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(1983) 05 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Reference No. 1 of 1977

Controller of Estate Duty APPELLANT

Vs

Smt. Kamla Wati RESPONDENT

Date of Decision : 03-05-1983

Acts Referred:
Land Acquisition Act, 1894 — Section 4(1)

Citation : (1984) 40 CTR 80 : (1984) 145 ITR 669 : (1984) 16 TAXMAN 73

Hon'ble Judges : S.P. Goyal, J;Prem Chand Jain, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajai Mittal, for the Appellant; O.P. Sharma and A.L. Bansal, for the Respondent

Judgement

Prem Chand Jain, J.—The Income Tax Appellate Tribunal. Amritsar, has referred the following questions of law said to arise out of its order dated 22nd April, 1977 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the deceased did not have the right to receive compensation at the time of his death as he was the owner of the land on the date of the death ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the compensation was not includible in the estate of the deceased ?"

2. In order to decide the aforesaid questions, it is necessary to notice certain salient features:

One Bhagat Ram Bahri died on 12th January, 1972. The deceased was the owner of agricultural land measuring 22 kanals 2 marla situate at Jullundur, which was acquired by the Collector, Jullundur, on 8th January, 1974. Shrimati Kamla Wati, after the death of Bhagat Ram Bahri, filed the accounts of his estate as an accountable person. In the return the value of the acquired land was shown at

Rs. 80,000. On 22nd February, 1973, a revised return was filed showing the value of the land as "nil", on the ground that the land had been acquired by the State Govt. and the compensation payable thereon was announced by the State Govt. after the death of the deceased and as such no estate duty was leviable thereon. The Asst. Collector did not accept this plea. He took the view that the land had been acquired on 21st May, 1968, when notification u/s 4(1) of the Land Acquisition Act, 1894, was issued, and as such the amount of compensation was liable to be added in the estate of the deceased. Consequently, a sum of Rs. 1,33,214 was added in the estate of the deceased.

3. In the appeal filed by Shrimati Kamla Wati, the Appellate Controller upheld the order of the Asst. Controller.

4. Still dissatisfied Shrimati Kamla Wati filed a second appeal before the Appellate Tribunal. On the contentions advanced the question posed by the Tribunal was whether the deceased had acquired a vested right to receive compensation from the State Govt. and whether his land was acquired by the State Govt. before the date of death. On consideration of the entire matter, the Tribunal found as follows :

"Notification u/s 4(1) of the Land Acquisition Act, 1894, was issued on May 21, 1968. The death occurred on January 12, 1972. The award was made by the Collector on January 8, 1974. The argument of the accountable person''s counsel is that the issue of notification u/s 4(1) cannot tantamount to making acquisition, which means deprivation of ownership and possession. He also drew our attention to the purports of the award dated January 8, 1974, which are as follows :

''The land shall vest absolutely in favour of the Provincial Government (Transport Department) free from all encumberance from today.''

From the aforesaid purports of the award, the counsel for the accountable person wants to establish that the acquisition became complete on January 8, 1974, by means of the award and before that there was no acquisition and the deceased continued to be the owner of the agricultural land until his death and, thereafter, the title to the land was vested in his heirs. On the other hand, the revenue representative argued before us that the possession was taken by the State Government on March 27, 1970, and, thereafter, the deceased ceased to be the owner in possession of the agricultural land. We have gone through the provisions of the Land Acquisition Act, 1894, and we have not come across any provision in the said Act under which possession of the land could be acquired by the State Government before the conclusion of the acquisition proceedings. Section 4 simply gives the right of entry to the officials of the State Government. However, the award purports that the possession was taken from the deceased on March 27, 1970. We do not know under which provision such possession was taken by the State Government from the deceased. However, we proceed in the matter taking it for granted that the deceased was dispossessed on March 27,

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1970. The question is what is the effect of such dispossession. The law is clear that deprivation of possession does not tantamount to acquisition. Acquisition means deprivation of ownership and possession. Section 4(1) purporting to issuing a notification simply means that the State Government made its intention clear that the same wanted to acquire the land notified u/s 4. Proceedings initiated u/s 4 did not mean that the acquisition proceedings are complete and the owner of the land has been deprived of possession and the land. Simply, by virtue of the proceedings initiated u/s 4(1) of the Land Acquisition Act, it cannot be said that the property vested in the State Govt. and the owner of the land acquired the vested right to claim compensation. Moreover, the award dated January 8, 1974, does make it clear that the land shall vest absolutely in favour of the Government from the date onwards. The purports of the award themselves negative the contention of the revenue representative that the land was acquired by the State Government on March 27, 1970, when the deceased was dispossessed from the land. It clearly appears to us that the land was not acquired until the date of death and the deceased continued to be the owner thereof until his death. He may not be in possession on the date of his death, but that does not mean that his land was acquired by the State Government and he acquired a vested right to receive the compensation from the State Government on and before the date of his death. There is no evidence on the record to show that the deceased was divested of his rights on and before the date of his death. It being so, we hold that the compensation which was awarded by the State Government much later could not be included in the estate of the deceased.

We posed a question to the revenue representative as to what would have been the position if the Assistant Controller had completed the proceedings before the date of the award. It is a coincidence that the proceedings were completed by the Assistant Controller after the date of award and then he came to know the exact amount payable by way of compensation to the heirs of the deceased. His answer is that in that event the open market value of the land would have been taken into consideration. If it is so, then the mere fact that the proceedings were completed by the Assistant Controller after the date of award will not change the law. As on the date of death, the deceased was the owner of the land and as he did not acquire the right to receive compensation at that time, the amount of compensation could not be included in the estate of the deceased."

5. Consequently, the appeal was allowed and the order of the Appellate Controller was set aside. As earlier observed, on the application of the Revenue u/s 64(1) of the E.D. Act, 1953, the aforesaid two questions have been referred to us for our decision.

6. It may be observed at the outset that it was conceded by Mr. O.P. Sharma, learned counsel appearing for the accountable, person that on the date of death, the deceased was the owner of the land in dispute and that he was entitled to receive compensation. It is in the light of the aforesaid concession that the answer to the two questions has to be found out. Now, if the deceased was the

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owner of the land on the date of his death, then he was certainly entitled to receive compensation.

7. The question that now arises for consideration is whether the amount of compensation which was determined after the death of Bhagat Ram Bahri could be included in the estate of the deceased. In the wake of the concession made, the answer is not far to seek. The deceased was the owner of the land on the date of his death and was entitled to the compensation. That being so, the compensation was certainly includible in his estate.

8. In this view of the matter, we decide question No. 1 to this effect that the Tribunal was correct in law in holding that the deceased was the owner of the land on the date of the death, but the Tribunal was not correct in law in holding that the deceased did not have the right to receive compensation at the time of his death.

9. On question No. 2, we hold that the Tribunal was not correct in law in holding that the compensation was not includible in the estate of the deceased.

10. In the circumstances of the case, we make no order as to costs.

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