Supreme Court of India
Commissioner Of Wealth Tax, ... vs Raja Velugoti Sarvagna Kumar ... on 7 March, 1973
Equivalent citations: AIR 1973 SC 2438, 1973 89 ITR 246 SC, (1973) 2 SCC 288
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Bench: H Khanna, K Hegde
JUDGMENT K.S. Hegde, J.

1. These appeals by certificate raise a common question of law, namely whether the compensation distributed to the junior members in a zamindari family under Section 45 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, as adopted by Andhra Pradesh (to be hereinafter called the 'Act'), can be taken into consideration in computing the net wealth of the family? For the purpose of deciding that question it would be sufficient if we refer to the facts in Civil Appeal No. 1628 of 1970.

2. In this case we are concerned with the net wealth of the family of former zamindari of Venkatagiri, for the assessment year 1957-58. The Wealth Tax Officer, while completing the assessment for the year in question included in the assessment the amount of final compensation receivable from the Government not only by the holder of the estate but also by his sons. The amount of compensation as per data sheet made available to the Wealth Tax Officer worked out to Rs. 6,16,416/-. From this amount the Wealth Tax Officer deducted l/6th which was payable to the maintenance-holders and brought the balance of Rs. 4,93,133/-, as the net wealth of the assessee H.U.F., to tax. The holder of the estate contended that the compensation payable to his sons under Section 45 of the Act; cannot be consider ed as the wealth of the H.U.F. But that contention was rejected by the Wealth Tax Officer. The order of the Wealth Tax Officer was reversed by the Appellate Assistant Commissioner. The Appellate Assistant Commissioner came to the conclusion that the compensation payable to the sons of the holder cannot be considered as the wealth of the assessee. The order of the Appellate Assistant Commissioner was affirmed by the Tribunal. At the instance of the Commissioner of Wealth Tax, Andhra Pradesh, the Tribunal submitted the following three questions to the High Court of Andhra Pradesh:

1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was correct in law in holding that the compensation amount of Rs. 4,93,133/- due to the family on the valuation date for the assessment year 1957-58 under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, did not form part of the Wealth of the joint family of Rajah Velugoti Sarvagna Kumar Krishna Yachendra Bahadur, Rajah of Venkatagiri, Venkatagiri?

2. Whether on the facts and in the circumstances of the case Appellate Tribunal was correct in law in holding that the compensation amount of Rs. 90,000/- due to the family on the valuation date for the assessment year 1957-58 under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, did not form part of the wealth of the joint family of Rajah Velugoti Sarvagna Kumar Krishna Yachendra Bahadur, Rajah of katagiri, Venkatagiri?

3. Whether on the facts and in the circumstances of the case Appellate Tribunal was correct in law in holding that the amount of Rupees 5,74,158/- was the liability of Hindu Undivided family of Rajah

Velugoti Sarvagna Kumar Krishna Yachendra Bahadur, Rajah of Venkatagiri, Venkatagiri?

3. The High Court answered all these questions in favour of the assessee. Thereafter these appeals have been brought, as mentioned earlier, after obtaining certificates from the High Court.

4. The Venkatagiri zamindari was an 'Estate' within the meaning of the Act. Under the customary law, though the Estate belonged to the family of the holder, the holder for the time being was fully entitled not only to deal with the income of the Estate but also with its corpus. The junior members had no right to claim any share either in the income or in the corpus. Their right to maintenance, if any, was regulated by customary law. The only right the junior members had in such an estate was the right of succession by survivorship in the event of the holder dying without alienating the Estate. The nature of such an Estate has been considered by this Court in Rajah Velugoti Kumara Krishna Yachendra Varu v. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu as well as in V.T.S. Thyagasundaradoss Thevar v. V.T.S. Sevuga Pandia Thevar . The same has been elaborately considered in a judgment of the High Court of Andhra Pradesh in Commr. of Expenditure Tax, A.P.v. S.R.Y. Sivarama Prasad Bahadur . There is no dispute as to the nature of the Estate. The only question for consideration is whether the compensation payable by the Government to the sons of the holder can be consider ed as payments due to the family of the holder. The contention of the Revenue is that the payments to which the sons of the holder are entitled to under Section 45 of the Act are really the moneys belonging to the family of the holder and therefore, the same are liable to be taken into consideration in computing the net wealth of the family of the holder. For deciding this question it is necessary to refer to certain provisions of the Act. Section 45 of the Act provides:

(1) In the case of an impartible estate which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the following provisions shall apply.

(2) ...

(3) ...

(4) ...

(5) ...

(6) The balance of the aggregate compensation shall be divided among the sharers, as if they owned such balance as a joint Hindu family and a partition thereof had been effected among them on the notified date.

5. To summarise the effect of Section 45, though the Estate belonged to the holder exclusively, the Act deems it as the Estate belonging to the family of the holder and further that the holder as well as his legitimate sons are considered as the sharers in that estate. The section provides that after making the disbursements prescribed in that section, the balance of the compensation amount will be distributed among the holder and his legitimate sons in accordance with the provisions contained

in the Act. Section 49 of the Act provides for a contingency where a sharer might have died during the pendency of the proceedings and compensation might have to be paid to his heirs or successors or the right may have devolved on others by act of parties. This is what Section 49 says: Where it is alleged that the interest of any person entitled to receive payment of any portion of the compensation has devolved on any other person or persons, whether by act of parties or by operation of law, the Tribunal shall determine whether there has been any devolution of the interest, and if so, on whom it has devolved.

6. Reading Section 45 and Section 49 together, there is no doubt that the compensation paid or payable to the sons of the holder is the absolute property of those sons. For that amount the holder has no right whatsoever. We asked Mr. S.T. Desai, the learned Counsel appearing for the Revenue, whether the holder could call upon his sons to reimburse him the compensation paid to them. He rightly conceded that he could not do so. We have no doubt that the compensation paid to the sons is their absolute property and in that compensation the holder has no right whatsoever. Hence it is impossible to say that the compensation paid or payable to the sons can be considered as a wealth of the holder or his family. Mr. Desai. contended that it is not the case of the holder that there was any partition wholly or partly in his family and, therefore, we should proceed on the basis that the compensation paid or payable to the sons is the compensation paid or payable to their family. That contention is wholly unacceptable. Section 45 proceeds on the basis that there is a statutory partition between the father and the sons in so far as the payment of compensation is concerned and the amount paid or payable to the sons is their exclusive property. Whether there was partition in respect of other properties or not, so far as the compensation amount is concerned, we must proceed on the basis that there was a partition between the father and the sons. It is true that Section 45 proceeds on the basis that the holder and his sons constituted a joint family and the estate belonged to the joint family, but this is only for the purpose of the Act. It is true that a fiction created for a particular purpose cannot be extended beyond that purpose. This is a well accepted position in law. But that principle of law is of no assistance to the Revenue. Herein as mentioned artier when the compensation amount is paid or is made payable to the sons, the same became their absolute property. Therefore, there is no question of extending the fiction provided in Section 45. We see no merit in these appeals. In the result these appeals fail and they are dismissed with costs; Three sets of hearing fee.