
(1987) 10 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4857 of 1983

Samudrala Ganesh Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 08-10-1987

Acts Referred:

Income Tax Act, 1961 — Section 230A

Citation : (1988) 74 CTR 126 : (1987) 65 CTR 126 : (1988) 174 ITR 304

Hon'ble Judges : P. Rama Rao, J

Bench : Single Bench

Advocate : P.V.R. Sarma, for the Appellant; M. Suryanarayana Murthy and Government pleader for Food and Agriculture, for the Respondent

Judgement

P. Rama Rao, J.—This is a petition to quash the order dated December 21, 1982, confirming the order dated August 9, 1982, declining to grant registration on the ground that the Income Tax clearance certificate has not been produced.

2. The sisters of the petitioner released and relinquished their undivided 3/40ths share in favour of the petitioner under a release deed executed on March 28, 1980, on stamp paper of Rs. 30 and the same was presented for registration on March 28, 1980. It is stated that the value of the 3/40ths share released by the three sisters is estimated at Rs. 21,775 on the basis of the wealth-tax assessment. The Sub-Registrar stated that unless the Income Tax clearance certificate is produced, the registration cannot be completed.

3. The Sub-Registrar, by an order dated August 9, 1982, declined to register the document. Aggrieved by this order, the petitioners filed an appeal before the District Registrar. The appellate authority held that the value of the entire property is the criterion for the purpose of section 230A of the Income Tax Act, 1961, for the value of the interest transferred and, therefore, confirmed the order of the Sub-Registrar. Section 230A(1) of the Income Tax Act reads as follows :

"230A (1) : Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit, or extinguish the right, title or interest of any person to or in any property valued at more than fifty thousand rupees, no registering officer appointed under that Act shall register any such document, unless the Income Tax Officer certifies that -

(a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Tax Act, 1940, the Business Profits Tax Act, 1947, the Indian Income Tax Act, 1922, the Wealth-tax Act, 1957, the Expenditure-tax Act, 1957, the Gift-tax Act, 1958, the Super Profits-tax Act, 1963, and the Companies (Profits) Surtax Act, 1964; or

(b) the registration of the document will not prejudicially affect the recovery of any existing liability under any of the aforesaid Acts."

4. Section 230A provides that registration cannot be effected unless a certificate is obtained from the concerned Income Tax Officer with regard to the clearance of all the existing liabilities regarding direct taxes. Sub-section (1) provides that the clearance certificate is necessary if the valuation exceeds Rs. 50,000. The valuation of Rs. 50,000 is with reference to the right, title or interest of any person in the property. The criterion should be the value of the property or the interest of the person in such property that is sought to be transferred. The authorities have taken into consideration the value of the entire property, though it is stated that the interest of the sisters relinquishing the property is only 3/40ths share. It is obvious that they are not concerned with the major chunk of the property and their right is restricted only to 3/40ths share and they can either transfer or relinquish to the extent Of 3/40ths share only. It is Only With respect to this extent that the Income Tax clearance certificate can be insisted upon. It is not disputed that the valuation of this interest is only RS. 21,775 and it does not exceed RS. 50,000. Therefore, section 230A is not applicable and, hence, the authorities erred in insisting upon the production of the Income Tax clearance certificate.

5. In the circumstances, the impugned orders are quashed and the Sub-Registrar is directed to register the release deed without insisting upon the production of Income Tax clearance certificate.

6. The writ petition is allowed. No costs. Advocate's fee Rs. 150.