
(1981) 08 KL CK 0021

In the High Court Of Kerala

Case No : W.A. No. 159 of 1981 (O.P. No. 2161 of 1979)

Wealth Tax Officer, C-Ward

APPELLANT

Vs

K. Madhavan Nambiar

RESPONDENT

Date of Decision : 18-08-1981

Acts Referred:

Kerala Joint Hindu Family System (Abolition) Act, 1975 — Section 4(1), 4(6)
Wealth Tax Act, 1957 — Section 17(1), 20, 41(1)

Citation : (1988) 169 ITR 810

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; George Abraham Vadakkal, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P.G.K. Warriar, K. Ramakumar and T. Ravikumar, for the Respondent

Judgement

P. Subramonian Pott, Actg. C.J.

1. This appeal is by the Wealth-tax Officer, C-Ward, Cannanore, against the decision of a learned single judge, of this court quashing exhibit P-1 notice issued by the Wealth-tax Officer to the petitioner in the petition calling upon him to deliver a return under the Wealth-tax Act, since he had reason to believe that the net wealth chargeable to tax for the assessment year 1970-71 had escaped assessment within the meaning of Section 17 of the Wealth-tax Act and also questioning the proceedings for attachment consequent on such notice, exhibit P-1. The petitioner was a junior member of Kanakathidam tarwad, a Marumakkathayam tarward, which fell within the scope of the Kerala Joint Hindu Family (Abolition) Act, 30 of 1976. That Act came into force on December 1, 1976. By the provisions of the Act, the joint family ceased to exist and the properties of the joint family were held, after December 1, 1976, by the members of the family as tenants-in-common as if on that day there was a partition of the joint family.

2. The petitioner was, when the joint family existed, only a junior member.

3. He was not a karnavan. It is said that there was no reason for the joint family to file any wealth-tax return. Some extensive unsurveyed land which it possessed was acquired by the State consequent upon which a sizable amount became due to it as compensation. Out of the amount of Rs. 70,02,183.25 deposited in court, the amount due to the tarwad was found to be Rs. 60,92,196.01. In view of the fact that the tarwad came to an end and the 106 members took the rights as tenants-in-common, the award determined the petitioner's entitlement out of the compensation as Rs. 57,469.16.

4. While so, the Wealth-tax Officer is seen to have taken the view that for the year 1970-71, the tarwad should have been assessed to wealth-tax since it was found that the assets possessed were of such value as would render the tarwad liable to pay wealth-tax. A notice, exhibit P-1, was issued to the petitioner not for any assessment against the petitioner or in respect of any portion of the tarwad assets due to him on his share but as if the notice to the joint Hindu family could be served upon the petitioner who was a junior member. Thereupon, the petitioner approached this court to quash such notice raising several grounds of attack against the notice. Though the learned judge has chosen to consider all those grounds, we would first consider the question whether such a notice could be issued to the petitioner in order to propose to assessment of escaped wealth against the tarwad for the assessment year 1970-71.

5. Act 30 of 1976 operated to put an end to the existence of all joint Hindu families in Kerala. The consequence was that from that day onwards there could be no joint Hindu family in the State. It is not a case of the family disrupting by partition. It is a case of statutory extinction of joint families. To provide for the distribution of the coparcenary property, provision is made in Section 4(1) that all members of an undivided Hindu family holding coparcenary property on December 1, 1976, shall be deemed to be holding such coparcenary property as tenants-in-common as if a partition had taken place among all the members of that undivided Hindu family. This means that the members became owners of what they would have obtained as their respective shares if a partition had taken place. It is not as if the law deemed that a partition had actually taken place. No partition has taken place, but had one taken place, each one would have a specific share taking into account the total extent of properties available and the number of members. Section 6 of the Act was a provision intended to keep alive the liability for debts binding on the joint Hindu family contracted before the commencement of the Act by the karnavan, vejman, manager or karta, as the case may be.

6. Section 41 of the Wealth-tax Act provides for service of notice. Sub-section (2) of that section provides that any notice or requisition under the Act may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager or any adult male member of the family, and in the case of any other association of persons be addressed to the principal officer thereof. It is by virtue of this provision that service intended to be effected on a Hindu

undivided family may be effected by notice addressed to any adult male member of the family. Notice can be served on the Hindu undivided family by serving it on a member and that member need not necessarily be the karta or manager but can be any adult male member. Purporting to invoke this provision, notice appears to have been served on the petitioner. If such a notice is not warranted, exhibit P-1 has to be quashed and no other question would arise.

7. The notice on the petitioner is issued admittedly after December 1, 1976, and on that day there was no Hindu undivided family in existence. Therefore, there is no question of addressing any adult male member of a joint Hindu family in order to serve a notice intended for the family. Proceedings in respect of the assessment for the year 1970-71 against the Kanakathidam family cannot be validly taken by issue of a notice upon a person who is one among the 106 tenants-in-common in respect of properties of the family. That and that alone is the status of the petitioner at the moment of service of notice. That does not oblige him under law to act either in discharge of any obligation under the Wealth-tax Act or to meet any obligations of any unit which he is supposed to represent. He does not represent any such unit then. For this reason, exhibit P-1 notice and the consequent attachment must fail.

8. Though learned counsel for the Revenue relied on Section 20 of the Wealth-tax Act which concerns the procedure in respect of assessment after partition of a Hindu undivided family, we do not consider that this section has any relevance. That is because we are not concerned with any partition of a Hindu undivided family here. We need not also consider the scope of the corresponding section of the Income Tax Act which is not identical with Section 20 of the Wealth-tax Act. Legislature has made provision in Section 20 of the Wealth-tax Act to assess a Hindu joint family even after its extinction by a partition. So, despite a partition, the provision could be used to assess the family. Evidently, the Situation arising by reason of extinction by a statutory enactment was not conceived at that time. But that would not furnish any justification to apply Section 20 of the Wealth-tax Act to a case to which the provision does not apply. Suffice it to say that no proceedings can be taken u/s 20 of the Wealth-tax Act.

9. Though learned counsel for the respondent wanted to support the judgment of the learned single judge by reference to the contention that Section 17(1) of the Wealth-tax Act would not apply to the facts and circumstances of the case, we do not think that we should go into this question, for, if the notice issued to the petitioner is unsustainable as one not contemplated by the provisions of the Act and one pursuant to which no proceedings could be pursued by the Department, the question whether the notice is in accordance with Section 17(1) may not arise for consideration.

10. In this view, we agree with the learned single judge in quashing exhibit P-1 notice and the proceedings for attachment though for reasons which are not quite the same as what the learned single judge found. Dismissed. No costs.

11. Learned counsel for the Revenue makes an oral application under article 134A of the Constitution for certificate for leave to appeal to the Supreme Court. We see no substantial question of law of general importance which needs to be decided by the Supreme Court arising in this case. Leave declined.