

Balakrishnan Vs. Union of India

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Court : Kerala

Decided On : Feb-19-2014

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : Balakrishnan

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE
THE CHIEF JUSTICE DR. MANJULA CHELLUR & THE HONOURABLE
MR.JUSTICE A.M.SHAFFIQUE WEDNESDAY, THE 19^H DAY OF
FEBRUARY 2014 30TH MAGHA, 1935 WA.No. 240 of 2014
----- AGAINST THE

JUDGMENT

IN WP(C) NO. 15794/2013 DATED 11-07-2013 ... APPELLANT(S)/PETITIONER:
----- BALAKRISHNAN, AGED 60 YEARS,
S/O. UNNERI, RESIDING AT SMITHA BHAVAN, ARASUMOOD, KULATHOOR
P.O. BY ADV. SRI.T.K.ANANDA KRISHNAN
RESPONDENT(S)/RESPONDENTS: ----- 1.
UNION OF INDIA, REPRESENTED BY SECRETARY, FINANCE DEPARTMENT,
NEW DELHI - 110 001, CENTRAL GOVERNMENT STANDING COUNSEL.

2. JOINT COMMISSIONER INCOME TAX RANGE-1, KAWDIAR, THIRUVANANTHAPURAM - 695 001.

3. INCOME TAX OFFICER, WARD-1(1), KAWDIAR, THIRUVANANTHAPURAM - 695 001.

4. THE SPECIAL TAHSILDAR (LA), THIRUVANANTHAPURAM - 695 001. R1 BY ADV.SRI.P.PARAMESWARAN NAIR, ASST.S.G.OF INDIA R2 &R3 BY ADV.SRI.JOSE JOSEPH, SC, INCOME TAX R4 BY GOVERNMENT PLEADER SRI.BOBBOY JOHN PULIKKAPARAMBIL THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON1902-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss MANJULA CHELLUR,C.J.

& A.M.SHAFFIQUE, J.

===== W.A. No.240 of 2014 =====
===== Dated this the 19th day of February, 2014

JUDGMENT

Manjula Chellur,CJ It is not in dispute that the property of the appellant measuring about 27.70 ares of land situated at Attippra Village in Thiruvananthapuram district is an agricultural land. According to petitioner, when this property was acquired for the 3rd phase of development of Techno Park in the year 2005, he was entitled for compensation and the compensation received by him is exempted from the payment of income tax by virtue of Section 10(37)(iii) of the Income Tax Act. When returns were submitted, he showed his income tax liability as nil, therefore he did not claim any benefits by way of deduction such as cost of acquiring the property, cost of improvements etc. from the sale value which he could have availed. A notice under Section 148 of Income Tax Act after refund of tax, was sent. W.A No.240 of 2014 2 2. According to the department, the income received from the above said land was chargeable to income tax but escaped tax assessment during the assessment year 2009-10. Hence a writ petition came to be filed in W.P.(C) No.15794/2013. Placing reliance on Info Park Kerala v. Assistant Commissioner of Income Tax (2008(4) KLT782 learned single Judge opined that petitioner cannot escape from the liability to pay income tax under the head 'capital gains' as there

is no compulsory acquisition of land. Aggrieved by the same, petitioner is before us.

3. The entire issue revolves around the fact whether by virtue of preliminary notification under Section 4(1) of the Land Acquisition Act can the sale in question by negotiations be termed as compulsory acquisition. The contents of sale deed at Ext.P4 and date of Ext.P2 notification are very relevant. Ext.P2 notification is prior to sale deed.

4. It is also not in dispute that no deductions under Section 194LA of the Income Tax Act came to be applied since the sale price was fixed by negotiations which is reflected in the sale deed at Ext.P4. Unless transfer of land or acquisition of W.A No.240 of 2014 3 land is by way of compulsory acquisition complying with the formalities and the Land Acquisition Act, Section 10(37)(iii) of the Income Tax Act would not apply. In that view of the matter, learned single Judge was justified in saying, the department was right in denying the benefits claimed by the writ petitioner. We find no good ground to interfere with the same. Accordingly, the appeal is dismissed. MANJULA CHELLUR, CHIEF JUSTICE A.M.SHAFFIQUE, JUDGE. sj20/02

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