

(1982) 01 KL CK 0006

In the High Court Of Kerala

Case No : Original Petition No. 2516 of 1979-N

T. T. P. Beepathumma

APPELLANT

Vs

Special Deputy Tahsildar (Arrears Collections) and Another

RESPONDENT

Date of Decision : 15-01-1982

Acts Referred:

Income Tax Act, 1922 — Section 46, 46(2), 46(5), 47

Income Tax Act, 1961 — Section 116(2), 221(1), 222(1), 222(2), 226(3)

Kerala Revenue Recovery Act, 1968 — Section 49(2)

Citation : (1982) 134 ITR 488

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Judgement

U.L. Bhat, J.—The petitioner seeks appropriate writ directing the respondents to forbear from enforcing Ex. P-2 notice or effecting a sale of the land shown in Ex. P-2 notice and to issue a writ of certiorari to quash Ex. P-2 notice.

2. The petitioner is one of the heirs of her father, U. N. Muhammed Kunhi, who died in 1969. On the return filed by his son, T. P. Kuttiali, under the provisions of the E.D. Act, 1953 (for short "the Act"), assessment was completed by the second respondent, who is the authority under the Act, and ex. P-1 assessment order was issued levying estate duty of Rs. 14,67. The duty so levied not having been paid, an attempt was made to recover the sum under the provisions of the Kerala Revenue Recovery Act, 1968 (for short "the R.R. Act"). The first respondent, who is the Special Deputy Tahsildar (Arrear Collection), Tellicherry, issued Ex. P-2 notice under s.49(2) of the R.R. Act stating that if the estate duty together with costs and interest is not paid, the land in T.S. No. 106 of the Tellicherry Municipality will be sold. The petitioner claiming to be in occupation of this land, is aggrieved by Ex. P-2 notice.

3. According to the learned counsel for the petitioner, estate duty can be recovered as an arrear of Income Tax under the I.T. Act, 1916, and that can be done only by the TRO notified under that Act and the first respondent has not

been so notified and as such he is recovered under the provisions of the I.T. Act, 1961, and not under the provisions of the Indian I.T. Act, 1922. Alternatively, it is submitted on the assumption that estate duty is to be recovered under the provisions of the I.T. Act, 1961, and not under the provision of the Indian I.T. Act, 1922. Alternatively, it is submitted that the machinery of the State govt. (first respondent is an employee of the State Govt.) cannot be utilised for the purpose and, if at all, the machinery of the Tellicherry Municipality alone can be utilised and, in such an event, the concerned officer has no right to attach or bring immovable property to sale and can proceed only to distrain and sell movable assets or to proceed according to the provisions of the Kerala Municipalities Act. The learned counsel for the respondents contend that estate duty has to be recovered not in accordance with the provisions of the I.T. Act, 1961, but in accordance with the provisions of the R.R. Act. They further contend that even if the provisions of the I.T. Act, 1961, are to be applied, recourse can be had to the provisions of the R.R. Act as has been done in the instant case.

4. Section 58(3) of the Act refers to an assessment order being passed by the Controller. Section 74 states that estate duty is a first charge on the property liable thereto. Section 73(1) requires the Controller to serve a notice of demand on the person accountable or liable to pay the duty specifying the sum payable and the time for payment. Section 73(5) says that the provisions of sub-s. (1), (1) (a), (2) to (5), (5)(a) and (6) and (7) of s. 46 and s.47 of the Indian I.T. Act, 1922, shall apply as if the said provisions were provisions of the Act and referred to estate duty instead of to Income Tax and the Controller instead of the ITO. The Indian I.T. act, 1922, was repealed by the I.T. Act, 1961 (see s. 297). The provisions referred to in s. 73(5) of the Act have corresponding provisions in the I.T. Act, 1961, and they are ss. 221(1) , 222(1) , 226(5) 116(2) , 226(3) , 227 , 231 , 232 , 222(2) and 229 , respectively, of the I.T. Act, 1961. The respondents have taken a stand that notwithstanding the repeal of the Indian I.T. Act, 1922, the provisions of that act alone govern the recovery of estate duty. According to the petitioner, the provisions of the I.T. Act, 1961, will have to be followed; even though there are certain similarities in the provisions of the two Income Tax Acts in the matter of recovery, there are also certain differences.

5. There can be no doubt that normally references in any other Act to the provisions of an Act which has been repealed subsequently should be considered as reference to the provisions of the re-enacted provisions, unless a different intention appears. This is the effect of s. 8 of the General Clause Act also. A different intention could be gathered depending on the provisions of a particular statute. If it is a case where the provisions of the Act are incorporated by a reference in another Act, the repeal of the earlier Act has, generally speaking, no effect upon the construction or effect of the Act in which the provisions have been incorporated. If, however, there is a mere reference to the provisions have been incorporated. If, however, there is a mere reference to the provisions of one statute in another without incorporation, the reference should be considered as a reference to without incorporation, the reference should be considered as a

reference to the provisions as may be in force from time to time in the former statute. (Vide *Mahindra and Mahindra Ltd. v. Union of India* [1979] 49 Comp Cas 419: AIR 1979 SC 798.

6. There can be no doubt that s.73(5) of the Act contains a provisions by incorporation and not merely a provision of reference. It does not merely make mention or refer to certain provisions of the Indian I.T. Act, 1922. It says that these provisions shall apply as if they were provisions of the E.D. Act and the reference to the ITO shall be considered as a reference to the Controller and the reference to Income Tax shall be understood as a reference to estate duty. In other words, certain provisions of the Indian I.T. Act, 1922, have been bodily incorporated into the scheme of the E.D. Act. This is a scheme of the incorporation and, therefore, the repeal of the Indian I.T. Act, 1922, will not have the effect of the provisions of the re-enacted Act being rendered applicable to the E.D. Act. The provision of the Indian I.T. Act, 1922, referred to in s. 73(5) of the Act will govern the recovery of the estate duty.

7. In the writ petition the only attack is that if the provisions of the I.T. Act, 1961, are applicable, the first-respondent has no authority or competence to issue notice or to effect recovery of the estate duty. That is because, according to the petitioner, he is not a TRO as defined in the Act. However, nowhere in the writ petition the petitioner has alleged that if the provisions of the Indian I.T. Act, 1922, are to be applied, the first-respondent has no authority or competence to issue notice or effect recovery of the estate duty. Section 46(2) of the Indian I.T. Act, 1922, states that the ITO may forward a certificate to the District Collector of the concerned district who may take steps to recover the amount due as if it were arrear of land revenue. There is no averment in the writ petition to the effect that under s. 46(2) of the Indian I.T. Act, 1922, read with the provisions of the R.R. Act, the provisions of the R.R. Act, the second respondent has no competence to decided on the act complained of in this writ petition. Therefore, it is unnecessary for me to consider whether there has been a valid notification issued under the Indian I.T. Act, 1922, or under the provisions of the R.R. Act vesting any authority with the first-respondent to take steps for recovery of the estate duty. In this view, the validity of the impugned notice has to be upheld.

8. I have referred to another argument of the learned counsel for the petitioner based on s. 46(5) of the Indian I.T. Act, 1922, and the corresponding section in the I.T. Act, 1961, whereunder the State Govt. can cause recovery of the tax in the same manner as and by the same person, who would be competent to recover municipal tax or local rate due and that reference to municipal tax and local rate would indicate that only officers of the local bodies such as a Municipality, Panchayat, Corporation, etc., who could take steps for recovery and not officers under the R.R. Act. Since recovery is competent under s. 46(2) of the Indian I.T. Act, 1922, it is unnecessary for me to consider the exact scope of s. 46(5) of that Act.

9. In the result, this original petition is dismissed, but without costs.