
(1962) 08 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 89 of 1961 (J)

Ranbahadur Singh

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 22-08-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1964) JLJ 135

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : K.A. Chitale and G.P. Singh, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—In this petition under articles 226 and 227 of the Constitution assailing a decision of the Board of Revenue, the question raised is whether the valuable consideration received by the petitioners from persons to whom the petitioners granted possession of Bandhs u/s 41 of the Rewa Land Revenue and Tenancy Code, 1935, could be included in the calculation of gross income for the purpose of assessment of compensation under the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (hereinafter referred to as the Act), and whether in the calculation of net income for the same purpose a deduction of 2% could be made on account of "Sewa" under paragraph 4 (c) of the Schedule to the Act.

2. u/s 10 of the Act, the State Government is liable to pay to every Jagirdar, whose jagir land has been resumed u/s 5, compensation determined in accordance with the principles laid down in the Schedule to the Act. A Jagirdar whose jagir was resumed u/s 5 of the Act was required to file a statement of claim for compensation in the prescribed form containing the particulars mentioned in section 13(2) and other particulars prescribed by the rules. In the prescribed form, a Jagirdar could include other items of income, if any,

mentioning the source of income and the average annual income from the source for the last twelve years. Paragraph 3 (a) of the Schedule to the Act provided for the inclusion of "rents, including cesses and local rates payable for the basic year by or on behalf of the tenants (other than tenants of "sir"), subpawaidars, grantees at a concessional rate of rent and grove-holders... " in gross-income. The "basic year" according to paragraph 2 of the Schedule was "the agricultural year immediately preceding the agricultural year in which the date of resumption" of the jagir fell. Paragraph 4 (c) provided that deduction of "an amount equal to 2 per cent of the gross income in lieu of the services known as sewa or zabta, if the Jagirdar is liable to render any such service" shall be made from the gross-income of the Jagirdar for determining the net income. Under the Act and the Schedule, the compensation payable to a Jagirdar was fixed in terms of certain multiples of the net income.

3. The petitioners' claim before the Board of Revenue was that the valuable consideration, which they had received by transferring the light of possession of the Bandhs u/s 41(1)(g) of the Rewa Land Revenue and tenancy Code, 1935, was their "other income" from jagir which under the rules framed u/s 42 of the Act and the forms prescribed by the rules should be included in the calculation of gross-income of the resumed jagir land. The Board of Revenue, while accepting the contention of the petitioners that paragraph-3 of the Schedule to the Act was not exhaustive of the items of the source* of income from which a Jagirdar derived from a jagir land and that "other items of income" not falling under paragraph could be taken into account under the rules, rejected the claim of the petitioners in respect of Bandh receipts taking the view that the valuable consideration received by the petitioners in respect of Bandhs u/s 41(1)(g) of the Code was in the nature of premium for leasing out the Bandhs, and that the premium could be recovered only once at the time of the grant of Bandhs and was not a "recurring payment" and could not, therefore, be treated as income. Accordingly, the Board upheld the decision of the Land Reforms Commissioner on this point in refusing to include the money received as valuable consideration for the Bandhs in the gross-income of the petitioners jagir.

4. The petitioners further contended before the Board of Revenue that the liability of rendering Sewa to the Rewa Darbar u/s 2 (1) of the Rewa Land Revenue and Tenancy Code ceased to exist on the formation of Vindhya Pradesh when the Ruler of Rewa State divested himself of all his powers, and that, therefore, no deduction could be made under paragraph 4(c) of the Schedule to the Act for calculating the net income. The Board took the view that the Rewa Land Revenue and Tenancy Code, 1935, was in force when the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, became operative, and that being so, the petitioners were under a legal liability to render Sewa to the Government of Vindhya Pradesh State, that is to say to the authority succeeding to the rights and powers of the Rewa Darbar; and that the fact that in actual practice no such Sewa was accepted from Jagirdars on and after the formation of Madhya Pradesh State was wholly irrelevant to the question of deduction under

paragraph 4(c) of Schedule.

5. These contentions have been repeated before us. It has been argued by Shri Chitale, learned counsel appearing for the petitioners, that u/s 41(1)(g) of the Rewa Land Revenue and Tenancy Code, 1935, every person obtaining, by grant or for valuable consideration, possession of a piwaidar's or Sub-Pawaidar's Bandh in respect of which the Pawaidar or Sub-Pawaidar is entitled to a Concession of 45 per cent in the Jama-Nikasi thereof is regarded as "Pachpan-Painta is tenants; that according to the definition of "rent" given in the Code whatever a tenant or sub-tenant paid for rent held by him was rent; and that, therefore, the valuable consideration which the petitioners received for their Bandh was rent under paragraph 3(a) of the Schedule and it did not cease to be so merely because it was paid in a lump sum. It was suggested that the valuable consideration received for the Bandh was nothing but "advance rent". Learned counsel proceeded to say that even if the valuable consideration was not rent, it was Jagir income from a source, namely, the Bandh, and in the calculation of gross income from various heads it was not necessary that the income should be of a recurring nature. It was further said that after transferring the possession of a Bandh u/s 41(1)(g) the petitioners used to construct another Bandh and used to obtain income therefrom by transferring the possession for valuable consideration u/s 41(1)(g) and thus the income from Bandhs was of a periodical nature.

6. We are unable to accede to the contentions advanced on behalf of the petitioners. Paragraph 3 (a) of the Schedule to the Act permits inclusion in the grossing come of a Jagirdar the rent that is payable for the basic year by or on behalf of the tenants (other than tenants of "Sir"), sub-pawaidars, grantees at a concessional rate of rent and grove-holders. The amount which the petitioners realised on the transfer of possession of Bandhs was not any rent in respect of the basic year, that is, the agricultural year immediately preceding the agricultural year in which the Jagir was resumed. It was admittedly a lump sum payment which the petitioners recovered for transferring the right of possession of Bandhs and was clearly a premium and not rent. The amount which the petitioners received was one which the assignee paid to them once for all for obtaining possession of Bandhs. It was not rent for any particular year or an advance rent for a certain number of years. Indeed, there is no material whatsoever even to suggest that what the petitioners received was really an advance rent for a certain number of years. The transfer of the right of possession of a Bandh u/s 41(1)(g) may be by grant or for valuable consideration and the consideration may be rent plus premium as well as rent alone or premium alone. In the present case, it was for premium alone. The fact that a person obtaining possession of a Bandh u/s 41(1)(g) becomes a Pachpan-Paintalis tenant does not necessarily imply that whatever the tenant paid for obtaining possession of a Bandh is rent for any year or years. In the definition of "rent" given in the Code, the amount paid by a person for obtaining the right of possession of a Bandh is plainly not included. "Rent" as defined in the Code

means "whatever is, in cash or kind, to be paid or delivered by a tenant or sub-tenant for land held by him," (underlining italics is ours). The words "to be paid or delivered"" cannot that which a tenant is required to pay periodically after obtaining the right of holding possession of a land. It does not include the consideration paid to the assignor by the assignee of the Bandh. In our opinion, the petitioners' claim for inclusion under paragraph 3 (a) of the Schedule of the valuable consideration received by them for Bandhs in the; gross-income of the Jagir is untenable.

7. Realising that the valuables consideration received by them for Bandhs was not any amount under paragraph 3(a) of the Schedule, the petitioners were contained before the Board of Revenue to resort to the residuary head of income prescribed by the rules under the Act and to contend that it was their other income from the Jagir which under the rules and the forms prescribed by the rules could be included in the calculation of gross income of the resumed Jagir land. The petitioners' claim based on the rules and prescribed forms is equally untenable According to the prescribed form, a Jagirdar could no doubt include in the gross income, "other items of income, if any, mentioning the source of income and the average annual. income from the source for the last twelve years." But the consideration which the petitioners received for the Bandhs was clearly not income. It was a lump sum and not a periodical monetary return "coming in" with some sort of regularity. In it's natural and legal meaning, "income" means periodical receipts. The; requirement laid down in the relevant item in the prescribed form that the source of the income should be mentioned and the average annual incomes from the source for the last twelve years should a so be stated unmist kab(sic)y shows that "income" as us d in the residuary i(sic)m connotes a periodical monetary return "coming in" with some sort of regularity from a definite source. The source must be one whose object is the production of a definite return, including anything in the nature of a mere wind fall. It may be that after the transfer of a Bandh for valuable consideration the petitioners constructed another Bandh and similarly transferred the right of possession of the new Bandh. But from this it does not follow that the consideration which the petitioners obtained by transferring the right of possession of various Bandhs was their income which under the terms of the relevant atom in the prescribed form could be included in the gross income of the Jagir. The amount of consideration thus obtained was not a regular income from a particular Bandh like the income which one derives from the fruits of a tree or the crop of a field. The Act, the Schedule and the rules under the Act all contemplate the inclusion of a periodical monetary return "coming in" with some regularity from a definite source in the calculation of gross income of a Jagir. This becomes clear when one bears in mind the important fact that under the Act the compensation payable to a Jagirdar for a resumed Jagir is in terms of certain multiples of net annual income. The net annual income is thus made the basis of compensation. That being so, it would be altogether illogical to regard a casual receipt occurring in any year as "income" for the purpose of assessment of

compensation under the Act. In our judgment, the petitioners' claim for inclusion of the valuable consideration received by them for Bandhs in the calculation of gross income was rightly rejected by the Board of Revenue.

8. In regard to the deduction of two percent of the gross income on account of Sewa, the position is very clear. Paragraph 4 (c) of the Schedule to the Act allowed this deduction to be made if the Jagirdar was liable to render services known as Sewa or Zabta. Section 25 of the Code imposed on certain Jagirdars the forms of Sewa enumerated in that provision. The Code was in force when the V. P. Abolition of Jagirs Act, 1962, was enacted in 1952. It is not disputed that the petitioners were liable to render Sewa to the Darbar u/s 25 of the Code so long as the Code was in force. As the Code was operative at the time of the resumption of the petitioners' Jagir, they were under a liability to render Sewa. No doubt, according to section 25 (1) the Sewa had to be rendered to the Darbar. But the well-accepted connotation of the term "Darbar" as used in relation to the former Indian States is the sovereign power or the Government of the State. The fact that on the formation of Vindhya Pradesh the Maharaja of Rewa divested himself of his powers makes no difference whatsoever to the legal liability of the petitioners to render Sewa u/s 25(1) of the Code. What is essential for a deduction under paragraph 4 (c) is the legal liability of the Jagirdar to render services and not whether in actual practice such services were or were not taken from a Jagirdar. The basis of this deduction is that where a Jagirdar was required to perform Sewa, there was a burden on the Jagir and to the extent of the burden of the Sewa the Jagirdar's income from the Jagir was to that extent lessened. Paragraph 4(c) only values the services known as Sewa or Zabta at two per cent and it excludes that value from the gross income of the Jagir. In our opinion, the Board of Revenue was right in rejecting the petitioner's contention with regard to the deduction under paragraph 4 (c).

9. For all these reasons, our conclusion is that the decision of the Board of Revenue is right and this application is dismissed with costs. Counsel's fee is fixed at Rs. 100. The outstanding amount of security deposit after deduction of costs shall be refunded to the petitioners.