

(2000) 11 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 2035 of 2000 27 November 2000

Smt. Gyarasidevi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 263(3)

Citation : (2001) 165 CTR 382

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Full Bench

Advocate : V.D. Hon, for the Petitioner, R.G. Deo and V.D. Sapkal,s, for the appearing parties;

Judgement

By The Court:

We have heard Mr. V.D. Hon, learned counsel for the petitioner and Mr. R.G. Deo, learned standing counsel for the Union of India as well as Mr. V. D, Sapkal, learned Addl. Government Pleader for the respondent No. 5.

2. The petitioner has brought in question a notice dated 11-1-2000 issued by the respondent No. 4 to the respondent No. 5, with a copy of M/s Jivanram Bijeram Agrawal (HUF), Dhule, and this notice is purportedly issued u/s 226(3) of the Income Tax Act, 1961 (the Act, for short). The whole controversy revolves around land in Final Plot No. 87 of Dhule town which admeasures about six acres and out of which, two acres have already been acquired by the respondent No. 5 sometime in the year 1974. In respect of compensation amount for the acquired land, first appeal was decided by this court and the order of this court came to be challenged before the apex court by filing a SLP. The said SLP came to be decided by the apex court vide its order dated 12-4-1996. The said SLP was filed by the present petitioner contending to be the sole owner of the entire land in Final Plot No. 87 including the land acquired. The Supreme Court upheld the contention of the petitioner that she was entitled to compensation (a) Rs. 75 per sq. mtr. along with other consequential benefits in respect of the land acquired.

Pursuant to the said order passed by the apex Court, the petitioner was to receive an amount about Rs. 31,00,000 (Rupees thirty one lacs only) from the Land Acquisition Officer as stated before us.

3. After the issuance of the impugned notice, the respondent No. 4 issued an attachment order against Jivanram Bijeram Agrawal (HUF) on 14-2-2000, and attached properties shown therein. The property in Final Plot No. 87 is admittedly not one of the properties attached by the said order, On 2-5-2000, the respondent No. 5 addressed a letter to the petitioner stating therein that the IT department had communicated him regarding Income Tax dues recovery of Rs. 34,47,952 from MIs Jivanram Bijeram Agrawal (HUF) and the petitioner was one of the members of the said HUF. The petitioner replied the said notice on 8-5-2000, and stated that her father-in-law viz., Jivanram Agrawal was running a business in the name of "M/s Jivanram Bijeram Agrawal" in the status of HUF and after demise of her father-in-law, her husband viz., Bhikchand Jivanram Agrawal became the Karta of the said HUF. Shri Bhikchand Jivanram Agrawal expired in 1995 without effecting any partition either total or partial in respect of the HUF property. She also stated that present members of the said HUF are : (1) Mr. Manchar s/o Bhikchand Agrawal, (2) Mr. Prakash s/o Bhikchand Agrawal, and (3) Smt. Gyarasidevi w/o Bhikchand Agrawal. She further requested that she being an old lady of 80 years, the department should not resort to any coercive action against her. A similar representation was submitted by the petitioner on 23-5-2000, to the respondent No, 4. On 8-5-2000, she also approached the respondent No. 5 and denied the claim of the IT department.

4. Contempt Petition (C) 3/2000 came to be heard by the apex court on 10-7-2000. The present petitioner was the petitioner before the apex Court. In the order passed on that day, the apex court recorded its order in the said Contempt petition as under ..

"Counsel for the non-applicant states that the payment will be made within this week. Matter is adjourned by three weeks."

In the Contempt Petition the non-applicants were the revenue authorities, including the respondent No. 5. Accordingly, on 14-7-2000, the respondent No. 5 issued a cheque of Rs. 26 lakhs by adjusting Income Tax dues payable by the petitioner on her personal account. This cheque was deposited in the State bank of India and the amount is presently lying with the said bank. 5. The petitioner has approached us on 26-5-2000, and the learned Vacation Judge by his order dated 2-6-2000, directed the respondents to maintain status quo as regards the amount of compensation in question till the next date. The interim order so granted was continued by a Division Bench by its order dated 14-6-2000, and the said order continues as at present.

6. The petitioner's claim before us is that the amount which has been sought to be attached is from the proceeds of the land acquired by the respondent No. 5 and the said amount was her personal property which she has received as

"Stridhan" and she wanted to utilize the said amount of compensation for her personal use as well as for the betterment of her three married daughters. It is also contended that the Income Tax dues of the firm could not be appropriated from the amounts due to the petitioner in respect of her personal property and the land acquired had nothing to do with the firm against which the attachment order came to be passed by the respondent No. 4.

7. The respondent Nos. 1 to 4 have filed affidavit-in-reply and have opposed the petition. It is contended that the provisions of section 226(3) read with section 171 of the Act authorize the recovery of Income Tax dues from the amounts payable to any of the members of the defaulting Jivanram Bijeram Agrawal (HUF) so long as they have the information with them that the property in Final Plot No. 87 was not the personal property of the petitioner alone. The revenue authorities have relied upon some documents submitted by one of the members of the HUF and they have also gone through the revenue record as available to them and come to the conclusion that the acquired property from Final Plot No. 87 was not the personal property of the present petitioner, leave alone her "Stridhan".

On the other hand, the petitioner has relied upon a Compromise Decree passed in Special Civil Suit No. 21/1975 by the learned Jt. Civil Judge, Sr. Division, Dhule. It is also pointed out that the petitioner has been individually paying wealth-tax. A communication dated 28-9-2000, addressed by the respondent No. 4 to the petitioner has been relied upon in support of this contention. The said communication indicates that in the case of the petitioner, the demand outstanding was Rs. 25,665 and in the case of the HUF of M/s Jivanram Bijeram Agrawal, it was Rs. 34,47,954 for the block period 1987-88 to 1998-99.

8. There is no dispute that u/s 226(3) read with section 171(6) of the Act, the revenue authorities are entitled to attach the money dues and appropriate such an amount against the tax payable to the Government of India. The impugned notice has been challenged before us on the ground that proceeds which were available to the petitioner pursuant to the order passed by the apex court were against the land which was acquired by the Government and the said land was the personal property (by way of "Stridhan") of the petitioner and it had no concern in anyway with M/s Jivanram Mjeram Agrawal (HUF) and, therefore, provisions of section 226(3) read with section 171 (6) of the Act were not attracted.

9. We must also note that Special Civil Suit No. 62/1999 has been filed by the petitioner against the members of the Jivanram Mjeram Agrawal (HUF) viz., Prakash as well as Manohar. The suit is for declaration and perpetual injunction in respect of the remaining land in Final Plot No. 87 and it is pending before the learned Civil Judge Sr. Division at Dhule. It is contended therein that the entire land property in Final Plot No. 87 is exclusive property of the petitioner and the defendants have no share and right to disturb her possession in respect of the said property. The only question for our consideration, in such circumstances, as

at present, is whether the impugned notice is without authority and illegal.

10. The Compromise Decree in Special Civil Suit No. 21/1975 is passed on a compromise agreement entered between Fulchand Pannalal Agrawal and Bhikchand Jivanram Agrawal on 19-1-1963. It would be relevant to note that late Jivanram Agrawal and Pannalal Agrawal were the sons of Mjeram Agrawal. Jivanram Agrawal, begot one son by name Bhikchand Jivanram Agrawal whereas, Pannalal Agrawal begot one son by name Fulchand Pannalal Agrawal. Between Fulchand Pannalal Agrawal and Bhikchand Jivanram Agrawal, the entire family property was shared and therefore, they entered into a compromise on 19-1-1963, Fulchand Pannalal Agrawal died in 1974. Before his demise, the said compromise agreement was converted into the Compromise Decree. Schedule "A"(I) to the said decree gives a list of the common properties between the family i.e., Bhikchand Jivanram Agrawal and Fulchand Pannalal Agrawal Fulchand Pannalal Agrawal begot one son by name Radhakishan, whereas, Bhikchand Jivanram Agrawal begot two sons viz , Manohar and Prakash. The agreement between Bhikchand and Fulchand entered on 19-1-1963, demarcated the property belonging to each one of them. However, whatever property came to the share of Bhikchand Agrawal, he transferred the same in the names of his wife (the present petitioner) and his two sons viz., Prakash and Manohar, as is evident from Schedule "B" (1) to F0 to the decree. It is seen from the documents that the present Final Plot No. 87 was original Survey No. 366A and 367/A/B/C.

11. Shri V.D. Hon, learned counsel for the petitioner, has also invited our attention to Schedules "O", "P" and "Q" to the said decree in support of his contentions that the personal credits as available to the three members of the HUF were the considerations for the respective properties being shown in their respective names.

The learned counsel for the petitioner has also referred to para 10 of the agreement dated 19-1-1963, which reads thus :

"(10) The said Bhikchand has undertaken all liability of the Khatas of Manchar, Prakash and liability of the Khatas of Manotiar, Prakash and hence, the partition has been so effected as to enable the said Bhikchand to transfer requisite properties in favour of the respective Khatedars in full satisfaction of their respective amounts. The said Bhikchand shall therefore, transfer sufficient properties marked with asterisk(*)out of Schedule "C" to the said Manohar, Prakash and Gyarasidevi absolutely in full satisfaction of their respective dues and undertakes that the said Fulchand and Bijeram. Dedraj Oil Mills (P) Ltd, stand fully exonerated of all liabilities in respect of those accounts,"

12. From the record that is relied upon and made available before us, it is clear that the said property has come from the petitioner's husband's side. The title of the petitioner, which she claims to be exclusive on the said property, cannot be gone into by us in a writ proceeding and the said exercise win have to be done by way of civil proceedings by leading evidence, etc. Whole petition is based on

the contention that the property acquired by the Government (Final Plot No. 87, Part) was the petitioner's exclusive and personal property by way of "Stridhan". Special Civil Suit No. 62/1999 filed by the petitioner is presently pending and she is required to establish her sole and personal title on the land in Final Plot No. 87. Our finding on this main issue will result in deciding the said pending suit finally which we cannot do.

The petitioner herself has admitted that she is one of the members of M/s Jivanram Bijeram Agrawal (HUF) and admittedly, the said firm has to pay Income Tax dues to the revenue . This issue, which we are required to address, including the impugned notice, was not before the apex court even in the Contempt Petition and therefore, the order passed by the apex Court, therein does not amount to a finding regarding the petitioner's exclusive right in respect of the property acquired. We have gone through section 226(3) read with section 171(6) of the Act and we do not find any infirmity in the impugned notice issued by the respondent No. 4,

13. Writ Petition is, therefore, rejected summarily. Interim order stands vacated.
14. At this stage, Mr. V.D. Hon, learned counsel for the petitioner submitted that the appeals filed by M/s Jivanram Bijeram Agrawal (HUF) are pending before the Commissioner (Appeals), Nasik, and till the appeals are decided, the amount deposited in the State bank of India, Dhule will not be withdrawn by any member of the HUF, including the petitioner. He has requested to stay our above order for the period of six weeks, The request of the counsel is hereby granted on the undertakings given. We also direct the lower appellate authority i.e., Commissioner (Appeals), Nasik, to hear and decide the pending appeals as expeditiously as possible and preferably within a period of three months from today. In the meantime, we direct the State bank of India to invest the subject amount lying with them presently in fixed deposit for a period of 46 days. We make it clear that we have not adjudicated upon any rights of any of the members of Jivanram Bijeram Agrawal (HUF) in respect of immovable properties and these issues ought to be decided in appropriate proceedings.