(2000) 11 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 2035 of 2000

Gyarasidevi APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:
Income Tax Act, 1961 — Section 171, 171(6), 226(3)

Citation : (2001) 250 ITR 342 : (2001) 119 TAXMAN 843

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : V.D. Hon, for the Appellant; R.G. Deo and V.D. Sapkal, for the Respondent

Judgement

1. We have heard Mr. V. D. Hon, learned counsel for the petitioner, and Mr, R. G. Deo, learned standing counsel for the Union of India as well as Mr. V. D. Sapkal, learned Additional Government Pleader for respondent No. 5.

2. The petitioner has brought in question a notice dated January 11, 2000, issued by respondent No. 4 to respondent No. 5, with a copy to Jivanram Bijeram Agrawal (Hindu undivided family), Dhule, and this notice is purportedly issued u/s 226(3) of the Income Tax Act, 1961 ("the Act", for short). The whole controversy revolves around land in final plot No. 87 of Dhule town which admeasures about six acres and out of which, two acres have already been acquired by respondent No. 5 some time in the year 1974. In respect of the compensation amount for the acquired land, first appeal was decided by this court and the order of this court came to be challenged before the apex court by filing a special leave petition. The said SLP came to be decided by the apex court vide its order dated April 12, 1996. The said SLP was filed by the present petitioner contending to be the sole owner of the entire land in final plot No. 87 including the land acquired. The Supreme Court upheld the contention of the petitioner that she was entitled to compensation at Rs. 75 per sq. mt. along with other consequential benefits in respect of the land acquired. Pursuant to the said

order passed by the apex court, the petitioner was to receive an amount about Rs. 31,00,000 (rupees thirty-one lakhs only) from the Land Acquisition Officer, as stated before us.

3. After the issuance of the impugned notice, respondent No. 4 issued an attachment order against Jivanram Bijeram Agrawal (Hindu undivided family) on February 14, 2000, and attached properties shown therein. The property in final plot No. 87 is admittedly not one of the properties attached by the said order. On May 2, 2000, respondent No. 5 addressed a letter to the petitioner stating therein that the Income Tax Department had communicated to him regarding Income Tax dues recovery of Rs. 34,47,952 from Jivanram Bijeram Agrawal (Hindu undivided family) and the petitioner was one of the members of the said Hindu undivided family. The petitioner replied the said notice on May 8, 2000, and stated that her father-in-law, viz., Jivanram Agrawal, was running a business in the name of "Jivanram Bijeram Agrawal" in the status of Hindu undivided family and after demise of her father-in-law, her husband, viz., Bhikchand Jivanram Agrawal, became the karta of the said Hindu undivided family. Shri Bhikchand Jivanram Agrawal expired in 1995 without effecting any partition either total or partial in respect of the Hindu undivided family property. She also stated that the present members of the said Hindu undivided family are : (1) Mr. Manohar, s/o. Bhikchand Agrawal, (2) Mr. Prakash, s/o. Bhikchand Agrawal and (3) Smt. Gyarasi-devi, w/o. Bhikchand Agrawal. She further requested that she being an old lady of 80 years, the Department should not resort to any coercive action against her. A similar representation was submitted by the petitioner on May 23, 2000, to respondent No. 4. On May 8, 2000, she also approached respondent No. 5 and denied the claim of the Income Tax Department.

4. Contempt Petition (C) No. 3 of 2000, came to be heard by the apex court on July 10, 2000. The present petitioner was the petitioner before the apex court. In the order passed on that day, the apex court recorded its order in the said contempt petition as under :

"Counsel for the non-applicant states that the payment will be made within this week. Matter is adjourned by three weeks."

5. In the contempt petition, the non-applicants were the Revenue authorities, including respondent No. 5. Accordingly, on July 14, 2000, respondent No. 5 issued a cheque of Rs. 26 lakhs by adjusting Income Tax dues payable by the petitioner on her personal account. This cheque was deposited in the State Bank of India and the amount is presently lying with the said bank.

6. The petitioner has approached us on May 26, 2000, and the learned vacation judge by his order dated June 2, 2000, directed the respondents to maintain status quo as regards the amount of compensation in question till the next date. The interim order so granted was continued by a Divi sion Bench by its order dated June 14, 2000, and the said order continues as at present.

7. The petitioner''s claim before us is that the amount which has been sought to

be attached is from the proceeds of the land acquired by respondent No. 5 and the said amount was her personal property which she has received as "stridhan" and she wanted to utilise the said amount of compensation for her personal use as well as for the betterment of her three married daughters. It is also contended that the Income Tax dues of the firm could not be appropriated from the amounts due to the petitioner in respect of her personal property and the land acquired had nothing to do with the firm against which the attachment order came to be passed by respondent No. 4.

8. Respondents Nos. 1 to 4 have filed affidavit in reply and have opposed the petition. It is contended that the provisions of Section 226(3) read with Section 171 of the Act authorise the recovery of Income Tax dues from the amounts payable to any of the members of the defaulting Jivanram Bijeram Agrawal (Hindu undivided family) so long as they have the information with them that the property in final plot No. 87 was not the personal property of the petitioner alone. The Revenue authorities have relied upon some documents submitted by one of the members of the Hindu undivided family and they have also gone through the Revenue record as available to them and come to the conclusion that the acquired property from final Plot No. 87 was not the personal property of the present petitioner, leave alone her "stridhan".

9. On the other hand, the petitioner has relied upon a compromise decree passed in Special Civil Suit No. 21 of 1975 by the learned Jt. Civil Judge, Senior Division, Dhule. It is also pointed out that the petitioner has been individually paying wealth-tax. A communication dated September 28, 2000, addressed by respondent No. 4 to the petitioner has been relied upon in support of this contention. The said communication indicates that in the case of the petitioner, the demand outstanding was Rs. 25,665 and in the case of the Hindu undivided family of Jivanram Bijeram Agrawal, it was Rs. 34,47,954 for the block periods 1987-88 to 1998-99.

10. There is no dispute that u/s 226(3) read with Section 171(6) of the Act, the Revenue authorities are entitled to attach the money due and appropriate such an amount against the tax payable to the Government of India. The impugned notice has been challenged before us on the ground that proceeds which were available to the petitioner pursuant to the order passed by the apex court were against the land which was acquired by the Government and the said land was the personal property (by way of "stridhan") of the petitioner and it had no concern in any way with Jivanram Bijeram Agrawal (Hindu undivided family) and, therefore, the provisions of Section 226(3) read with Section 171(6) of the Act were not attracted.

11. We must also note that Special Civil Suit No. 62 of 1999, has been filed by the petitioner against the members of Jivanram Bijeram Agrawal (Hindu undivided family), viz., Prakash as well as Manohar. The suit is for declaration and perpetual injunction in respect of the remaining land in final Plot No. 87 and it is pending before the learned Civil Judge, Senior Division at Dhule. It is

contended therein that the entire land property in final Plot No. 87 is exclusive property of the petitioner and the defendants have no share and right to disturb her possession in respect of the said property. The only question for our consideration, in such circumstances, as at present, is whether the impugned notice is without authority and illegal.

12. The compromise decree in Special Civil Suit No. 21 of 1975, is passed on a compromise agreement entered into between Fulchand Pannalal Agrawal and Bhikchand Jivanram Agrawal on January 19, 1963. It would be relevant to note that the late Jivanram Agrawal and Pannalal Agrawal were the sons of Bijeram Agrawal. Jivanram Agrawal begot one son by name Bhikchand Jivanram Agrawal, whereas, Pannalal Agrawal begot one son by name Fulchand Pannalal Agrawal. Between Fulchand Pannalal Agrawal and Bhikchand Jivanram Agrawal, the entire family property was shared and, therefore, they entered into a compromise on January 19, 1963, Fulchand Pannalal Agrawal died in 1974. Before his demise, the said compromise agreement was converted into the compromise decree. Schedule "A" (I) to the said decree gives a list of the common properties between the family, i.e., Bhikchand Jivanram Agrawal and Fulchand Pannalal Agrawal. Fulchand Pannalal Agrawal begot one son by name Radhakishan, whereas, Bhikchand Jivanram Agrawal begot two sons, viz., Manohar and Prakash. The agreement between Bhikchand and Fulchand entered on January 19, 1963, demarcated the property belonging to each one of them. However, whatever property came to the share of Bhikchand Agrawal, he transferred the same in the names of his wife (the present petitioner) and his two sons, viz., Prakash and Manohar, as is evident from Schedule "B" (1) to F(3) to the decree. It is seen from the documents that the present final Plot No. 87 was Original Survey Nos. 366A and 367/A/B/C.

13. Shri V. D. Hon, learned counsel for the petitioner, has also invited our attention to Schedules "O", "P" and "Q" to the said decree in support of his contentions that the personal credits as available to the three members of the Hindu undivided family were the considerations for the respective properties being shown in their respective names.

14. Learned counsel for the petitioner has also referred to para. 10 of the agreement dated January 19, 1963, which reads thus :

"(10) The said Bhikchand has undertaken all liability of the Khatas of Manohar, Prakash and liability of the Khatas of Manohar, Prakash and hence, the partition has been so effected as to enable the said Bhikchand to transfer requisite properties in favour of the respective Khatedars in full satisfaction of their respective amounts. The said Bhikchand shall therefore transfer sufficient properties marked with asterisk(*) out of Schedule "C" to the said Manohar, Prakash and Gyarasidevi absolutely in full satisfaction of their respective dues and undertakes that the said Fulchand and Bijeram Dedraj Oil Mills Private Ltd. stand fully exonerated of all liabilities in respect of those accounts."

15. From the record that is relied upon and made available before us, it is clear that the said property has come'' from the petitioner husband''s side. The title of the petitioner, which she claims to be exclusive on the said property, cannot be gone into by us in a writ proceeding" and the said exercise will have to be done by way of civil proceedings by leading evidence, etc. The whole petition is based on the contention that the property acquired by the Government (final Plot No. 87, part) was the petitioner''s exclusive and personal property by way of "stridhan". Special Civil Suit No. 62 of 1999, filed by the petitioner is presently pending and she is required to establish her sole and personal title on the land in final plot No. 87. Our finding on this main issue will result in deciding the said pending suit finally which we cannot do.

16. The petitioner herself has admitted that she is one of the members of Jivanram Bijeram Agrawal (Hindu undivided family) and, admittedly, the said firm has to pay Income Tax dues to the Revenue. This issue, which we are required to address, including the impugned notice, was not before the apex court even in the contempt petition and, therefore, the order passed by the apex court, therein does not amount to a finding regarding the petitioner''s exclusive right in respect of the property acquired. We have gone through Section 226(3) read with Section 171(6) of the Act and we do not find any infirmity in the impugned notice issued by respondent No. 4.

17. The writ petition is, therefore, rejected summarily. Interim order stands vacated.

18. At this stage, Mr. V. D. Hon, learned counsel for the petitioner submitted that the appeals filed by Jivanram Bijeram Agrawal (Hindu undivided family) are pending before the Commissioner of Income Tax (Appeals), Nasik, and till the appeals are decided, the amount deposited in the State Bank of India, Dhule, will not be withdrawn by any member of the Hindu undivided family, including the petitioner. He has requested to stay our above order for a period of six weeks. The request of counsel is hereby granted on the undertakings given. We also direct the lower appellate authority, i.e., the Commissioner of Income Tax (Appeals), Nasik, to hear and decide the pending appeals as expeditiously as possible and preferably within a period of three months from today. In the meantime, we direct the State Bank of India to invest the subject amount lying with them presently in fixed deposit for a period of 45 days. We make it clear that we have not adjudicated upon any rights of any of the members of Jivanram Bijeram Agrawal (Hindu undivided family) in respect of the immovable properties and these issues ought to be decided in appropriate proceedings.

