. Vasudevan Potti ILR [1970] 2 Mad 546 has pointed out that there was passing of title to the property only

when possession thereof was taken from the owner by the Government u/s 16 of the Land Acquisition Act.

18. The provisions of the Land Acquisition Act themselves are clear to show that till possession was taken the proceedings had only a tentative

character, as the Government had a right to withdraw from the acquisition till possession was taken. When once possession was taken, then the

rights of the owner with reference to the property are extinguished and he could look only to the compensation. In the present case, the award in

respect of the Saidapet property was made only on 29th July, 1963, after the death of Govinda Reddiar, the deceased. Therefore, during his

lifetime the property continued in his possession and enjoyment. The contingency contemplated by the partition deed, viz., of the acquisition of the

property and the consequence of a division of the compensation amount did not materialise on the facts herein, during the lifetime of Govinda

Reddiar. Clause 3 of the partition deed clearly provided that he was entitled to possess and enjoy the property with power to let out the whole or

a portion thereof during his lifetime. Any income derived from the property was to be for his own use and benefit. It is only in the event of the

property being acquired by the Government during his lifetime, that it was contemplated that there would be a division in the compensation amount

in four equal shares. The acquisition, on the facts herein, took place only after his lifetime and, therefore, the contingency contemplated by the said

clause had not materialised so as to bring into operation the clause relating to the division of the compensation amount. On the date of his death, viz., 5th June, 1963, the property remained his. Consequent on his death, the property Jell to be divided in equal shares by his sons. Only if the

acquisition had been completed during the lifetime of Govinda Reddiar, the contention of the accountable person that he was entitled to only one-

fourth share could be accepted. As the acquisition was only after his lifetime, we are unable to accept this submission.

19. The learned counsel for the accountable person brought to our notice a decision of this court in State of Madras Vs. Balaji Chettiar and

Others, , where it was observed that even at the stage of Section 9 the analogous relationship of purchaser and vendor was established and that

only if the acquisition was proceeded with there would be the right of compensation. This decision is inconsistent with the decision of Dr. G.H.

Grant Vs. State of Bihar, . The relevant passage, as already extracted from page 409 of that decision, would clearly go to show that the award by

the Collector was strictly speaking only an offer made to the persons interested in the land notified for acquisition. When once the offer itself

emanated at the stage of the award, the notice to the interested persons u/s 9 cannot give the persons the status of vendors of the property. As the

relevant passage to which our attention was drawn by the counsel is inconsistent with the decision of the Supreme Court, we do not think it proper

to follow it.

20. There is no dispute that except in the case of the contingency of the acquisition, Govinda Reddiar had a life interest in the said property. He

was in a position to occupy himself or to let out the family bungalow. Only in case he allowed one of the sons to occupy, the other sons could claim

a right to live in the same property. As this contingency did not take place during his lifetime, the deceased continued to have a life interest with

reference to this property till he died. Section 7 of the Estate Duty Act was thus brought into operation. u/s 7, the property in which the deceased

or any other person had an interest ceasing on the death of the deceased is to be deemed to pass on his death to the extent to which the benefit

accrued or arose by the cesser of such interest. This provision is attracted as the deceased had an interest ceasing on his death with reference to

the Saidapet property. The valuation of this property cannot also be in dispute, as u/s 40 of the Estate Duty Act the value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased is, in case where the interest extended to the whole income of the

property, the principal value of the property. The principal value of the property in the present case has been taken at the same figure as the

amount of compensation awarded by the Land Acquisition Officer. Thus, the assessment u/s 7 cannot be validly resisted.

21. The Tribunal has proceeded on the basis that this property has been left undivided by the parties, so that it continued to retain the character of

the joint family property involving the consequences of each of the coparceners being entitled only to a share therein. This conclusion is opposed to

Clause 20 of the partition deed, which says that all the parties agreed and declared that they had all become divided from each other in status and

property. Clause 20 is thus inconsistent with any property having been retained as joint family property. The property has been the subject of

division in the manner contemplated by Clause 3 of the partition deed. We have to and do hold that the deceased had an interest in the property

which ceased on his death and, that, therefore, it came within the scope of Section 7 read with Section 40 of the Act.

22. We now turn to Redditottam property. We have already seen that this property was acquired during the lifetime of the deceased. In the

partition deed it was provided that Govinda Reddiar was to be in possession and enjoyment of the property during his lifetime and that after his

death it should be taken by his three sons in equal shares with absolute right. As the property was acquired even during the lifetime, the question

that arises is whether the clause regarding the life operated even with reference to the substituted property. In Sri Ravu Janardhana Krishna Ranga

Rao Bahadur Vs. The State of Madras and Others, this court, which dealt with the question as to whether the impartibility of the estate extended

to the compensation payable under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, pointed out that the principle that

conversion would not alter the quality or nature of the estate was of universal application. Section 7 of the Act deals with an interest ceasing on the

death with reference to any property. The property has been defined in Section 2(15) of the Estate Duty Act as including the sale proceeds and

also any property converted from one species into another by any method. Even though this is not a case of a sale as such, still it would come within the scope of the expression ""any property converted from one species into another by any method"" in Section 2(15). The interest of

Govinda Reddiar would, on the facts herein, attach to the compensation payable under the Land Acquisition Act. When once it is found that the

interest of the deceased extended to the substituted property, viz., the compensation amount, then the consequences contemplated by Section 11

of the Estate Duty Act would follow. Where an interest ceasing on death is disposed of or had determined, whether by surrender, assurance,

divesting, forfeiture or in any other manner, then under Clause (b) of Section 11(1) of the Act the property in which the interest subsisted is to be

deemed to pass. In other words, if Section 7 would have applied to the compensation if it had remained intact, then Section 11(1)(b) requires us

not to give effect to any dealing with such property during the statutory period. The statutory period is two years. If the compensation had been

received more than two years prior to the death of Govinda Reddiar and if it had been partitioned amongst the parties, then Section 11(1)(b)

would not have come into operation. But, as the compensation was divided within the statutory period, Section 11(1)(b) is attracted. Therefore,

the sum of Rs. 10,663 was also dutiable.

23. In the result, we answer both the questions in the negative and against the accountable person. The Controller will have his costs. Counsel fee

Rs. 250.

