

(1965) 09 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 324, 325, 326, 418, 419, 935, 1136, 1137, 1432, 1433, 1434, 1435, 1436 and 1437 of 1965

Deep Chand Jain

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 24-09-1965

Acts Referred:

Constitution of India, 1950 — Article 227

Uttar Pradesh Large Land Holdings Tax Act, 1957 — Section 12, 4

Citation : AIR 1966 All 412

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Ashoke Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—In this group of writ petitions the main questions raised are common. The facts requisite for the decision of the common questions are also similar. All these can conveniently be decided by one judgment.

2. The petitions are under Article 226 of the Constitution. They pray that the orders of the authorities constituted under the U. P. Large Land Holdings Tax Act, 1957 be quashed.

3. In response to notices served on the petitioners u/s 7(2) of the Large Land Holdings Tax Act, the petitioners filed returns showing the annual valuation of their land holdings. The assessing authority did not accept the returns and called upon the petitioners to prove it. The petitioners filed oral and documentary evidence in support of their case that certain disputed areas of land were not theirs but were the holdings of their wives or sons or brothers in view of a partition of the joint family properties between the members of the family, by a partition decree or by a will or by a partition deed. In some cases the petitioners urged that they had transferred the land to others and that they were not liable

to be taxed for such areas.

4. The assessing authority did not accept the petitioners' case. In its view mere partition by a decree or deed or sale by a registered deed was insufficient, but that the petitioners must, in addition, prove that the partition or sale was recognised in the revenue records and that there was a de facto separation of management and cultivation of the holding. The petitioners went up in appeal but the Commissioner upheld this view. The petitioners thereafter filed a revision u/s 12 of the Act before the Board of Revenue. Before the Board of Revenue reliance was placed by the petitioners on a Division Bench decision of this Court in *Mohan Lal v. State*, reported in 1962 All LJ 842.

5. Till this decision came, the Board of Revenue had taken the view that the holding tax has to be levied on a landholder for the entire area recorded in his name or in the names of the members of his family, in the revenue papers; and that it is immaterial whether any transfer has taken place unless the transfer is followed by an entry in the revenue records in favour of the transferee. (See *Abdul Rashid Khan v. State* 1961 RD 118 . This view was over-ruled by the High Court in *Mohan Lal's* case 1962 All LJ 842. Desai, C. J. speaking for the Bench observed:

"What is clear from Section 4 is that the petitioner was liable to be assessed to holding tax on the annual value of the aggregate of all land held or occupied by him on 1-7-1957. It is immaterial whether he held or occupied it in his own name or in the names of his sons. The question in whose name the land was held or occupied will not arise if it was not held by him..... The Commissioner and the Board of Revenue have clearly gone wrong in taking everything upon the entries in the village records. The words "whether in his own name etc." did not make entries in the village records relevant when he was not found to have title or possession..... A landholder who has neither title or possession over land, cannot certainly be said to occupy it merely because his name is recorded in the village records, but he also cannot be said to hold it. The *lekhal's* act of recording his name wrongly in the village records cannot be said to be his act of holding the land. The essential question to be considered was whether the land was held or occupied by the petitioner on 1-7-1957 or not; if it was answered in the affirmative it did not matter whether his name was recorded or his son's, and if it was answered in the negative, no further question arose and the land was not to be included in his land holding."

In effect this decision ruled that revenue records are not decisive for finding whether a holding was held or occupied by the landholder; the reality has to be found out.

6. With respect to the binding efficacy of this Court's decision in *Mohan Lal's* case 1962 All LJ 842, the Board of Revenue observed as follows in its judgment disposing of the revision petition of *Raja Sheopati Singh*, who is the petitioner in Civil Misc. No. 1432 of 1965:

"The judgment of the Hon"ble High Court was passed on 17-5-1962. This judgment cannot have retrospective effect. Assessments were made in 1959 and 1960 while orders in appeal were, passed in 1960 and 1961. The orders of the Hon"ble High Court were passed in 1962. The new interpretation of law cannot be given retrospective effect. Till 1960 and 1961 the interpretation of law was that the recorded entries should be the guiding factor in coming to the conclusion whether a person was a landholder or not. It has also been held by the Board of Revenue in 1964 RD 161, Sampuran Singh v. State, that a decision on a point of law in accordance with the prevalent interpretation of law at the time of decision is not to be regarded as a wrong exercise of jurisdiction in the light of a subsequent interpretation of law. These cases must, therefore, be judged according to the law as it was interpreted till 1961 and not according to interpretation of law as given by the Hon"ble High Court subsequently on 17-5-1962."

7. Similar view has been taken by the Board of Revenue in deciding the revisions in the case of other petitioners all of which were dismissed. This view of the Board of Revenue raises the following questions:

(1) What is the effect of declaration of law by a Court?

(2) Is the Board of Revenue entitled to interfere in a revision where it finds that the authorities below it have acted contrary to the declaration on the question whether a particular land was a taxable holding or not?

8. The incidents and effect of a law made by the law-making authority are fundamentally different from the declaration of law by a court, when a law is made or enacted it comes into existence for the first time; it has to be imposed. But unlike a natural born, it does not automatically breathe life from the moment of its birth. Its maker, for instance, the Legislature, has to decide the time when the law will start operating. The Legislature may intend that the law will operate from the date of its birth or from some earlier or later date. The law thus operates prospectively or retrospectively, as the Legislature wills.

9. The courts while deciding cases do not make law. When the courts interpret any law they only explain what the pre-existing law is. They do not create or impose it. The courts do not possess the power to say that its view of the law will hold good from a date of its choice or for a period of time set by itself. That will in substance amount to amending the law from time to time. That is a power which vests exclusively in the law-making authority and not in the courts.

10. The true rule appears to be that the courts declaration is co-extensive with the life of the law. It is effective for the whole or the time that that law remains in force.

11. When the Board of Revenue interpreted the provisions of Section 4 of the Act to mean that the revenue entries are to be treated as the guiding factor, that interpretation was effective not from the date of the decision in 1960 or 1961,

but ever since the existence of that law, that is from 1957. Same is the effect of the High Court's decision. The High Court being a superior court having superintendence over all courts and authorities situate within its territorial jurisdiction (see Article 227 of the Constitution), its decision is binding on all courts and tribunals situate in this State. The High Court's decision has the effect of nullifying the contrary views taken by courts over which it has superintendence. The Board of Revenue is one such authority. The view of the High Court will, therefore prevail, and will prevail for the whole of the period that the particular law which is up for interpretation, is in operation.

12. The decision of the Privy Council in AIR 1921 59 (Privy Council) is in point. One Bapuji died leaving a daughter Saraswati. The question was if Saraswati succeeded to a limited or a full estate. The family of Bapuji had lived in Bombay Presidency. Amongst Hindus, the law of succession is determined according to the particular school of Hindu Law which governs the individual. The rule obtaining in the Bombay Presidency was declared by the High Court of Bombay in 1859 in the case of *Pranjivandas v. Deokuvarbai* (1859) 1 B HC 130 to be that a daughter gets a full estate and not merely a limited estate. At the time of his death Bapuji was living at Chikai in the Central Provinces.

13. The Judicial Commissioner of Nagpur did not agree with the Bombay High Court's view. He got out of it by holding that the Bombay decision which was rendered in 1859 will not be applicable to the family of Bapuji which had migrated out of Bombay in 1800. In other words, he held that the Bombay High Court's view would operate only from 1859;

"In this, their Lordships hold "observed the Privy Council" that he was clearly wrong. He was treating the decision of 1859 as if it were a statute which imposed law for the first time. It was nothing of the sort. It was declaratory of the law as it had existed."

14. The Board of Revenue was in error in holding that the High Court's decision was a new interpretation which will be effective only from the date it was given. It was nothing of the kind. It was declaratory of the law ever since its existence.

15. The next question is whether the Board of Revenue is entitled to interfere in a revision where it finds that the subordinate authorities have acted contrary to the law declared by the High Court. The Board of Revenue can, u/s 12 of the Act, interfere if the assessing authority or the appellate authority appears to have exercised a jurisdiction not vested in it by law or has acted in the exercise of its jurisdiction illegally or with substantial irregularity. In substance the powers of the Board of Revenue are similar to the jurisdiction possessed by the High Court under Clauses (a) and (c) of Section 115, C. P. C. It is clear that Section 12 applies to jurisdiction alone; the irregular exercise or the illegal assumption of it, and as the Privy Council and the Supreme Court have said "the section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved". *Balakrishna Udayar v. Vasudeva Ayyar* AIR 1917 PC 71 and

Keshardeo Chamria Vs. Radha Kissen Chamria and Others, . Ex hypothesis if a conclusion of law or fact involves a question of jurisdiction, the revisional power comes into play.

16. Facts or matters which relate to, or define the limits of jurisdiction are usually called collateral or jurisdictional questions. They are extrinsic to the merits of the case. According to Allen, ("Law and Orders" Br. Sir C. K. Allen, Second Edit., p. 303) they may be described as a set of circumstances which are pre-requisite to the exercise of jurisdiction, that is, facts upon the existence of which the jurisdiction of a tribunal to adjudicate or determine a particular subject-matter depends.

17. S.A. De Smith has aptly observed in "Judicial Review of Administrative Action" (p. 69) that "no satisfactory test has ever been formulated for distinguishing matters which go to jurisdiction from matters which go to the merits". Decided cases do furnish some guidance in this regard. If a statute confers power upon a tribunal and defines the nature of the subject-matter upon which that power is to operate, the decision of the tribunal whether a particular subject-matter is of that nature or not will relate to the condition precedent for the exercise of the power. Such a question would relate to the jurisdiction of the Tribunal. The Tribunal cannot give itself jurisdiction by wrongly deciding such an issue. It is a jurisdictional issue, where power has been given to permit a person to take materials from land other than a park, R. v. Bradford (1908) 1 KB 365 or an orchard, Rule v. Armagh JJ. 1942 2 IR 55, or to acquire compulsorily land which does not form part of a park. White and Collins v. Member of Health (1939) 3 KB 838, it was held that the question whether a piece of land is a park or orchard is collateral, being a condition precedent to the exercise of jurisdiction.

18. The jurisdiction of an industrial tribunal under the Industrial Disputes Act 1947 is dependent upon the dispute being an "industrial dispute" as defined in the Act. The Supreme Court held that the finding whether a dispute is an industrial dispute, relates to the condition precedent, and is on a jurisdictional question. (The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.,

19. u/s 7-A of the Delhi, Ajmer Mar-war Rent Control Act, 1917, the Rent Controller could fix standard rent of newly constructed premises. The Supreme Court held that the question whether the premises were newly constructed or not, was really a jurisdictional question. If the Rent Controller decided wrongly that fact and assumes jurisdiction where he has none, the matter will be open to re-consideration in revision, Roshan Lal Mehra Vs. Ishwar Das, . Under the U. P. Rent Control Act, rent can be fixed of accommodation constructed prior to the mentioned date. The Supreme Court held that the question whether the building was newly constructed was really a jurisdictional question, the finding whereon is revisable u/s 115, C. P. C., Ch. Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, .

20. u/s 34 of the Income Tax Act, 1922, an Income Tax Officer can issue a notice

for re-assessment provided he has reason to believe that under-assessment has resulted from non-disclosure of material facts. The existence of reasons was held by the Supreme Court to be a condition precedent to the exercise of jurisdiction to issue the notice (Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,

21. u/s 3, U. P. Large Land Holding Tax Act 1957 a "holding tax" is leviable on the annual value of each land holding. Under the proviso, no such tax shall be charged on any land holding the area whereof does not exceed thirty acres. Section 1 defines a land holding with reference to a land-holder. Thus land holding, the limits whereof have been defined in Sections 3 and 4 of the Act, is the subject-matter of taxation. The question whether a particular holding is a large holding so as to attract liability to tax in the hands of a particular land holder, is preliminary or collateral to the exercise of jurisdiction to assess the tax. The decision on such a question is a decision on a jurisdictional issue and is revisable. The Board of Revenue would be within its powers to reconsider the finding on such an issue.

22. But the Board of Revenue relying upon its Full Bench decision in Hamid Fatima v. State 1964 RD 160, has held that a decision on a point of law in accordance with the prevalent interpretation of law at the time of decision is not to be regarded as a wrong exercise of jurisdiction in the light of a subsequent interpretation of law. The Full Bench rested its decision entirely upon a ruling of the Gujarat High Court reported in Shah Kantilal Manilal and Another Vs. Kothari Gopaldas Bababhai, . The Gujarat High Court held that in a revision the High Court must only consider the law as it stood on the date when the Subordinate Court had decided the matter and not on the date when the revision was being decided. In the Gujarat case an ordinance was involved. The Ordinance was passed subsequent to the judgment of the subordinate court. It was held that the Court cannot be said to have acted illegally or with material irregularity in not considering the Ordinance.

23. The Gujarat case was concerned with an Ordinance which is a law made by a law-making agency. The Gujarat case was not concerned at all with the nature or effect of a court's declaration or interpretation of law. That case does not afford any assistance to the question which was raised before the Full Bench namely as to the effect of the High Court's decision on the pending cases. The Full Bench decision does not lay down correct law.

24. If any court or authority within the territorial jurisdiction of a High Court initiates a proceeding or decides on the rights of parties contrary to the law laid down by the High Court, it will be acting without jurisdiction. So was held by the Supreme Court in East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, . In that case the question arose whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. The Supreme Court held that under Article 215 of the Constitution of India every

High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Article 226 it has a plenary power to issue orders or writs for the enforcement of fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction.

Under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Their Lordships further held that it would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law, declared by that court and start proceedings in direct violation of it. If Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision will conform to the law laid down by it. Such obedience would also be conducive to their smooth working, otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer.

25. The Supreme Court then went on to hold:

"We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

The objection before the Board of Revenue was that the proceedings have been decided by the taxing authority contrary to the law declared by the High Court. Those proceedings were without jurisdiction. It was incumbent upon the Board of Revenue to have interfered in the matter. In refusing relief the Board of Revenue has laid itself open to comment and disapproval.

26. In many of the cases the respondents have in their judgments remarked that the partition had been made with the object of evading the tax and that it was only a paper transaction. See for instance the judgments of the Assessing Officer and the Commissioner in Civil Misc. Writ No. 418 of 1965 (Kunwar Jeoti Swamp v. Assessing Officer). In the case of Kunwar Jeoti Swamp a large volume of oral and documentary evidence including partition decrees of courts of law and registered partition deeds have been filed. The respondents have discarded the whole evidence on the suspicion that the transactions had been entered into for the purpose of avoiding payment of holding tax. The Board of Revenue has in the case of State v. Sri Shiam Behari Lal 1957 All LJ 88 (BR) held that "if the members of an undivided Hindu family have separated in fact and in law even with the intention of avoiding high taxation, there is no law to declare it void". In another case the Board of Revenue held that "even in partition in a Joint Hindu

family is effected in law and in fact to avoid assessment it cannot be held to be illegal and inoperative". See *Sri Karan Singh v. State* 1957 All LJ 95 (BR). The motive impelling persons to partition their properties is irrelevant. A man is entitled to employ all such means as are not prohibited and made unlawful by law in order to save payment of tax. Such an attitude of mind is no crime, per se; it should not give rise to any suspicion.

27. The legislative history of the Act shows that big landholders are expected to break up their holdings. If they do so, the assessing authorities should not look upon it with suspicion. The U. P. Legislature passed the U. P. Zamindari Abolition and Land Reforms Act in 1950. One of the underlying policy was to prevent accumulation of large holdings in the same hands. Section 154 of that Act prohibited transfer by Bhumidhars, to any person, who would as a result of the transfer, become entitled to land which together with the land, if any, held by him will in the aggregate exceed thirty acres. By the U. P. Amending Act 37 of 1958 the limit was reduced to 12-1/2 acres. In 1948 the U. P. Agricultural Income Tax Act was enacted. After the abolition of zamindari that Act became out of date. Section 28 of the U. P. Large Land Holding Tax Act, 1957, repealed the Agricultural Income Tax Act and replaced it. The object and reasons of the former Act state:

"The principle of social justice enshrined in our Constitution also demand that disparities between agricultural incomes be reduced. More efficient exploitation of agricultural lands is the essential for increasing the food production in the State. Those big holders who do not fulfill this duty towards society will have to sell up, as they should, if they fail in making increased contribution to the exchequer in the form of holdings tax under this legislation."

The preamble advises big land holders to sell up, if they do not wish to pay the holding tax.

28. Section 45 of the U. P. Imposition of Ceiling on Land Holdings Act, 1961, repealed Large Land Holdings Tax Act with effect from 30-6-1961. Now a ceiling of 30 acres has been imposed. No one can have more than 30 acres. The excess vests in the State. The agrarian policy of the State legislature appears to have been to level down Large Land Holdings to a maximum of 30 acres for an individual. If a person has a larger holding, he has been encouraged to break it up, divide it or sell it, as the case be, on pain of paying the holding tax for same years, and later on, by having to part with the excess land altogether, under the Ceiling Act. The setting in which the Large Land Holdings Tax Act has been passed does not indicate that it frowns upon the breaking up of large holdings. On the other hand, it is designed to encourage it.

29. In the cases of *Kunwar Jeoti Swamp*, *Jai Prakash* and *Deep Chand Jain* the assesseees raised an objection that the holding is a joint family holding coming down from their ancestors and that the same has been partitioned. The respondents did not accept the partition for one reason or the other. In this

connection the question whether Section 4 (2) would apply is also relevant. As held in Mohan Lal's case 1962 All LJ 842, Section 4 (1) of the Act would apply to all land held or occupied by a landholder and not to a land which is held or occupied by another even though that other may be a member of the same family. Under Expl. II land held by an incorporated association (other than a co-operative society) or a company or firm, shall be deemed to be one land holding. This Explanation does not include a joint Hindu family. Section 4 (2) of the Act provides that where land is held or occupied by two or more persons, the share in the land of such person shall for the purposes of this Act be deemed to have been held separately and shall form part of the land holding of such person.

In a joint Hindu family the members acquire an interest in the family properties by birth under their personal law. They all have a share in the joint family properties. In such a case the provisions of Section 4 (2) of the Act may apply. Section 4 (2) opens with a non obstinate clause "subject to the provisions of Sub-section (1)", but this does not change the position. Subsection (1) does not make the share in land held or occupied by one person to be that of another even though the two may be members of the same family. Section 4 (1) only provides for contingencies where the land held or occupied by one person may be recorded in the names of the members of his family. The respondents have not examined the case from this point of view. If various members of the family have an existing interest in the holding, then their share will form part of their land holding, and would be assessable in their hands, u/s 4 (2). In that event, the fact whether there has been a petition or not may lose value. The question of separate management or cultivation may also be irrelevant. The respondents have not dealt with the cases from this point of view. I need not express a concluded opinion as they deserve to go back for decision afresh.

30. In the Writ Petitions of Raja Sheo Pati Singh and others (Civil Misc. Writ Nos. 1432 to 1437 of 1965) one of the questions raised was that the petitioners were not liable to tax with respect to lands which have been sold away to other people under registered sale deeds. The judgment of the Board of Revenue indicates that the various sale deeds were filed, but this submission was rejected on the ground that mutation was effected in the revenue records after the charging date which is the 1st July. If title to land passes it is of no consequence whether the transfer has been recorded in the revenue papers or not. This was so held in Mohan Lal's case 1962 All LJ 842 (supra) also. The Board of Revenue was, therefore, in error in rejecting the claim of these assesseees with respect to the land which had been sold away to other people on this ground. The other findings of the Board in these cases were not challenged.

31. In the result, all the petitions succeed and are allowed with costs. In Writ Petitions Nos. 1432, 1433, 1434, 1435, 1436 and 1437 of 1965 the judgment of the Board of Revenue is quashed and the cases are sent back to the Board of Revenue for decision afresh, in accordance with the law in the light of the observations made above, regarding the question of exclusion of land which has

been sold away by those petitioners. In Writ Petitions Nos. 418 and 419 of 1965 of Kunwar Jeoti Swamp, Writ Petitions Nos. 324, 325 and 326 of 1965 of Sri Deep Chand Jain and Writ Petitions Nos. 935, 1136 and 1137 of 1965 of Sri Jai Prakash the judgments and orders of the Board of Revenue, the Additional Commissioner (or the Commissioner, as the case be) and the Assessing Authority are all quashed and set aside. These cases are remanded back to the Assessing Authority concerned for decision afresh in accordance with the law and in the light of the observations made above.