
(1990) 04 OHC CK 0027
In the Orissa High Court
Case No : First Appeal No. 55 of 1981

Madan Mohan Samantray

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-1990

Acts Referred:

Income Tax Act, 1961 — Section 269C, 269D, 269E, 269F, 269G

Citation : (1991) 188 ITR 306

Hon'ble Judges : J.M. Mahapatra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R.K. Mohanty, for the Appellant; S.C. Roy, General, for the Respondent

Judgement

G.B. Patnaik J.

1. The plaintiff is the appellant against the judgment and decree of the Subordinate Judge, Bhubaneswar, dismissing the plaintiff's suit on a finding that the suit is not maintainable.

2. The plaintiff alleged that the plaintiff had purchased the disputed property from one Ushamani Mahapatra and, thereafter, constructed a building on the said land with his own money. On November 16, 1973, he had executed a sale deed in favour of defendant No. 3 who is his daughter, but the said document was a sham one and was never intended to be acted upon. According to the plaintiff, no title in respect of the disputed property had passed on to defendant No. 3 on the basis of the sale deed dated November 16, 1973, and there had been no transfer of ownership, but defendant No. 2 initiated a proceeding under Chapter XXA of the Income Tax Act against defendant No. 3. The plaintiff also appeared in the said proceeding and submitted before defendant No. 2 that the proceeding was not maintainable as there had been no transfer in favour of defendant No. 3. Defendant No. 2, however, rejected the objection of the plaintiff and passed final orders under the said Chapter XXA of the Income Tax Act. The plaintiff, thereafter, filed the present suit after serving due notice u/s 80, Code of Civil

Procedure, praying for a declaration that the disputed property belongs to the plaintiff and is not liable to be proceeded against in acquisition proceedings under Chapter XXA of the Income Tax Act.

3. Defendant No. 2 filed a written statement alleging therein that the plaintiff executed a registered sale deed in respect of a double-storeyed building standing on the disputed land for a consideration of Rs. 20,000 and, in the sale deed itself, it was acknowledged that he had received the consideration money from defendant No. 3 earlier. As the market value of the property was more than rupees one lakh and defendant No. 2 was prima facie satisfied that the property transferred was undervalued, he issued a notice u/s 269D of the Income Tax Act. The proceeding was initiated both against the plaintiff and defendant No. 3, namely, the transferor and the transferee. Due particulars were given to the parties and, after considering the stand of both the transferor and transferee, defendant No. 2 passed orders on March 18, 1978. The plaintiff filed an appeal against the same before the Appellate Tribunal and defendant No. 3 also filed an appeal against the same in the said Appellate Tribunal. Both the appeals were dismissed by the Tribunal by order dated August 30, 1978. The said order in the proceeding under Chapter XXA became final as the aggrieved party never approached the High Court and, therefore, the civil court would have no jurisdiction to interfere with the said order. In assailing the averment of the plaintiff with regard to the shamness of the transaction, it was averred that the document in question was produced by defendant No. 3, the transferee, through her authorised representative which indicates that the sale had been acted upon and was a real one and not a sham. Other allegations in the plaint were denied. An additional written statement was also filed on behalf of defendants Nos. 1 and 2 denying the allegation of mala fides.

4. Defendant No. 3 did not file any written statement.

5. On these pleadings, the learned Subordinate Judge framed 7 issues of which issue No. 1 is to the effect whether the case is maintainable as laid. On behalf of defendant No. 2, an application was filed on August 19, 1980, that the preliminary issue regarding jurisdiction for trying the suit should be decided first. Issue No. 3 is to the effect as to whether the court has jurisdiction to decide the matter. The learned Subordinate Judge took up the questions of jurisdiction and maintainability preliminarily and came to hold that though Section 293 of the Income Tax Act which bars the jurisdiction of the civil court in respect of orders of assessment made under the Act, in terms, would not apply to an acquisition proceeding under Chapter XXA, yet the jurisdiction of the civil court must be held to be impliedly barred in respect of the said acquisition proceeding and the civil court has no jurisdiction to give relief declaring that a property which has been sold for an apparent consideration which is less than the fair market value is not liable to be proceeded against under Chapter XXA of the Income Tax Act. The essential relief sought for by the plaintiff being beyond the scope of the jurisdiction of the civil court, the Subordinate Judge dismissed the suit. It is this

decision which is being assailed in this appeal by the plaintiff.

6. Mr. Mohanty, learned counsel for the appellant, raises the only contention that the decision of the Tribunal on the collateral fact on the existence of which the Tribunal got jurisdiction to decide other questions is not conclusive and the civil court has always the jurisdiction to examine whether the Tribunal has acted within its jurisdiction unless the power of the civil court is expressly taken away. Since Section 293 of the Income Tax Act, as it stood prior to its amendment by the Finance Act of 1988, did not specifically bar the jurisdiction of the civil court to examine the validity of an order in the acquisition proceedings under Chapter XXA of the Income Tax Act, the civil court will have the jurisdiction to decide the question as to whether the collateral fact for conferring jurisdiction on the special tribunal existed or not. Thus, the question whether there was a valid transfer" or not would be amenable to the scrutiny of the civil court and the Subordinate Judge erred in law in coming to the conclusion that the civil court had no jurisdiction.

7. Mr. Roy, learned Advocate-General appearing for the Department, on the other hand, contends that the scheme of Chapter XXA of the Income Tax Act, if examined, would indicate that the remedies available to a person in a civil suit are available under the self-same Chapter XXA and, therefore, the civil court's jurisdiction to examine the validity of an order passed under the statute (under Chapter XXA) must be held to be impliedly ousted. Since the plaintiff did not pursue his remedies available to him under the said Chapter XXA, he cannot be permitted to do so by filing a civil suit.

8. The correctness of the rival submissions depends upon an interpretation of Section 9 of the CPC and the provisions of Chapter XXA of the Income Tax Act. Chapter XXA was inserted in the Income Tax Act with effect from November 15, 1972, and contains Sections 269A to 269S. Section 269C is the provision dealing with proceedings for acquisition of immovable property. Under Sub-section (1) of Section 269C, where the competent authority has reason to believe that an immovable property of a fair market value exceeding Rs. 1,00,000 has been transferred by a person to another person for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax or with the object of facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the assessee under the Indian Income Tax Act or the Wealth-tax Act, the competent authority may, subject to the provisions of the said Chapter, initiate proceedings for the acquisition of such property under the Chapter, provided that before initiating such proceedings, the competent authority shall record his reasons for doing so and provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent

consideration therefor by more than fifteen per cent. of such apparent consideration. For better appreciation of the point in issue, Section 269C(1) is quoted hereinbelow in extenso with the two provisos :

"269C. Immovable property in respect of which proceedings for acquisition may be taken.--(1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding one hundred thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of-

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer ; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 of 1957),

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter :

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so :

Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefore by more than fifteen per cent of such apparent consideration."

9. According to Mr. Mohanty, learned counsel for the appellant, there must be a transfer by one person to another and that transfer must be for an apparent consideration which is less than the fair market value of the property which would give jurisdiction to the competent authority to initiate a proceeding u/s 269C. Though the findings of the competent authority in a proceeding under Chapter XXA of the Income Tax Act on all other aspects would be held to be conclusive and cannot be assailed, the question whether, in fact, there was a transfer or not would be amenable to the jurisdiction of the civil court and since the plaintiff alleged in the suit that the transfer was a sham one, the civil court will retain its jurisdiction to decide on that question and to that extent its jurisdiction is not ousted. Mr. Mohanty further argues that the bar provided in Section 293, admittedly, did not apply to an acquisition proceeding and that is why the said provision was amended with effect from March 1, 1988, by inserting the expression "any proceeding taken or order made under this Act" and, therefore, until March 1, 1988, there was no bar for the civil court to decide the

question whether, in fact, there was a transfer or not on which collateral fact the competent authority would assume jurisdiction under Chapter XX-A.

10. There is no doubt that Section 293, as it stood prior to its amendment by the Finance Act of 1988, did not bar the jurisdiction of the civil court expressly in respect of an order passed under Chapter XXA of the Income Tax Act and that is why the Legislature brought in the expression "any proceeding taken or order made" by way of amendment in 1988. Yet, notwithstanding the absence of any express bar, it is still to be considered whether the jurisdiction can be said to have been impliedly barred. Mr. Mohanty, in support of his argument, strongly relies upon a Bench decision of this court in the case of Benudhar Dalai Vs. The State of Orissa, , wherein this court, on examining the provisions of Section 39 of the Orissa Estates Abolition Act, came to hold that the finding of the Collector under the said Act as to whether the lease was made on or after January 1, 1946, could be examined in a civil court and the civil court's jurisdiction was not barred to that extent, since the Collector, under the Orissa Estates Abolition Act, gets jurisdiction to annul a lease u/s 5(1) of the said Act only when the lease is executed after January 1, 1946.

11. Mr. Mohanty also relies upon two other decisions, namely, Smt. Lalita Todi and Others Vs. Commissioner of Income Tax, and Abdus Samat Haji Adam Kantharia and others Vs. Union of India and others, . In the Patna case, the order of the competent authority under Chapter XXA of the Income Tax Act had been assailed before the High Court u/s 269H of the said Chapter XXA which provided an appeal to the High Court against the decision of the Appellate Tribunal u/s 269G and, in that appeal, the High Court examined the correctness of the findings of the competent authority. We fail to understand how the said decision is of any assistance in deciding whether the civil court has jurisdiction to examine the legality of an order passed under Chapter XXA of the Income Tax Act. The Bombay case was a writ petition under Article 226 of the Constitution which challenged the legality of a notice issued u/s 269D and the court examined the legality of the said notice on the ground whether the preconditions for initiation of a proceeding u/s 269C were satisfied or not. The said decision is also of no relevance in adjudicating on the question whether the civil court has jurisdiction to consider whether there was a transfer or not within the ambit of Section 269C of the Income Tax Act. Thus, both the aforesaid decisions are of no assistance to the appellant.

12. The Privy Council, in the case of AIR 1940 105 (Privy Council) , has observed (at p. 110) ;

"... it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure

13. It would be appropriate to extract a passage from Lord Esher's observation in *Queen v. Commissioners for Special Purposes of the Income Tax* [1888] 21 QBD 313 which observation has been followed in all other subsequent decisions (p. 319) :

"When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shewn to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends ; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

14. In the case of *Sashibhushan Rath v. State of Orissa* [1973] 39 Cut LT 530, a Bench of this court was examining certain provisions of the Orissa Municipal Act, and, in that connection, it also examined the question whether jurisdiction of the civil court is barred or not. It was observed by their Lordships that though the civil court's jurisdiction had not been expressly barred under the Municipal Act, yet the question whether it had been impliedly barred had to be decided by applying the third test laid down by Willes J. in the case of *Wolverhampton New Waterworks Co. v. Hawkesford* [1859] 6 CBNS 336, the third test being ;

"... where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class."

15. The second class of cases referred to therein is where the statute gives the right to sue merely but provides no particular form of remedy, there the party can proceed only by action at common law. The Bench of this court in the said case also relied upon the decision of the Supreme Court in the case of *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , and quoted the three

principles which are extracted hereunder (at p. 89) :

"(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals."

16. It was also observed by their Lordships of the Supreme Court that exclusion of jurisdiction of the civil court was not readily to be inferred unless the conditions above set down applied.

17. Thereafter, the Division Bench of this court, on examining the provisions of the Orissa Municipal Act, came to hold that the remedies normally associated with actions in a civil court had been prescribed in the statute in Sections 273A, 274 and 344 and, therefore, the jurisdiction of the civil court had been impliedly barred.

18. Since, admittedly, there is no express bar ousting the jurisdiction of the civil court in respect of orders passed under Chapter XXA in Section 293 of the Income Tax Act, we would now examine the provisions contained in Chapter XXA itself to find out whether the theory of implied bar can be applied or not. u/s 269C, if preconditions prescribed therein are satisfied, then the Competent Authority would initiate a proceeding for acquisition of the immovable property in question. u/s 269D, notice to the effect of initiation of the acquisition proceeding shall be published in the Official Gazette. Section 269E provides for entertaining objections both from the transferor and the transferee as well as any other persons referred to in Sub-section (2)(a) of Section 269D. Section 269P provides

for hearing of objections and that hearing has to be made after the Competent Authority fixes a day and place for the hearing and the proviso to Sub-section (1) of Section 269F stipulates that, even if the transferee has not made any objection, yet he is entitled to a notice. Under Sub-section (4) of Section 269F, the Competent Authority is empowered to make such further enquiry as he thinks fit before disposing of the objections and Sub-section (5) stipulates that the decision of the Competent Authority in respect of the objections heard shall be in writing and shall state the reasons for the decision with respect to each objection. Sub-section (6) of Section 269F indicates that the Competent Authority, on being satisfied after hearing the objections and taking into account all relevant materials on record that the conditions prescribed in Clauses (a), (b) and (c) are satisfied, after obtaining the approval of the Commissioner, shall make an order for acquisition of the property under the Chapter. Section 269G provides for an appeal against the order of acquisition to the Appellate Tribunal and Section 269G further provides for hearing and disposal of the said appeal. Against the order passed u/s 269G, a further appeal is provided to the High Court on a question of law.

19. These being the provisions of the Act, we have no doubt in our mind in coming to the conclusion that the remedies normally associated with actions in civil courts have been prescribed in the Income Tax Act itself in Chapter XX-A. Even though there is no express exclusion of the jurisdiction of the civil court in Section 293 of the Income Tax Act in respect of orders passed under Chapter XX-A, an examination of the different provisions referred to earlier clearly indicates that the statute created a special liability and provided for the determination of that liability and also further laid down that all questions about that liability would be determined by the Tribunal so constituted and the remedies which were normally associated with the actions in the civil court were prescribed by the same statute itself. Since adequate remedy has been provided for in the statute itself and the Tribunal under the Act has been empowered to do what a civil court would do in a civil suit, the jurisdiction of the civil court must be held to be excluded when the statute has given finality to the orders passed by the Tribunals under the Act. It is to be noted in this connection that the plaintiff, against the order of the Competent Authority, had filed an appeal before the Appellate Tribunal and, being unsuccessful there, never invoked the jurisdiction of the High Court u/s 269H and, therefore, he cannot be permitted to invoke the jurisdiction of the civil court again to assail the validity of the orders of the Competent Authority under the Income Tax Act. We may also at this stage note that Section 269Q provides that Chapter XX-A will not apply to transfer to relatives when such transfer is made on account of love and affection even though for consideration far less than its fair market value if a recital to that effect is made in the instrument of transfer. In the present case, there is no such recital in the deed itself. Further, the relief claimed in the suit also will not come within the ambit of "existence of a collateral fact" so as to confer jurisdiction on the civil court as decided by this court in Benudhar Dalai Vs. The State of

Orissa, . In this view of the matter, we do not find any error in the impugned order of the Subordinate Judge in coming to the conclusion that the jurisdiction of the civil court must be held to be impliedly barred and the civil court has no jurisdiction to declare that the property in question is not liable to be proceeded against in an acquisition proceeding under Chapter XXA of the Income Tax Act.

20. In the result, we hold that there is no merit in this appeal which is dismissed but, in the circumstances, there will be no order as to costs of this court,

J. M. Mahapatra, J.

21. I agree.