

(1966) 08 MAD CK 0022

In the Madras High Court

Case No : Civil Revision Petition No. 1901 of 1965

Ve.

APPELLANT

Vs

Sivagami Achi v. Vr. Ve. Vr. Ramanathan Chettiar And Others.

RESPONDENT

Date of Decision : 03-08-1966

Acts Referred:

General Clauses Act, 1897 — Section 6, 6(c)

Income Tax Act, 1922 — Section 54

Income Tax Act, 1961 — Section 137, 137(1), 138, 138(2), 280

Citation : (1967) ILR (Mad) 91 : (1967) 64 ITR 36 : (1967) 80 LW 119

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This is a petition to revise an order of the Subordinate Judge of Devakottai dismissing an application of the petitioner, who is the plaintiff in a suit, to direct the Income Tax Officer, Third Circle, Karaikudi, to produce certain documents, the details of which were mentioned and which are alleged to have been filed during assessment proceedings relating to the first defendant for the assessment years 1941-42 to 1948-49. The petition in the first instance was posted before Natesan J. who thought that there was a conflict of opinion in regard to the effect of the repeal of section 137 of the Income Tax Act, 1961, and referred the question to be decided by a Division Bench. That is how the petition comes before us.

2. The suit is for directing the first defendant to produce his accounts and render a true and faithful account of the moneys gifted to the plaintiff by her father and kept by himself as trustee for her in or about Karthigai - Margali of Akshaya year for improving and argumenting the same, and after his death kept, managed, controlled and improved by the defendants as trustees for the plaintiff and for a decree against the first defendant for payment to the plaintiff of such amount as may be found due on rendition of accounts. While the suit was pending, the petitioner applied to the Subordinate Judge under rule 76 of the Civil Rules of Practice for summoning from the Income Tax Officer certain documents. One of

these documents related to the Income Tax examination proceedings notes pertaining to the first defendant for the year Vikrama (1941-42) in respect of the sale proceeds of 5 per cent. Government of India Bonds (1940-43). The second is eight iynthogais in original from Vikrama to Sarvajith (assessment years 1941-42 to 1948-49) submitted by the first defendant and, lastly, the interest payment examination notes of the year Vehudhanya (1939-40) in respect of interest amount credited to the plaintiff, and daughter of the second defendant, Kalyani Achi, the then assessee on behalf of the minor adopted son, the first defendant. It does not appear that the first defendant filed a counter affidavit or resisted the application. On the application, the Subordinate Judge issued summons to the Income Tax Officer which recited that it was issued since section 137 of the Income Tax Act, 1961, has been omitted from the Income Tax Act, 1961, by the Finance Act, 1964 (Act V of 1964). In response to the summons, the Income Tax Officer wrote to the Subordinate Judge stating that the records in question related to the assessment proceedings under the Income Tax Act, 1922, and hence section 54 of that Act continued to apply, in the absence of any direction in section 297 of the Income Tax Act, 1961, and in the light of the provisions of section 6 of the General Clauses Act, 1897. The Income Tax Officer, therefore, submitted in his communication that he was thus prevented from producing before the court the documents called for. The Income Tax Officer, however, forwarded the documents in question in a sealed cover to the court. The Subordinate Judge disposed of the application on the basis that it was a case of a privilege claimed by the Income Tax Officer and considered that, since section 137 of the Income Tax Act, 1961, had been omitted and the next section has been modified by the Finance Act, 1964, the right course for the assessee was to follow the procedure prescribed in section 138 and that the petitioner not having followed that procedure, the petition should be dismissed. In the view of the Subordinate Judge, section 138 of the Income Tax Act, 1961, as modified by the Finance Act, 1964, was the only provision now existing relating to disclosure of information, and since the petitioner had not resorted to that remedy, the privilege claimed by the Income Tax Officer should be up held. Natesan J., before whom the petition was first put down for hearing, mentioned in his referring order that the matter had to be examined by reference to section 54 of the Income Tax Act, 1922, sections 137 and 138 of the Income Tax Act, 1961, and the omission or modification of one or the other of those sections by the Finance Act, 1964. But confronted with two conflicting decisions each by a learned single judge of this court in *Income Tax Officer, Central Circle, Madras v. Ramaratnam* and *Ramakrishna Mudaliar v. Rajabu Fathima Bukari*, as to the effect of repealing section 137, he thought it necessary to refer the matter to a Division Bench.

3. Before we proceed to consider the point in controversy, it is first necessary to notice the relative statutory provisions. Section 54 of the Income Tax Act, 1922, related to disclosure of information by a public servant. By sub-section (1) of that section, it was enjoined that the particulars contained in any statement made, return furnished or accounts or documents produced under the provisions

of the Act, or in any evidence given or affidavit or deposition made, in the course of any proceedings under the Act, except under Chapter VIII or in any record of any assessment proceedings, should be treated as confidential. The second limb of sub-section (1) put a bar on courts and directed that no court, except as provided by the section, shall be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part thereof or to give evidence before it in respect thereof. Sub-section (2) made disclosure by a public servant of such particulars an offence punishable with a term of imprisonment besides fine. Sub-section (3) provided for certain exceptions to the bar against disclosure. The Income Tax Act, 1961, repealed the 1922 Act and substantially re-enacted its provisions. The matter relating to disclosure of information is contained in sections 137 and 138 of the Income Tax Act, 1961. Sub-section (1) of section 137 is in identical terms as sub-section (1) of section 54 of the earlier Act. Sub-section (2) appears in a modified form and is confined to an injunction on a public servant against disclosure of any particulars mentioned in sub-section (1) of section 137. The penalty for contravention of this injunction is to be found provided in section 280 of the 1961 Act. Sub-section (3) of section 137 is also substantially the same as sub-section (3) of section 54 of the earlier Act, except for certain additional exceptions, one of which is what is contained in clause (XXI) relating to disclosure of so much of such particulars to any person as is evidence of the fact that any property does not belong to the assessee but belongs to such person. This clause is followed by a proviso which says that, in order to attract this exception, the assessee should have been, prior to such disclosure, examined by the Income Tax Officer in respect of his right to such property. Section 138 is of limited scope, as it originally stood, and is limited to disclosure of information in respect of tax payable. The Finance Act, 1964 (Act V of 1964), by section 32 omitted section 137 of the Income Tax Act, 1961, and by section 33 substituted section 138 by a new section which contains two sub-sections. The first sub-section is practically the same as the old section 138. Sub-section (2) entrusts the Central Government with the power to direct by a notified order that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except to such authorities as may be specified in the order. Section 43 of this Finance Act has suitably modified section 280.

4. It may be seen that, as a result of the omission of section 137 and the substitution of section 138 by a new sub-section, there is no longer any general declaration of the particulars contemplated by the omitted section 137(1) being treated as confidential and no longer the bar placed by that sub-section on courts is maintained. The prohibition against any public servant disclosing certain particulars also has disappeared. The position, therefore, is that no particulars contained in any document whatever filed or produced during assessment proceedings are confidential and the bar on the court from summoning for such particulars is lifted. Section 138(2) of the Income Tax Act, 1961, gives the power to the Central Government, as we said, to specify by a notified order the

particulars which might be treated as confidential. Section 280, as modified, visits the delinquent officer who contravenes an order notified u/s 138(2) with penal consequences. It is common ground that no order has so far been notified u/s 138(2) as far as our attention has been invited to.

5. The question is what precisely is the effect of the omission of section 137 from the Income Tax Act, 1961, by the Finance Act, 1964 ? The effect of a repeal - and we proceed on the assumption that omission of a section from the statute book is tantamount to a repeal - is, generally speaking, as if the repealed Act never existed except as to things completed or closed. But in view of this effect, the Indian Legislature enacted the General Clauses Act, 1897, which has been more or less modeled on the provisions of the English Interpretation Act. Section 6 of the Indian Act, which corresponds to section 38 of the Interpretation Act, defines the effect of the repeal, of which the part material for present purposes reads :

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed...

6. How this provision is to be applied has been indicated by the Supreme Court in *State of Punjab v. Mohar Singh* :

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

7. We should, therefore, bear in mind these principles in determining the effect of the omission of section 137 of the Income Tax Act, 1961. The omission of section 137 is not followed by a re-enactment of that section in any form. But it does not follow that, on that account, the application section 6 of the General Clauses Act is ruled out, because, in the absence of any re-enactment, it cannot obviously be said that there is any intention to the contrary, namely, to destroy the rights which would otherwise have been preserved by application of section 6 of the General Clauses Act. Where there is no re-enactment, there is no question of the existence of any inconsistency or incompatibility, leaving the field clear to attract the interpretation clause, namely, section 6.

8. *Sadasivam J. in Income Tax Officer, Central Circle, Madras v. Ramaratnam*,

however, found in section 138, as modified by the Finance Act, 1964, an intention to the contrary. The learned judge observed :

Though section 137 of the Income Tax Act, 1961, is repealed by the Finance Act of 1964, there is modified restriction by virtue of section 138, clause (2), introduced by the same Act.

9. This, according to the learned judge, is an indication of the intention to the contrary rendering section 6 of the General Clauses Act inapplicable.

10. Venkataraman J. was, however, of a different view in Ramakrishna Mudaliar v. Rajabu Fathima Bukari. He considered that section 138(2) was not incompatible or inconsistent with the effect section 137 being continued notwithstanding its omission by reason of section 6 of the General Clauses Act. The learned judge took note of the fact that actually, as far as he was informed, there was no notified order u/s 138(2). The learned judge went further and thought that the matter covered by section 137 would fall within the ambit of section 6(c) of the General Clauses Act. He observed that the Income Tax Officer incurred an obligation when documents were filed before him and that obligation continued until repeal of that section, and that this obligation of the Income Tax Officer was to be correlated to the corresponding right of the assessee concerned to forbid the Income Tax Officer from giving evidence in relation to the documents filed before him.

11. In our opinion, Venkataraman J. was right when he said that section 138(2) does not contain any intention so as to eliminate the application of section 6. It is possible that partial or total prohibition against disclosure of stated particulars in specified documents filed before the Income Tax Officer u/s 138(2) may be consistent or compatible with section 137(1) of the Income Tax Act, 1961. Further, in the absence of any notified order u/s 138(2), it is as if the subject-matter of section 137(1) has not been re-enacted for purposes of application of application of section 6 of the General Clauses Act.

12. The question then is whether at all, having regard to the character of the implications of section 137(1) and (2) of the Income Tax Act, 1961, section 6(c) of the General Clauses Act can be applied to its repeal. This question does not appear to have been argued either before Sadasivam J. or Venkataraman J. and the latter proceeded on the assumption, as we understand his judgment, that section 137(1) created an obligation and a corresponding right within the meaning of section 6(c) of the General Clauses Act. P. Kandiah Thevar v. Third Income Tax Officer, Tirunelveli, would also appear to have proceeded on that assumption, for the question whether section 137 created any right or obligation or privilege within the meaning of section 6 was not, as far as we can see, argued in that case. Likewise, O. P. Agarwal, Income Tax Officer v. State applied section 6, but no consideration appears to have been given to its applicability.

13. In our opinion, section 137 of the 1961 Act like its predecessor, section 54 of the Income Tax Act, 1922, neither created an obligation nor privilege or right

which could be properly regarded as having been incurred, acquired or having accrued. Disclosure or non-disclosure appears to us to be a matter of public policy in public interest, especially from the standpoint of the revenue. Venkataraman J. himself noticed in the case cited that the prohibition against disclosure was enacted in public interest to enable a full and true disclosure to be made by the assessee. The same idea is to be found also in *P. Kandiah Thevar v. Third Income Tax Officer, Tirunelveli*. Now what is it that section 137(1) says ? It merely declares that the particulars specified should be treated as confidential. To our minds that in itself does not create any liability or right or privilege. We think that the declaration is not from the point of view of any particular individual. Such a declaration does not confer a right or impose an obligation on any specified person. No particular person can, by virtue of this declaration, be said to have incurred an obligation or acquired a right or privilege. The confidence is directed to be kept in respect of the particulars not by any particular officer but it is attached to the very particulars. Likewise, the second part of sub-section (1), as it seems to us, contains but a bar on courts from summoning for the specified particulars. So too, sub-section (2) enjoins a prohibition against any public servant disclosing such particulars. Neither a mere bar on the court or on the scope of its jurisdiction nor the prohibition against any public servant from disclosing the particulars may by itself amount to an obligation incurred. We are inclined to think that not every obligation, however abstract, necessarily involves a corresponding right also in the abstract. The bar on courts really relates to the power of the court and the prohibition against any public officer disclosing such particulars is no more than forbidding him from divulging the particulars. To our minds, neither the bar nor the prohibition can be regarded at all as an obligation, in any case as an obligation incurred within the meaning of section 6(c) of the General Clauses Act. Where the court contravenes the bar, no particular person including the assessee, in whose assessment proceedings the particulars have been placed before the particular Income Tax Officer, has a cause of action against it. All that any one like the assessee may do in such a case would be to bring it to the notice of the court that it has contravened. So also, in the case of a public officer contravening the prohibition laid against him, any one can bring it to the notice of the authorities concerned, so that he may be visited with the penal consequences. It does not follow from it that the person who gives such information or brings to the notice of the court the non-adherence to the bar, does it in exercise of any right, as such vested or acquired by him. In our opinion, the right, privilege or obligation must be understood in the context of the following words, "acquired, accrued or incurred" in any enactment repealed. The right, privilege or obligation in section 6(c) appear to be related to particular individuals who by relative acts acquire or incur the right or obligation or to whom the privilege accrues. Section 6(c) does not comprehend a right in gross or in the abstract, but covers only specific right or obligation with reference to ascertainable persons as distinguished from the general public. We think that this view of ours receives support from *Hamilton Gell v. White*, a decision of the English court of Appeal. *Atkin L. J.*, one of the

learned judges, was there concerned with the scope of section 38 of the Interpretation Act, 1889, which word for word corresponds to section 6(c) of the Indian Act. The learned judge expressed the view :

It is obvious that provision was not intended to preserve the abstract rights conferred by the repealed Act, such for instance as the right of compensation for disturbance conferred upon tenants generally under the Act of 1908, for, if it were, the repealing Act would be altogether inoperative. It only applied to the specific rights given to an individual upon the happening of one or other of the events specified in the statute.

14. The learned judge in that decision also quoted from *Abbott v. Minister for Lands*, the following observation which, we think, is pertinent to the present consideration :

The mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed to be a right accrued within the meaning of the enactment.

15. It is no doubt true that an assessee who filed documents before an Income Tax Officer may feel aggrieved by the disclosure by that officer of the particulars therein contained. But what he can do about it and what is his right in relation to it ? He cannot take any action by himself. All that he can do is to bring it to the notice of the proper authorities that there has been a contravention by the Income Tax Officer. But this fact is not peculiar or limited to the assessee, for it is open to any member of the public to bring such a contravention to the notice of the authorities. Hardly can it be said that this phenomenon is based on a right or privilege. When an offence has been committed under the Indian Penal Code or any other penal statute, any member of the public can furnish information about it. Can it be said that this is because a specific right has been acquired by the informant ? We clearly think not. The position, in our opinion, is more or less the same with reference to section 6(c) of the General Clauses Act.

16. We are of opinion that section 6(c) of the General Clauses Act, which is the only clause relied on for the revenue, is not attracted to the omission of section 137. The consequence is that the general effect of repeal without reference to section 6(c) will apply. It follows that the conclusion of the subordinate judge is not correct. The petition is allowed with costs. The court below will take suitable steps on the application to have the relative records summoned.