

(1967) 06 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 717 of 1966

Kesavan Vadhyan Namboodri

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 16-06-1967

Acts Referred:

Constitution of India, 1950 — Article 295(1)
Kerala Land Tax Act, 1961 — Section 2, 21, 4, 5

Citation : AIR 1968 Ker 279

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : C.S. Ananthakrishna Iyer, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.U. Isaac, J.—The petitioner is said to be a karnavan of a very ancient and premier Namboodiri family in the erstwhile State of Cochin. This State was integrated with the erstwhile State of Travancore; and the United State of Travancore and Cochin was formed with effect from the first day of July, 1949 as per a covenant entered into between the Ruler of these two States. Subsequently this integrated State came to be known as the State of Travancore-Cochin, and became one of the States in Part B of the I Schedule to the Constitution. As result of the States Reorganisation Act, 1956, the State of Travancore-Cochin ceased to exist; and the State of Kerala was formed consisting of a major part of the State of Travancore-Cochin and what was known as the Malabar District of the former State of Madras. Kerala State was formed with effect from 1-11-1956.

The petitioner claims that the members of his Mana are traditionally erudite Scholars in the Rig Veda, and were the hereditary high priests of the community, and that in recognition of these qualities and in consideration of the services rendered by them to the then State of Cochin, the Maharaja granted certain lands to the petitioner's Mana free of land tax. It is said that the petitioner's

Mana owns two Deva-swoms, and for the support and maintenance of these Devaswoms and their temples, the Maharaja also gave similar grants of land free of tax. While the petitioner's Mana was enjoying these lands pursuant to the aforesaid grants, the Maharaja of Cochin issued the Settlement Proclamation of 1905. The purport of this proclamation was to conduct a revenue settlement of all the lands in the State in accordance with the principles laid down therein

Section 14 of this Proclamation deals, among another things, with Pandaravaka lands held on concessional tenures, as well as lands held tax-free conditionally or absolutely. This Section also provides that the Diwan would frame such rules as he deemed necessary prescribing the terms on which such grants would be confirmed and laying down the procedure to be followed in their disposal and for the issue of title deeds. Accordingly, the Diwan of Cochin framed Rules in this respect of 14th March 1905; and these rules are contained from page 464 of Volume I of the Rules and Notifications under the enactments of Cochin. Rules 4 to 20 of these Rules (Pages 467 to 471) are the Rules relating to service and personal grants; and they contain the procedure for the issue of title deeds in respect of lands held under such grants.

Ext. P-1 dated 27th June, 1908 is a title deed issued by the Diwan of Cochin to the petitioner's Mana in accordance with the above Proclamation and the Rules made thereunder for certain lands held by the Mana under a tax-free grant from the Maharaja of Cochin. The Mana was also given similar title deeds for the remaining lands held on tax-free grants from the Maharaja Exts. P-3 series and P-4 series are said to be the copies of these title deeds They were issued by the Diwan in 1908. Before the formation of the United State of Travancore and Cochin, and thereafter until the passing of the Travancore-Cochin Land Tax Act. 1955, the levy and collection of tax on lands in the area, which comprised the erstwhile State of Cochin, were governed by the Settlement Proclamation of 1905.

The Land Tax Act of 1955 repealed the aforesaid Proclamation and provided for the levy of a low and uniform rate of tax on all the lands throughout the State of Travancore-Cochin. The Land Tax Act, 1955 was, however, struck down as unconstitutional by the Supreme Court in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . As a result of this, the Kerala Legislature enacted the Kerala Land Tax Act, 1961. The lands held by the petitioner's Mana under Exts. P-1, P-3 series and P-4 series were not subject to any levy either under the Settlement Proclamation of 1905 or under the Land Tax Act of 1955. Purporting to act under the Land Tax Act of 1961, the Deputy Tahsildar, Trichur, who is respondent No. 2 in this case, issued a notice u/s 7 of the Travancore-Cochin Land Revenue Recovery Act 7 of 1951, calling upon the petitioner to pay a sum of Rs. 30.80 as land tax. This notice is Ext. P-5 dated 26-11-1965; and it relates only to some of the lands held by the petitioner's Mana under the aforesaid title deeds.

In response to Ext. P-5, the petitioner submitted an objection to the second

respondent stating that the land to which Ext. P-5 related was held by his Mana free of tax as per title deeds referred to above, and that the State had no authority to levy any tax in respect of the said lands. This was supplemented by another objection. Ext. P-7 dated 31-5-1965 stating that most of the lands under the aforesaid title deeds were either owned by other persons or held by tenants, and that the petitioner should not be subjected to levy of tax in any event in respect of such lands. There was no response to Ext. P-6 or Ext. P-7. The petitioner has, therefore, filed this Original Petition for a writ of certiorari or other appropriate writ to quash Ext. P-5, to declare that the Land Tax Act of 1961 is unconstitutional and to prohibit the State of Kerala, who is the first respondent, and the second respondent from levying or collecting any tax in respect of the lands held by his Mana under the aforesaid title deeds.

2. The learned counsel for the petitioner does not press his contention that the Land Tax Act of 1961 is unconstitutional, in view of the fact that this Act was included in the Ninth Schedule of the Constitution by the Constitution (Seventeenth amendment). Act. 1964, and the constitutional validity of this amendment was upheld by the Supreme Court in *Sajjan Singh Vs. State of Rajasthan*, . Two contentions alone are pressed by the learned counsel and they are.

(i) Lands held by the petitioners Mana are held under irrevocable grants by a sovereign authority, and that a successor State is bound by such grants

(ii) The land? concerned in this case are held by the petitioner's Mana under title deeds issued by the State of Cochin in accordance with the Settlement Proclamation of 1905 and the Rules framed thereunder. The Settlement Proclamation of 1905 was expressly repealed by the Land Tax Act of 1955; but this Act, as a whole, was struck down by the Supreme Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . The Land Tax Act of 1961, repeals only the Land Tax Act of 1955, and not the Settlement Proclamation of 1905, Hence the Settlement Proclamation and the Rules made thereunder prevail in respect of the lands concerned in this case.

3. In support of the first contention, the learned counsel relied on Article 295(1) (b) of the Constitution, and argued that the Kerala State being a successor of the erstwhile State of Cochin is bound by the grants given by the Maharaja of Cochin, and that Kerala State has no power by legislation or otherwise to impose a tax on lands given to the petitioner's Mana free of tax by the Cochin Maharaja. This contention cannot stand for reasons more than one. The Settlement Proclamation of 1905 shows that its purport was to have a revised and complete revenue settlement of all lands in the State, including lands held under concessional tenures or as tax-free conditionally or absolutely. The lands given to the petitioner's Mana by the Maharaja of Cochin as free of tax were settled under the Settlement Proclamation of 1905 and the Mana was given title deeds in accordance with the said Proclamation and the Rules made thereunder. Thereafter, it is not possible for the petitioner to contend that these lands are

being held under the original grants.

Assuming that the said lands can still be deemed to be held under the grants given by the Maharaja of Cochin, it is well-settled on the authority of the decision in *Maharaja Shree Umaid Mills Ltd. Vs. Union of India (UOI)*, and *Firm Bansidhar Premsukhdas v. State of Rajasthan* AIR 1967 SC 40 that Article 295(1)(b) of the Constitution has no application to such a case, and that the contractual liability of a sovereign State is not binding on the successor State, except to the extent, if any, the successor State recognises the same. After a review of the authorities on the question, the Supreme Court said in AIR 1967 SC 4ft:

"It is not correct to say as a matter of law that the successor State automatically inherits the rights and obligations of the merged State. There is no question of subrogation--the successor State is not sub-rogated ipso jure to the contracts with the merged State, The true legal position is that the contract of the predecessor State terminates with the change of sovereignty unless the contract is ratified by the succeeding sovereign State. It is now well established in law that the contractual liability of a former State is binding on a succeeding sovereign State only if it recognises that contractual liability. The reason is that the taking over of sovereign powers by a State in respect of territory which was not till then a part of it is an act of State and the municipal Courts, recognised by the new sovereign have the power and jurisdiction to investigate and ascertain only such rights as the new sovereign has chosen to recognise or acknowledge; and such recognition may be express or may be implied from circumstances. In other words accession of one State to another is an act of State and the subjects of the former State may claim protection of only such rights as the new sovereign recognises as enforceable by the subjects of the former State in his municipal Courts".

The petitioner's learned counsel submits that no tax has been collected in respect of these lands or no demand therefore has been made until the notice Ext. P-5 was sent and that this amounts to a recognition of the right of the Mana to hold the said lands free of tax under the grants. This submission cannot be accepted. Recognition of a right or ratification of a contract can be made only by a positive act, or by a course of conduct evidencing a conscious acquiescence in the said right or of the obligations under the contract. There is nothing to show that anything like that has happened in this case.

So long as the Settlement Proclamation of 1905 remained in force, the petitioner's lands were free of tax as per the settlement made thereunder. The Land Tax Act of 1955, which repealed the Settlement Proclamation, was struck down by the Supreme Court, as already stated; and there was practically no occasion for making any demand for payment of tax under the Land Tax Act of 1955. At any rate an omission to make a demand for collection of tax cannot amount to recognition of the alleged right of the petitioner's Mana to hold these lands free of tax.

4. The next contention of the petitioner's learned counsel raises the question whether the Settlement Proclamation of 1905 has been repealed by implication on the enactment of the Land Tax Act, 1961. This Proclamation has not admittedly been repealed in express terms by the Land Tax Act, 1961. The principles relating to repeal of a statute by implication are laid down in the decisions of the Supreme Court in *Trust Mai Lachmi Sialkoti Bradri Vs. The Chairman, Amritsar Improvement Trust*, and in *Municipal Council Palai Vs. T.J. Joseph and Others*, .

In *Trust Mai Lachmi Sialkoti Bradri Vs. The Chairman, Amritsar Improvement Trust*, the Supreme Court said at p. 979:

"It is a maxim of the law that implied repeals are not to be favoured, and where two statutes are entirely affirmative and identical, no question of inconsistency could arise. Where the operative terms of the two enactments are identical and the enactments, so to speak, run parallel to each other there would be no scope for the application of the doctrine of implied repeal and that would be so particularly in a case where the earlier enactment is one of temporary duration while the latter is a permanent enactment. . . "

In AIR 1933 SC 1561 the court said at page 1564:

"It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicate? that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together".

Reference may also be made to the following statement of law in paragraph 2012 in Volume 1 of *Statutes and Statutory Constructions* by J. G. Sutherland 3rd Edition:

".....Where a consistent body of laws cannot be maintained without the abrogation of a previous law, a repeal by implication of previous legislation or of the common law is readily found in the terms of a later enactment. It is the necessary effect of the later enactment construed in the light of the existing law, regardless of whether such an effect is the child of the legislative mind or a creature of fortuity, that ultimately determines an implied repeal "

The learned author again states in the same paragraph -

"When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two Acts, the latest legislative expression prevails and the prior law yields to the extent of the conflict"

I have to examine the provisions of the Land Tax Act of 1961 in the light of the aforesaid principles.

The preamble of this Act states that this was enacted because it was deemed necessary to provide for the levy of a basic tax on lands in the State of Kerala. The lands we are concerned in this case are lands in the State of Kerala; and in the absence of any exemption, these lands also come within the sweep of the language used in the preamble. The Legislature intended to give exemptions in respect of certain lands in the State; and they are dealt with in Section 2 of the Land Tax Act of 1961. Admittedly the petitioner's lands do not come within the ambit of Section 2. Section 4 of the Land Tax Act, 1961 reads as follows:--

"Notwithstanding anything in any enactment, grant deed or other transaction, the arrangement herein made for the levy of the basic tax shall be deemed *inter alia* to be a general revenue settlement of the State."

In the light of the clear language used in this Section, it is not possible to say that the petitioner's lands are exempted from the levy of tax under the Land Tax Act, 1961, by virtue of the terms and conditions of any grant given by a former sovereign, or any other enactment. This Section states in express terms that notwithstanding anything contained in any enactment or grant the provisions in this Act shall be deemed to be a general revenue settlement for levy of basic tax on all lands in the State. Thus no field is left for the Settlement Proclamation of 1905 to operate. The result is that this Proclamation stands repealed by implication by the Land Tax Act of 1961. The petitioner's contention on this point cannot, therefore, succeed.

5. The petitioner has also taken objection in this Original Petition to the attempt of the revenue authorities to levy and collect tax from him in respect of all lands covered by the title deeds Exts. P-1, P-3 series and P-4 series on the ground that his Mana is not holding all the said lands. This is not a case where these lands are registered as liable to land tax formerly, but it is a case of new levy. Under these circumstances, it is only just and proper that an enquiry is made regarding the extent of the Lands held by the petitioner's Mana, and its liability to pay tax under the Land Tax Act of 1961 is determined, before the petitioner or the Mana is called upon to pay land tax. Accordingly, I direct the second respondent to conduct such an enquiry, and determine the amount of tax payable in respect of the lands held by the petitioner and or his Mana in accordance with the Land Tax Act of 1961, before any action is taken for recovery of land tax from the petitioner and his Mana.

6. In the result this Original Petition fails except to the extent indicated above; and is accordingly dismissed. There will be no order as to costs.