

(1960) 03 KL CK 0047
In the High Court Of Kerala
Case No : O.P. No. 348 of 1959

Kunhammad Haji

APPELLANT

Vs

Agrl. Income Tax Officer, Vayithiri and Another

RESPONDENT

Date of Decision : 04-03-1960

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
States Reorganisation Act, 1956 — Section 119, 5

Citation : (1960) KLJ 762

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant;

Final Decision : Dismissed

Judgement

M.S. Menon, J.—This petition under Articles 226 and 227 of the Constitution challenges the validity of Ext. P. 3 dated 10-3-1959, an order of assessment under the Madras Plantations Agricultural income tax Act, 1955. The assessment year concerned is 1957-58. The accounting period covered by the assessment is a period prior to the formation of Kerala on 1-11-1956, namely, 1-4-1956 to 31-10-1956.

2. The Madras Plantations Agricultural Income tax Act, 1955, continued to be in force in the Malabar area of the State after the formation of the Kerala State, as a result of section 119 of the States Reorganisation Act, 1956. The Travancore-Cochin Agricultural income tax Act, 1950, was extended to the Malabar area of the State by the Travancore-Cochin Agricultural income tax (Amendment) Act, 1957, with effect from 1-4-1957. Section 3 (i) of the amending Act changed the name of the Travancore-Cochin Agricultural income tax Act, 1950, to Agricultural income tax Act, 1950 and section 15 of that Act repealed the Madras Plantations Agricultural income tax Act, 1955, in the following terms:

"The Madras Plantations Agricultural income tax Act, 1955, (Act V of 1955) as in

force in the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956, is hereby repealed.

3. In 1958 KLT 1144 = 1958 K.L.J. 1286, a Full Bench of this Court held that the income derived from lands in Malabar prior to the formation of Kerala on 1-11-1956 cannot be the subject of a levy under the Agricultural income tax Act, 1950. The decision necessitated legislative interference and Ordinance No. 1 of 1959 was promulgated by the Governor of Kerala with effect from 1-4-1957. The Ordinance has since been replaced by an Act, the Madras Plantations Agricultural income tax (Revival) Act, 1959 also with effect from 1-4-1957.

4. Sub-section (1) of section 2 of the Madras Plantations Agricultural income tax (Revival) Act, 1959 provides:

"The Madras Plantations Agricultural income tax Act, 1955 (Madras Act V of 1955), hereinafter referred to as the Madras Act, is hereby revived and shall be in force and shall be deemed to have been in force to the extent and for the purposes necessary for the levy, assessment, re-assessment and collection of the agricultural income tax under the Madras Act on the agricultural income of every person for the period or periods prior to the 1st day of November, 1956."

5. The first contention urged before us is that the Kerala State Legislature has no power to revive the Madras Plantations Agricultural income tax Act, 1955, as it has purported to do by section 2 (1) of the Madras Plantations Agricultural income tax (Revival) Act, 1959. That the Kerala State Legislature had the power to repeal the Madras Plantations Agricultural income tax Act, 1955, as it did by section 15 of the Travancore-Cochin Agricultural income tax (Amendment) Act, 1957 is not disputed before us. A power of revival is normally implicit in the power of repeal and if the Kerala State Legislature had the power to repeal the enactment, it is, we think, axiomatic that it has also the power to revive the same.

6. The next contention urged before us is that section 15 of the Travancore-Cochin Agricultural income tax (Amendment) Act, 1957, has not been repealed by the Madras Plantations Agricultural income tax (Revival) Act, 1959, and that the said section should be considered as still in force. We see no merit in this contention. When the Madras Plantations Agricultural income tax Act, 1955, is expressly revived as has been done by the Madras Plantations Agricultural income tax (Revival) Act, 1959, it is certainly impossible to hold that section 15 can in any sense be operative subsequent to the revival effected by the Legislature.

7. The preamble to the Madras Plantations Agricultural income tax (Revival) Act, 1959, clearly shows that one of the objects of the Act was to wipe out completely the effect of the repeal effected by section 15 of the Travancore-Cochin Agricultural income tax (Amendment) Act, 1957. The relevant portion of the preamble reads as follows:

"Whereas the Madras Plantations Agricultural income tax Act, 1955 (Madras Act V of 1955), as in force in the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act XXXVII of 1956), was repealed by section 15 of the Travancore-Cochin Agricultural income tax (Amendment) Act, 1957 (Kerala Act VIII of 1957)."

8. Sub-section (2) of section 2 of the Madras Plantations Agricultural income tax (Revival) Act, 1959, provides:

"For the purposes of levy, assessment, re-assessment and collection of agricultural income tax under the Madras Act for the assessment year 1957-58, notwithstanding anything contained in sub-clause (i) of clause (t) of section 2 of the Madras Act, "previous year" shall be the period commencing from the day next after the last day of the previous year in respect of the assessment year 1956-57 and ending on the 31st day of October, 1956:

Provided that, notwithstanding anything contained in section 3 of the Madras Act, the tax chargeable on the total agricultural income for the assessment year 1957-58 shall be at the rate applicable to the "average annual income" according to the Schedule to the Madras Act; such "average annual income" shall be an "amount bearing to the aforesaid total agricultural income, the same proportion as the period of twelve months bears to the period for which the agricultural income is reckoned:

Provided further that the limit for exemption from chargeability to tax for the assessment year 1957-58 shall be determined with reference to the "average annual income".

The third contention urged before us is that even if we treat the Madras Plantations Agricultural income tax Act, 1955, as having never left the Statute Book as a result of section 2 (1) of the Madras Plantations Agricultural income tax (Revival) Act, 1959--as we think we should for the purposes of taxation in respect of the periods prior to 1-11-1956--the amendment effected by the subsection extracted above should be considered as beyond the legislative competence of the Kerala State Legislature for the lack of a territorial nexus at the time the income was derived. We cannot agree.

9. It is certainly competent for a State to affect any property within its territory. It is equally clear that a tax is not a penalty imposed on the tax payer and that it is not necessarily unconstitutional because it is retroactive in character. The contention is only that the territorial nexus between the Kerala State and the agricultural lands concerned did not exist at the time the agricultural income was obtained and it is hence not possible for the Kerala State Legislature to effect the amendment impugned before us.

10. It is not disputed that but for the formation of Kerala the amendment could have been effected by the Legislature of the Madras State in respect of the area and for the period with which we are concerned. The provisions of the States

Reorganisation Act, 1956, make it clear that the Kerala State is a successor to the State of Madras in respect of the Malabar District and that it has been endowed with all the powers possessed by the predecessor State at the time the new State came into being on 1-11-1956. A successor State dealing with an enactment which it inherited from its predecessor, and which has never left the Statute Book but has continued to operate without disruption for all relevant purposes, must necessarily be considered to have all the powers that its predecessor had in respect of that piece of legislation. The nexus necessary for a valid amendment of such an enactment must be implicit in the very fact of succession.

11. Counsel for the petitioner drew our attention to 1958 KLT 1144 (F. B.) = 1958 K.L.J. 1286. We are unable to find anything in that decision which militates against the view we have taken. That was a case--as indicated in paragraphs 2 and 3 above--of the extension of a Travancore-Cochin enactment, the Travancore-Cochin Agricultural income tax Act, 1950, to the Malabar District where it was never in force and the consequences that flowed from such an extension. What we are concerned with in this case is with the powers of amendment in respect of an enactment which was in force in the Malabar District at all relevant times.

12. The fourth and last contention urged before us is that the previous year as provided in sub-section (2) of section 2 of the Madras Plantations Agricultural income tax (Revival) Act, 1959, is discriminatory in character and violates the equal protection of the laws guaranteed by Article 14 of the Constitution. Counsel for the petitioner stated that his submissions regarding this point are the same as those he made in O.P. No. 345 of 1959. In our judgment in the said petition we have held that the submissions are unacceptable and that we are unable to agree that there has been a violation of Article 14 of the Constitution.

13. Counsel for the petitioner submitted that we need not deal with any of the remaining contentions raised in the petition, and that his client proposes to deal with them in the appeal that has been filed and is now pending disposal. Those contentions are not considered in this judgment. In the light of what is stated above, the petition has to be dismissed and we decide accordingly. In the circumstances of the case, however, there will be no order as to costs.