

(1997) 09 MAD CK 0165

In the Madras High Court

Case No : Writ Petition No. 13088 of 1997 and WMP No. 21051 of 1997

Rajam Chettiar Maha Sivarathiri Kattalai

APPELLANT

Vs

Special Commissioner and Commissioner of Agricultural
Income Tax and Another

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 34

Citation : (2000) 241 ITR 794

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : M.V. Venkataseshan, for the Appellant; R. Arul Jothi, for the Respondent

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of certiorari to call for the records in proceedings No. A-1/RP No. 427 of 1979, dt. 2nd January, 1997, on the file of the Special CIT and Commr. of Agrl. IT, Chepauk, Chennai-5, and to quash the same.

2. Heard Mr. M. V. Venkataseshan, learned counsel for the petitioner, and Mr. R. Arul Jothi, learned Government Advocate for the respondents.

3. The petitioner-trust constituted in terms of the deed of trust dt. 15th October, 1959, is a religious and charitable trust founded by Rajam Chettiar. An extent of 90.74 acres was endowed for the trust which consists of both nanjai and punjai lands in Peraiyur and Mannargudi.

4. According to the petitioner, the income from the lands are being utilised for the performance of religious and charitable trust, as provided in the deed of trust. The petitioner trust claims that in terms of s. 4(b) of the Tamil Nadu Agrl. IT Act, 1955, the entire income from the agricultural lands are exempted as the same is utilised for charitable and religious purposes. The petitioner further states that the petitioner trust is not subjected to tax or assessment to any

Income Tax under the provisions of the Tamil Nadu Agrl. IT Act, 1955.

5. The second respondent assessed the petitioner-trust under s. 65(1) of the Tamil Nadu Agrl. IT Act for the asst. yrs. 1974-75 to 1978-79 and levied a tax of Rs. 1,689.75 for each assessment year and in all aggregating to Rs. 8,448.75. According to the petitioner, the petitioner trust should have been granted exemption in terms of s. 4(b) of the Tamil Nadu Agrl. IT Act. Aggrieved by the said assessment proceedings dt. 30th May, 1979, the petitioner preferred a revision in R.P. No. 427 of 1979, on the file of the first respondent and sought to set aside the assessment proceedings of the second respondent dt. 30th May, 1979.

6. However, on 10th September, 1985, the revision was decided ex parte and it was dismissed by the first respondent. As against the said proceedings of the first respondent dt. 10th September, 1985, the petitioner filed W.P. No. 7910 of 1986 on the file of this Court. This Court, after hearing either side, by order dt. 18th April, 1996, allowed the writ petition and remitted the matter back to the first respondent for fresh disposal according to law after giving an opportunity of hearing.

7. Y. Venkatachalam J., by order dt. 18th April, 1996, made in Writ Petition No. 7910 of 1986, allowed the writ petition, set aside the impugned proceedings of the first respondent dt. 10th September, 1985, made in R.P. No. 427 of 1979 and remanded the matter to the first respondent for fresh disposal according to law. The operative portion of the order passed by Y. Venkatachalam J. reads thus :

"In the result, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh disposal according to law after giving an opportunity to the petitioner to defend his cause within six months from the date of receipt of the records from this Court. In the circumstances, there will be no order as to costs."

8. After the said order, it is represented that the revision was adjourned from time to time and ultimately it was posted on 9th December, 1996, for hearing. It is stated that neither the petitioner nor counsel for the petitioner attended the hearing and the first respondent while holding that neither the petitioner nor his counsel had turned up for enquiry despite several opportunities, ultimately ordered that the earlier order passed by the Commissioner in R.P. No. 427 of 1979, dt. 10th September, 1985, was thereby confirmed. Being aggrieved, the present writ petition has been preferred.

9. Heard learned counsel for the petitioner as well as the learned Government Advocate. Though the petitioner seeks to explain the absence of the petitioner as well as counsel at the time of hearing before the first respondent, which this Court is not inclined to entertain or accept the said explanation, as a number of opportunities have been afforded by the first respondent to appear before him. Despite the opportunities, the petitioner had failed to appear.

10. However, learned counsel for the petitioner contends that the earlier order dt. 10th September, 1985, made in R.P. No. 427 of 1979, had already been set aside by this Court and as such the first respondent cannot, as per law, order that the order passed by the then Commissioner in R.P. No. 427 of 1979 on 10th September, 1985, is confirmed. There is force in the contention raised by learned counsel for the petitioner.

11. The order dt. 10th September, 1985, made in R.P. No. 427 of 1979 has already been set aside by this Court in Writ Petition No. 7910 of 1986. The effect of this Court setting aside or quashing the order passed on 10th September, 1985, would definitely mean the order dt. 10th September, 1985, no longer survives and it is deemed to have never been made. When this Court in exercise of power conferred under Art. 226 of the Constitution of India had quashed or set aside the proceedings of the first respondent dt. 10th September, 1985, made in R.P. No. 427 of 1979, the said order stands quashed and it is never deemed to have been made and it is no longer on file and it is no longer in existence.

12. Such being the legal position, the first respondent would not at all have been justified in disposing of the revision petition by merely stating that the order dt. 10th September, 1985, is confirmed. The confirmation of the order dt. 10th September, 1985, would arise only if the order survives and is available as on 2nd January, 1997. As already pointed out, order dt. 10th September, 1985, stands set aside or quashed. The effect would be that the said order is no longer available on file and the legal fiction that follows consequent to the order passed by this Court in Writ Petition No. 7910 of 1986, dt. 18th April, 1996, would be that the order dt. 10th September, 1985, has either been erased or never deemed to have been made.

13. Therefore, there is no order at all for the first respondent to confirm the order dt. 10th September, 1985. The first respondent should have passed fresh orders in the revision consequent to remand made by this Court according to law and the first respondent ought not to have disposed of the revision petition by merely stating that the order dt. 10th September, 1985, made in R.P. No. 427 of 1979 is confirmed. Thus, the ultimate portion of the order is vitiated and the first respondent could not in law confirm the order dt. 10th September, 1985, as it is no longer available or in existence on file.

14. In the circumstances, the present writ petition is allowed and the order dt. 2nd January, 1997, made in A-1/R.P. No. 427 of 1979 on the file of the Special CIT and Commr. of Agrl. IT, the first respondent herein, is quashed and the matter is remitted back to the first respondent for de novo proceedings. It is well open to the respondents to pass fresh orders on the merits and according to the provisions of the Agrl. IT Act, 1955. As the matter has been remitted back for de novo proceedings, the first respondent shall afford one opportunity of hearing to the petitioner and pass orders according to law.

15. The writ petition is allowed, but no costs. Consequently, W.M.P. No. 21051 of

1997 is closed.