
(1977) 08 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 136 of 1976 (Old No. 375 of 1971-Jabalpur)

Income Tax Appellate Tribunal

APPELLANT

Vs

Sardar Virendra Singh

RESPONDENT

Date of Decision : 01-08-1977

Acts Referred:

Madhya Bharat Abolition of Jagirs Act, 1951 — Section 13, 9

Citation : (1981) ILR (MP) 711 : (1978) 23 MPLJ 39

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; K.A. Chitale, for the Respondent

Judgement

Oza, J.

This is a reference made by the Income Tax Appellate Tribunal, Indore, with regard to six assessments for the years 1955-56, 1956-57, 1957-58, 1958-59, 1959-60 and 1960-61. A common case has been stated as common question of law arises. . The question arises out of the Tribunal's common appellate order in respect of these assessment years, the assesses being the same.

The facts necessary for the disposal of this reference; are that Sardar Narayanrao Bolia was a jagirdar in the former Holkar State. He died on March 19, 1932, leaving behind two widows, viz., Smt. Laxmibai and Smt. Shakuntalabai. He had no issue. He left a will dated March 7, 1932, under which, he expressed his desire that one Kanoji Bolia, his younger brother, should be taken in adoption by his senior widow. The adoption could not be carried out, it appears, as it could not be done without the sanction of the Ruler and by orders dated May 19, 1932, the Maharaja of Holkar directed the estate to be placed under the court of wards. On January 6, 1935, Laxmibai filed an application before His Highness Maharaja of Holkar for payment of maintenance as per. nemuh. Ultimately, on. January 12, 1935, His Highness sanctioned the adoption of Kumar Virendrasingh, who is the assessce in the present case, and on the same day also directed that

monthly allowance be paid to Laxmibai at the rate of Rs. 500 per month. By a subsequent order dated April 18, 1944, His Highness further directed that maintenance at the same rate, i.e., Rs. 500 per month, be paid to Shakuntalabai also. By a subsequent order dated June 16, 1948, this allowance was raised to Rs. 600 per month payable to both widows. The question that arose before the tribunal was as to whether the amount of maintenance which was paid to these two widows was under a legal obligation and, therefore, overriding title and as such did not form part of the assessee's total income, and that is the question referred in this reference.

It is not in dispute that the estate of the jagirdar was governed by the Manual for Jagir dars of the Holkar State (hereinafter called the Jagir Manual). It is also not in dispute that the Ruler of the Holkar State under Chapter IV of the Manual (section 16) had jurisdiction to fix the maintenance ; and it is also not in dispute that the order passed by His Highness Maharaja of Holkar in the present case granting maintenance at the rate of Rs. 600 per month to the two widows was an order which had the force of law, The only controversy that has been raised is about the nature of this maintenance allowance after the passing of the Madhya Bharat Abolition of Jagirs Act (28 of 1931).

Section 16 of the Jagir Manual reads :

" In case if the recipients of the maintenance are not satisfied with the arrangements made by the jagirdar, it will be open to them to apply to the Government who may fix the amount with regard to their wants and to the prosperity and interests of the jagir. "

This apparently confers jurisdiction on the Government of the State to fix the maintenance allowance and it is in exercising these powers u/s 16 that the ultimate order of June 16, 1948, was passed by the then Ruler of Holkar State enhancing the allowance to the two widows Axing it at Rs. 600 per month. Learned counsel appearing for the department did not contend that this order was not u/s 16 of the Jagir Manual. It is also not disputed that the orders passed by the Ruler u/s 16 would be the orders having the force of law and it is also not disputed that the Jagir Manual of the Holkar State has not been repealed.

It was contended by the learned counsel for the department that u/s 9 of the Abolition of Jagirs Act the maintenance allowance which the widows were getting came to an end and if at all any maintenance was to be continued it was possible only if u/s 13 of that Act the Jagir Commissioner had passed orders under Clause (c) thereof for payment of maintenance. This Act came into force on December 7, 1951. Learned counsel for the assessce on the other hand contended that Section 9 of the Act in fact continued the maintenance allowance which a maintenance holder was getting prior to the passing of this Act. What Section 13 provided, according to the learned counsel, was only a procedure for modification of the allowance if it was thought necessary. Section 9 of the Abolition of Jagirs Act provides : " 9. Amount for maintenance.--Any person who, under any law, or

other provision having the force of law or any custom, is entitled to receive a maintenance allowance out of the income of any jagir, shall be entitled to receive, out of the compensation payable to the jagirdar, such amount for maintenance annually, as the Jagir Commissioner may fix, after taking into consideration-

- (i) the amount of maintenance allowance which that person used to receive from the jagir before the date of resumption,
- (ii) the net income of the jagir dar from the jagir at the time of Axing the said maintenance allowance.
- (iii) the net amount of compensation payable to the jagirdar, and
- (iv) such other matters as may be prescribed. "

Apparently, the main part of the section provides that any maintenance allowance which a person entitled to receive under any law or other provision having the force of law he shall be entitled to receive out of the compensation payable to the jagirdar. And this, therefore, clearly indicates that Section 9 maintained what a person was entitled to receive under any law or any order having the force of law. It is not in dispute that the orders passed for grant of maintenance in the case are orders having the force of law. As regards the amount what is provided in this section is that it would be such amount as the Jagir Commissioner may fix after taking into consideration the things mentioned in Sub-clauses (i) to (iv) of this section. A reading of Section 9, therefore, indicates that if any person was receiving maintenance and was entitled to receive it from the income of the jagir under any order having the force of law he shall be entitled to receive it out of the compensation payable to the jagirdar. What further has been provided is only about the quantum. If it is to be paid out of compensation it was provided that the circumstances enumerated in the sub-clauses of this section shall be considered and the Jagir Commissioner shall fix the amount. It could not, therefore, be read in the section to mean that what maintenance one was entitled to under any law before this Act came into force has been specifically negated by this section. And the argument of the learned counsel for the department ultimately leads to this conclusion as, according to him, as the Jagir Commissioner has not passed any order fixing the quantum of compensation after the passing of this Act, the old order passed by the Maharaja of the State ceases to be operative and, therefore, it does not amount to a legal obligation on the assessee to pay this compensation.

Under Section 13 of the Abolition of Jagirs Act the procedure has been provided for orders of the Jagir Commissioner with regard to various things including maintenance allowance to be paid u/s 9 of the Act. A reading of Sections 9 and 13, therefore, indicates that the maintenance allowance which one was entitled to receive before the coming into force of this Act has been further maintained by the provisions of Section 9. But in case the maintenance allowance has to be paid out of the compensation payable to the jagirdar, then the Jagir

Commissioner was expected to pass appropriate orders fixing the quantum of compensation, apparently, as the compensation was being paid, by the State. It, therefore, appears that in a case where the maintenance allowance had to be paid by the State from the compensation amount, jurisdiction was conferred on the Jagir Commissioner to no the amount as the amount of maintenance had to be consistent with the net income of the jagirdar from the jagir and the net amount of compensation payable to the jagirdar. This jurisdiction of the Jagir Commissioner about fixing of the amount only is referable to the amount of maintenance which is to be paid out of the compensation payable to the jagirdar under this Act.

It is not in dispute that what has been resumed under this Act is the lands in the jagir and the jagirdar was entitled to compensation with regard to what has been resumed, Section 5 of this Act clearly indicates that other properties of the jagirdar were not affected by this Act :

"5. Notwithstanding anything contained in the last preceding section-

(a) the jagirdar shall continue to remain in possession of land cultivated personally by him.

(b) (i) all open enclosures used for agricultural or domestic purposes and in continuous possession (which includes possession of any predecessor-in-interest) for twelve years immediately before the date of resumption,

(ii) all open house-sites purchased for valuable consideration,

(iii) all private buildings, places of worship, and wells situated in, and trees standing on lands included in such enclosures or house-sites, as are specified in Clauses (i) and (ii) above, or land appurtenant to such buildings or places of worship, within the limits of a village site, and

(iv) all groves wherever situate, belonging to or held by the jagirdar or any other person, shall continue to belong to or be held by such jagirdar or other person, as the case may be, and the land thereof with the areas appurtenant thereto shall be settled on him by the Government according to the provisions of the Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007.

(c) All tanks, trees, private wells and buildings in or on occupied land belonging to or held by the jagirdar or any other person shall continue to belong to, or be held by such jagirdar or other person. "

Section 14 of the Jagir Manual provided for maintenance of the widows and maintenance of the family and Section 14 reads :

" 14. Every jagirdar shall be bound to make a suitable provision for the widows and minors in his family and also for his brothers.

Explanation.--By suitable provision is meant that these dependants shall have

decent maintenance according to the position of the family; care being taken that the jagirdar has sufficient margin to keep up his position as jagirdar and keep his jagir in a state of prosperity. In other words, maintenance should neither be too excessive nor too meagre. "

And it was in this context that Section 16 provided that the Government may fix the amount of maintenance. Apparently, therefore, when maintenance was to be provided for u/s 14 or fixed u/s 16 of the Jagir Manual the income of the jagir from all sources could be considered, whereas what the Jagir Commissioner was expected to fix u/s 9 of the Abolition of Jagirs Act was the amount of maintenance which was to be paid out of the compensation which was payable to the jagirdar and which was only as a result of the resumption of the jagir lands by the Government.

It was not disputed that the order passed under the Jagir Manual by His Highness fixing maintenance of the two widows was an order having the force of law and it is well settled that that order could not be withdrawn or cancelled except by a specific legislation for that purpose. In *Madhaorao Phalke Vs. The State of Madhya Bharat*, , the question was considered by their Lordships of the Supreme Court and it was observed at page 303 of AIR :

"In our opinion, having regard to the contents of the two orders and the character of the provisions made by them in such a detailed manner it is difficult to distinguish them from statutes or laws; in any event they must be treated as rules or regulations having the force of law.....The right guaranteed to the appellant by an existing law cannot be extinguished by the issue of an executive order. "

In fact, learned counsel appearing for the department also did not contest this legal position. But this contention was that by enacting Section 9 of the Abolition of Jagirs Act this right came to an end. But as discussed earlier, Section 9 instead of finishing the right in fact maintains it. Consequently, the contention that the right of maintenance of these widows came to an end cannot be accepted. It is, therefore, clear that so far as the liability to pay maintenance under orders of His Highness u/s 16 of the Jagir Manual is concerned it has been maintained u/s 9 of the Act. But if no orders have been passed by the Commissioner about the amount to be paid out of the compensation the maintenance holder could not get it directly from the Government out of the compensation. But on this basis it could not be held that the payment of maintenance was not a legal obligation and, therefore, had no overriding title.

The question about the income whether diverted by overriding title has been considered by their Lordships of the Supreme Court in *Commissioner of Income Tax, West Bengal III Vs. Imperial Chemical Industries (India) (P.) Ltd.*, . Their Lordships, after considering a series of decisions, approved the observations made in *Commissioner of Income Tax v. Sitaldas Tirathdas* [1961] 41 UK 367 (SC) :

" There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible, but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow, it is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."

Learned counsel for the department conceded that if the maintenance granted to the widows is continued as the orders of the Maharaja of Holkar continue to have the force of law, it will be an obligation in the nature of overriding title and, therefore, the amount of maintenance paid to these widows could not be said to be part of the assessee's total income.

In the light of the discussion, therefore, our answer to the reference is that the Tribunal was right in holding that the maintenance allowance of Rs. 14,400 per annum was payable to the two ladies under legal obligation or overriding title and as such it did not form part of the assessee's total income.

In the circumstances of the case, parties are directed to bear their own costs.