
(1988) 03 CAL CK 0025
In the Calcutta High Court

Income Tax Officer

APPELLANT

Vs

Savitri Devi Seva Trust

RESPONDENT

Date of Decision : 02-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 230A, 269UL, 281A, 281A(1)

Citation : (1989) 176 ITR 138

Hon'ble Judges : Dipak Kumar Sen, Acting C.J.; Shyamal Kumar Sen, J

Bench : Division Bench

Judgement

Dipak Kumar Sen, Actg. C.J.

1. The material facts on record and proceedings leading up to this appeal are, inter alia, that by deed dated July 15, 1983, executed by Girdharilal Jagatramka, respondent No. 2, a public charitable trust, named, Savitri Devi Seva Trust, respondent No. 1, was created. On or about January 4, 1984, the Commissioner of Income Tax, West Bengal-VII, issued certificates respectively under Sections 12A and 80G of the Income Tax Act, 1961, certifying, inter alia, that respondent No. 1 had been duly registered and that it was an institution established in India for the prescribed charitable purposes.

2. On or about June 9, 1986, an agreement was entered into by and between the owners of premises No. 58/6, Prince Anwar Shah Road, Calcutta, hereinafter referred to as "the said property" and the six trustees of respondent No. 1 whereby the former agreed to sell to the latter, the said property consisting of land measuring 4 cottahs 13 chittacks and 18 sq. ft. and unfinished brick buildings and structures thereon on an "as is where is" basis for a consideration of Rs. 9 lakhs. A sum of Rs. 5 lakhs was paid by the said trustees by way of earnest money by seven several cheques.

3. The said agreement dated June 9, 1986, was entered into by and amongst the vendors of the said property, on the one hand, and Dinesh Chandra Bajoria, Suresh Kumar Bajoria, Arvind Bajoria, Smt. Sharda Bajoria, Smt. Kanta Bajoria

and Smt. Lata Bajoria, the trustees to the said trust in their individual capacities, inasmuch as the vendors of the said property refused to enter into any transaction with respondent No. 1, a charitable trust.

4. On September 30, 1986, six several conveyances were executed whereby the vendors transferred 1/6th undivided share in the said property separately to the following persons :

(a) Smt. Kanta Bajoria, (b) Smt. Lata Bajoria, (c) Radha Organics, a registered partnership firm, (d) Radha Properties, also a registered partnership firm, (e) Smt. Sharda Bajoria and (f) Radha Udyog, also a registered partnership firm.

5. The said Dinesh Chandra Bajoria, Suresh Chandra Bajoria, Arvind Bajoria, Smt. Lata Bajoria, Smt. Sharda Bajoria and Smt. Kanta Bajoria were parties or confirming parties to each of the said conveyances.

6. Thereafter, respondent No. 1 filed a return of its income with audited accounts and balance-sheet for the assessment year 1987-88. In the said balance-sheet, the said property was shown as belonging to respondent No. 1.

7. On or about December 11, 1986, respondent No. 1 issued a notice u/s 281A(1) of the Income Tax Act, 1961, to appellant No. 2. It was stated in the said notice that the three trustees of respondent No. 1 and the three partnership firms of which the trustees were the partners, were not the real owners of the said premises but were only benamidars of respondent No. 1. The trustees of respondent No. 1 subsequently decided to sell the said property and utilise the sale proceeds to repay the loans obtained for the trust for purchasing the said premises and utilise the balance for charitable purposes in terms of the objects of the trust.

8. Between August 24 and August 29, 1987, six several deeds were executed by and between respondent No. 1 on the one hand, and the said three trustees, namely, Smt. Lata Bajoria, Smt. Kanta Bajoria and Smt. Sharda Bajoria, and the said three partnership firms, namely, Radha Udyog, Radha Properties and Radha Organics, all parties to the said six several conveyances executed on September 30, 1986. By the said deeds, it was declared by the said trustees and the said partnership firms, inter alia, that the price or consideration in respect of the said property including all costs, charges and expenses of and incidental to the execution and registration of the said conveyances had been borne and paid by respondent No. 1 and, in fact, the said property was purchased by respondent No. 1 and that the said trustees and/or the said partnership firms were and are merely benamidars who had lent their names to the said transaction for and on behalf of respondent No. 1 and, as such, they have been holding the said property in trust for respondent No. 1. It was admitted that the beneficial interest in the said property had remained vested in respondent No. 1 and that respondent No. 1 was in beneficial enjoyment thereof. The said trustees and the said partnership firms declared that they had no right, title and interest in the said property and they further disclaimed all right, title or interest claimed or

demanded in respect thereof in favour of respondent No. 1.

9. On or about September 26, 1987, respondent No. 1 entered into an agreement for sale of the said property in its entirety with the Indian Bank in its Zonal Office at 24, Park Street, Calcutta, at the price of Rs. 42,67,200. Suresh Kumar Bajoria, as one of the trustees of respondent No. 1, signed the said agreement on behalf of respondent No. 1.

10. On or about September 28, 1987, respondent No. 1 made an application u/s 230A(1) of the Income Tax Act, 1961, before the Income Tax Officer, "A" Ward, Trust Circle, Calcutta, appellant No. 1, in the prescribed form for issue of a certificate under the said Section 230A(1) of the said Act.

11. Pursuant to the directions of appellant No. 1, respondent No. 1 also produced before the former a certificate u/s 269UL of the Income Tax Act, 1961. It was stated in the said certificate by the appropriate authority that it had no objection to the transfer of the said property by respondent No. 1 to the Indian Bank.

12. Thereafter, on or about November 20, 1987, an inspector deputed by the appellants inspected the said property as also the relevant documents including the declarations made by the three trustees and the said three partnership firms to the effect that they were benamidars of respondent No. 1 in respect of the said property, the real owner being the trust.

13. By his letter dated November 26, 1987, appellant No. 1 refused to issue a certificate u/s 230A of the Income Tax Act, 1961, to respondent No. 1 on the ground that the said property did not stand in the name of the trust and no valid evidence had been produced regarding the transfer of the said property to respondent No. 1.

14. Being aggrieved, the respondents moved this court under Article 226 of the Constitution some time in December 1987, for, inter alia, the following orders :

(a) a writ of certiorari calling upon the appellants to transmit the records to this court and for quashing of the order passed by appellant No. 1 dated November 26, 1987,

(b) a writ in the nature of mandamus calling upon the appellants to act in accordance with law and to withdraw or rescind the said order dated November 26, 1987,

(c) a writ in the nature of prohibition commanding the appellants to forbear from giving any effect or taking any steps in pursuance of the said order dated November 26, 1987,

(d) a writ in the nature of mandamus commanding appellant No. 1 to deal with the application for issue of a clearance certificate u/s 230A(1) of the Income Tax Act, 1961, dated September 28, 1987, and to issue a certificate as prayed for.

15. The said application was opposed by the appellants. Abu Mohammed Zahirul

Hasan, the then Income Tax Officer, "A" Ward, Trust Circle, Calcutta, affirmed an affidavit on January 13, 1988, which was filed in opposition to the said application of the respondents.

16. Suresh Kumar Bajoria, respondent No. 3, affirmed an affidavit some time in January 1988, which was filed in reply to the said affidavit of Abu Mohammed Zahirul Hasan.

17. The application was heard and disposed of by the first court by an order dated February 1, 1988. By the said order, the Indian Bank in its Calcutta Zonal Office, 24 Park Street, Calcutta, was made a party to the said application on an oral submission made on behalf of the respondents and the cause title of the pleadings was directed to be amended accordingly.

18. Further, the Income Tax Officer, "A" Ward, Trust Circle, Calcutta, appellant No. 1, was directed to issue a clearance certificate u/s 230A(1) of the Income Tax Act, 1961, on the basis of the conveyance submitted to him in the name of respondent No. 1 represented by the trustees on or before February 12, 1988. The Indian Bank was directed to keep the offer for purchase of the said property open till February 15, 1988. All parties were directed to act on a signed copy of the minutes of the said order,

19. The present appeal is against the said order dated February 1, 1988. On February 12, 1988, this appeal was admitted. Learned advocate for the appellants prayed for interim stay of the operation of the order dated February 1, 1988, under appeal, which we declined to grant. Detailed submissions were made on behalf of the parties who invited us to adjudicate on the merits of the controversy. It was directed that the matter would appear for judgment subsequently.

20. At the hearing of this appeal, learned advocates for the parties reiterated the respective contentions of the parties in their pleadings. Learned advocate for the respondents submitted that since the inception of the transaction involving the said property, respondent No. 1 intended to acquire the said property and the trustees called upon the vendors to sell the said property to the trust. The payments which had been made to the vendors were interest-free loans given by the trustees to the said trust but the vendors declined to sell the property to respondent No. 1. It was submitted further that the consideration for the said premises including all costs, charges and expenses of and incidental to the conveyances on the said property had been borne and paid partly by respondent No. 1, partly by the trustees of respondent No. 1 out of the interest-free loans provided by them and partly by the said three partnerships of which the trustees were partners.

21. It was submitted that the trustees and the partnership firms were not the real owners of the said property. The right, title and interest in the said property vested in respondent No. 1. After purchase of the said property, respondent No. 1 had filed its return of income with audited accounts where it was declared that

the said property belonged to the said trust. Respondent No. 1 gave notice u/s 281A of the Income Tax Act, 1961, claiming the property as belonging to it in the benami of the trustees and the said partnership firms. In the several indentures of declaration executed respectively on August 24, and August 29, 1987, the trustees and the said partnership firms had declared specifically that they had never asserted or claimed any ownership or right to the said property and that respondent No. 1, at all material times, had been the beneficiary and in the beneficial enjoyment of the said property. The consideration for acquiring the said property in six undivided parts or shares, was declared to have been paid out of the trust funds and that the said transactions were benami transactions. The trustees and the said partnership firms disclaimed, released and discharged all right, title, interest, claim and demand in respect of the said property in favour of respondent No. 1.

22. It was further submitted that in the facts and circumstances, appellant No. 1 had wrongfully and erroneously come to the conclusion that the said property did not stand in the name of the trust or that no valid evidence was on record to show that the said property belonged to respondent No. 1. Appellant No. 1 acted illegally and arbitrarily in refusing to grant a certificate u/s 230A(1) of the Income Tax Act, 1961, as applied for by the respondents. It was contended that appellant No. 1 had no jurisdiction, authority or competence to pass the impugned order dated November 26, 1987, and withhold the grant of the clearance certificate u/s 230A(1) of the said Act. Respondent No. 1, through the trustees, had duly made the said application u/s 230A(1) of the said Act in compliance with Rule 44B of the Income Tax Rules, 1962. Under the agreement dated September 26, 1987, it was respondent No. 1 who intended to transfer the said property to the added respondent, namely, the Indian Bank, and the draft conveyance records that respondent No. 1 would transfer the said property to the Indian Bank. It was not the case of the appellant that the transfer would prejudicially affect the recovery of any existing tax liability of respondent No. 1.

23. It was submitted that u/s 230A of the said Act, the authority concerned was only called upon to ascertain whether an application had been made by the intended transferor concerned and in the form prescribed and further whether the intended transfer would prejudicially affect the interests of the Revenue. The authority concerned had no jurisdiction or authority to adjudicate or decide questions of title involved in the intended transfer. It was submitted that appellant No. 1 had failed to proceed on the basis of relevant materials and considerations and had refused to issue the certificate u/s 230A of the said Act on extraneous and irrelevant grounds.

24. It was submitted that, in any event, respondent No. 1 and its trustees had produced a certificate from the authority concerned u/s 269UL of the Income Tax Act, 1961, and also had produced sufficient documentary evidence recording that the trustees and the said partnership firms had declared respondent No. 1 to be the owner of the said property. The returns of income filed by respondent No. 1

also constituted relevant evidence. The appellants never called upon respondent No. 1 and the trustees to produce any further evidence and accepted the aforesaid evidence when produced. The said impugned order dated November 26, 1987, and the withholding of the clearance certificate u/s 230A of the said Act by the appellants were, therefore, erroneous, mala fide and arbitrary.

25. Learned advocate for the appellants, on the other hand, reiterated the contentions of the appellants as contained in the said affidavit of appellant No. 1 affirmed on January 13, 1988, and filed in opposition to the writ application. It was submitted that after processing the case through the Inspector deputed by the appellants and on examination of the title deeds produced on behalf of respondent No. 1, it appeared that on September 30, 1986, three individuals, the three trustees and the three partnership firms purchased 1/6th share each of the said property. Subsequently, in August 1987, each of the said purchasers made a separate declaration that the purchases were made in benami for the trust.

26. In the proposed transfer, the trustees were named as the vendors. Appellant No. 1 had the jurisdiction to make an assessment in respect of respondent No. 1 but did not have any jurisdiction to assess the trustees individually. It was submitted that the certificate u/s 230A of the said Act could only be issued if it was established that the said property was held by the said trust. The title to the said property did not vest in the trust or in the trustees acting on behalf of the trust. Therefore, it was not described that the said property was held by the trust.

27. The subsequent declarations of the several purchasers that they were only benamidars of the trust had no legal effect as they could not confer any title on respondent No. 1.

28. It was submitted that the said property was initially purchased by the said several purchasers for a total consideration of over Rs. 42 lakhs. This would result in short-term capital gain of Rs. 27 lakhs which would be taxable in the hands of the individual trustees and the said partnership firms, the original purchasers, but not in the hands of respondent No. 1 which claims to be a charitable trust.

29. It was submitted that the transaction in respect of which a certificate u/s 230A of the said Act was being sought was nothing but a device to evade liability to tax.

30. It was further submitted that, in any event, the said three individual trustees and the said partnership firms were not entitled to obtain tax clearance certificate u/s 230A of the said Act from appellant No. 1 nor had appellant No. 1 any jurisdiction to issue such certificate to the said individuals and partnership firms.

31. Learned advocate for the respondents relied on and cited the following decisions in support of his contentions.

(a) Panchanan Das Vs. Income Tax Officer, "K" Ward and Others, . In this case, it

was held by Sabyasachi Mukherji J. (as his Lordship then was) that for the grant of a tax clearance certificate u/s 230A of the Income Tax Act, 1961, the Income Tax Officer concerned was required only to find out whether any tax liability is outstanding in respect of the particular taxing Acts mentioned in the section or whether any satisfactory provision for payment of such liability had been made. The Income Tax Officer was not entitled to take into account whether the property involved was the subject-matter of any litigation with the Income Tax Department which intended to acquire the said property, The same would be an extraneous consideration.

(b) Gopal Industrial Estate and Others Vs. Income Tax Officer, Ward "E" (Revenue), Bhavnagar and Others, . In this case, a Division Bench of the Gujarat High Court laid down that while issuing a certificate u/s 230A of the Income Tax Act, 1961, it was not open to the Income Tax Officer concerned to take into consideration any factor other than the circumstance whether any liability in respect of payment of taxes under an order of assessment already made was outstanding or not. The Income Tax Officer could not refuse to issue such a certificate on the ground that the assessment proceedings were outstanding and had not been completed.

Nor would it be relevant for the Income Tax Officer to consider whether there was lack of co-operation on the part of the assessee in completing the pending assessment proceedings.

(c) Mrs. Helen Jayaraj Vs. Sub-Registrar of Mylapore and Others, . This is a decision of a learned judge of the Madras High Court. The facts in this case and the principles laid down do not appear to be relevant to the controversies in the instant case. This case need not be considered any further,

32. To appreciate the controversies involved in the present proceedings, it would be convenient at this stage to note the provisions of Section 230A of the Income Tax Act, 1961, which provides, inter alia, as follows :

"Section 230A. (1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of Clause (a) to Clause (e) of Sub-section (1) of Section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property valued at more than fifty thousand rupees, no registering officer appointed under that Act shall register any such document, unless the Income Tax Officer certifies that--

(a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Tax Act, 1940, the Business Profits Tax Act, 1947, the Indian Income Tax Act, 1922, the Wealth-tax Act, 1957, the Expenditure-tax Act, 1957, the Gift-tax Act, 1958, the Super Profits Tax Act, 1963, and the Companies (Profits) Surtax Act, 1964 ;or

(b) the registration of the document will not prejudicially affect the recovery of

any existing liability under any of the aforesaid Acts.

(2) The application for the certificate required under Sub-section (1) shall be made by the person referred to in that sub-section and shall be in such form and shall contain such particulars as may be prescribed."

33. It is to be noted that the above section is not intended to validate any transfer or to ensure the recording of any valid transfer. The certificate from the Income Tax Officer is necessary to register any document which purports to transfer any immovable property. The certificate is limited and only records that the transferor has no existing tax liabilities under the various statutes mentioned in the section or that satisfactory provision has been made for payment of such existing liabilities and that the registration of the document will not prejudicially affect the recovery of any existing liabilities under the said taxing statutes.

34. A person requiring a certificate under the said section has to apply in the prescribed form containing particulars as prescribed therein.

35. The section does not require or empower the Income Tax Officer concerned to adjudicate or determine the validity of the transfer or the title of the transferor in the property which is sought to be transferred. The Income Tax Officer has to ensure primarily that the transferor seeking the certificate is a party to the document of transfer, whereby the transfer is purported to be made, and the existing tax liabilities of the said person. These are the primary requirements which have to be satisfied whereafter the certificate prescribed under the said section is required to be issued.

36. Obviously, where the transferor, as recorded in the document, is a person other than the person who is seeking a certificate under the said section, the Income Tax Officer concerned will not be required to issue a certificate. In any event, such a certificate issued by the Income Tax Officer will not be a certificate as contemplated under the said section and the registering authority under the Indian Registration Act will not accept such a certificate for the purpose of registering the said transfer.

37. In the instant case, the document which the respondents seek to register is a deed of conveyance where the trustees of respondent No. 1, as such trustees, have been described as the vendors and the Indian Bank, the added respondent, has been described as the purchaser. The said three trustees and the said three partnership firms who are the original transferees on record of the undivided 1/6th share, respectively, of the said property are the confirming parties to the said document where it is, inter alia, recorded that the said three trustees and the said partnership firms had lent their names for purchase of the said property on behalf of respondent No. 1, who was the beneficiary and respondent No. 1 at all material times was or was deemed to be the sole beneficial and the real owner or purchaser of the said property.

38. On the basis of the aforesaid, respondent No. 1 has sought to make a title to

the said property in its favour. The Indian Bank, the added respondent, appears to be satisfied with the title. Respondent No. 1 has obtained a certificate u/s 269UL of the Income Tax Act, 1961.

39. In any event, if respondent No. 1 has no title to the said property, mere registration of the conveyance would not create a title in favour of respondent No. 1 and no title would pass to the Indian Bank, the purchaser.

40. In the facts as aforesaid, it appears to us that all that appellant No. 1, the Income Tax Officer concerned, is required to do is to ascertain whether the transferor, namely, respondent No. 1, has any existing tax liability and whether sufficient provision has been made for payment of such existing tax liabilities, if any, and whether the registration of the conveyance would prejudicially affect the recovery of any existing tax liability.

41. Beyond that, appellant No. 1 is not called upon or empowered to launch into an enquiry on the title of respondent No. 1 in the said property.

42. u/s 41 of the Transfer of Property Act, 1882, if an ostensible owner of a property transfers the same with the express or implied consent of persons interested in the property for consideration, such a transfer will not be voidable on the ground that the transferor was not authorised, provided the transferor has acted in good faith,

43. Similarly, u/s 8 of the Transfer of Property Act, 1882, a transfer of property passes to the transferee all interest which the transferor is then capable of passing in the property and the legal incidents thereof.

44. In view of the aforesaid, it appears that even if an enquiry is made as to the title of respondent No. 1 in the said property, it would appear that in view of the said notice dated December 11, 1986, u/s 281A(1) of the said Act to appellant No. 2, the said indentures respectively dated August 24, 29, 1987, executed by and between the said three trustees and the said three partnership firms disclaiming their right, title and interest in the said property in favour of respondent No. 1 and the fact that the said three trustees and the said three partnership firms are confirming parties to the proposed deed of conveyance, sufficient title can be said to have been made out in favour of respondent No. 1.

45. The trustees of respondent No. 1 who are parties to the said proposed conveyance are acting on behalf of respondent No. 1. The said three trustees and the said three partnership firms in whose names the said property was initially purchased are confirming parties to the said deed of conveyance, As such, they cannot be held or deemed to be the transferor of the property in favour of the Indian Bank against the tenor of the proposed deed of conveyance, In any event, all the trustees have produced before us Income Tax clearance certificates which they have obtained from their respective Income Tax Officers for the purpose of obtaining bank loans.

46. Appellant No. 1, the Income Tax Officer, in the facts, is not entitled to

withhold the certificate u/s 230A of the Income Tax Act, 1961, in favour of respondent No. 1. This is not a case where a clear or obvious fraud is being sought to be perpetrated.

47. For the reasons as aforesaid, the order dated February 1, 1988, does not appear to be erroneous and does not call for any interference. The said order is affirmed.

Shyamal Kumar Sen, J.

48. I agree.