

Badri Vishal Tandon Vs. Assistant Controller of Estate Duty and ors.

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Court : Allahabad

Decided On : Apr-15-1975

Reported in : [1976]103ITR468(All)

Judge : Yashoda Nandan and ;K.C. Agrawal, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 34(1); [Constitution of India](#) - Article 14;
Hindu Law

Appeal No. : Civil Miscellaneous Writ No. 343 of 1973

Appellant : Badri Vishal Tandon

Respondent : Assistant Controller of Estate Duty and ors.

Advocate for Def. : Deokinandan, Adv.

Advocate for Pet/Ap. : S.N. Kacker, Adv. General and ;R.N. Bhalla, Adv.

Judgement :

K.C. Agrawal, J.

1. This is a writ petition under Article 226 of the Constitution challenging the assessment order dated January 29, 1972, and those given in the appeals by the Zonal Controller of Estate Duty and that of the Income-tax Appellate Tribunal dated March 14, 1972, and September 13, 1972, respectively. The relevant facts

are as under :

One Lala Ram Mohan Das, who owned considerable properties, died on June 27, 1967. Badri Vishal Tandon, his son, filed statement of account on January 25, 1968. Apart from self-acquired individual properties, the deceased held certain ancestral properties in the capacity of karta of the joint Hindu undivided family. The Estate Duty Officer, acting under Section 34(1)(c) of the Estate Duty Act, clubbed the value of the interest of the deceased in the joint family with that of the other coparceners and determined the rate of the estate duty payable on the property passing on his death. Feeling aggrieved, the petitioner filed an appeal before the Zonal Controller of Estate Duty. He substantially allowed the appeal of the petitioner on other controversies, but maintained the decision of the Estate Duty Officer on this question. The second appeal filed before the Income-tax Appellate Tribunal was also dismissed. As a result of the order of the Income-tax Appellate Tribunal, the petitioner was held liable to pay Rs. 96,846 as estate duty. But, if the shares of the male lineal descendants were not aggregated for rate purposes then the duty payable on the share of the deceased, which passed on his death, would have come to Rs. 57,925. Consequently, the petitioner asserts that the demand of Rs. 38,941 on account of aggregation is unjustified unconstitutional and illegal.

2. Learned Advocate-General, appearing for the petitioner, has challenged the excess levy of the estate duty on the ground that the provisions of Section 34(1)(c) of the [Estate Duty Act, 1953](#) (hereinafter referred to as 'the Act') providing for aggregation of the shares of lineal descendants with that of the deceased are ultra vires the Constitution as it violates Article 14 of the [Constitution of India](#). To appreciate the contention of the counsel for the petitioner and the scope of Section 34(1)(c) of the Act, we may also consider some of its other provisions which would help us in deciding the controversy.

3. Section 2(15) defines 'property 'as including' any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also including any property converted from one species into another by any method'. As we are not concerned with the Explanations to this definition, it is not necessary for us to mention them.

4. Section 2(16) defines 'property passing on the death' as under :

"Property passing on the death' includes property passing either immediately on the death or after any interval either certainly or contingently, and either originally or by way of substitutive limitation, and 'on the death' includes 'at a period ascertainable only by reference to the death'."

5. Section 5 is the charging section providing for the extent of charge under the Act. Sub-section (1) is alone relevant for our purpose. The same reads as under :

"In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the territories which immediately before 1st November, 1956, were comprised in the States specified in the First Schedule to this Act, and in the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, which passes on the death of such person, a duty called 'estate duty' at the rates fixed in accordance with Section 35."

6. Sections 6 to 16 are under the heading 'Property which is deemed to pass'. Section 7 alone deserves to be mentioned in this regard. This provides that the property in which the deceased or any other person had an interest ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint Hindu family governed by the Mitakshara, Marumak-kattayam or Aliyasantana law. Section 34 deals with aggregation.

7. Section 34(1)(c), which alone is involved for interpretation in this case, may be reproduced. This is as follows :

'34. (1) For the purpose of determining the rate of the estate duty to be paid on any property passing on the death of the deceased,--.....

(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara,

Marumakkattayam or Aliyasantana law, also the interests in the joint family property of all the lineal descendants of the deceased member;

shall be aggregated so as to form one estate and estate duty shall be levied thereon at the rate or rates applicable in respect of the principal value thereof. '

8. Section 39(1) lays down that 'the value of the benefit accruing or arising from the cessation of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death'. Section 40 provides for the valuation of benefits from interest ceasing on death.

9. The ground on which the learned Advocate-General has challenged the validity of Section 34(1)(c) is that this section makes an invidious classification between a coparcener having male lineal descendants and a coparcener dying without leaving a male lineal descendant. He submits that in the case of the coparcener leaving his male lineal descendants, the value of his interest in the joint family is aggregated with the value of the interest of male lineal descendants, for the purpose of imposition of rate, whereas in the case of others leaving no male lineal descendant, the estate duty is computed on the value of the property passing on the death. This results in the imposition of higher estate duty in the former case. This classification, according to the learned Advocate-General, apart from being unrealistic, capricious and arbitrary, does not have any rational relation to the object sought to be achieved by the statute. He strongly relied upon the case of *V. Devaki Ammal v. Assistant Controller of Estate Duty* : [1973] 91 ITR 24 (Mad) in support of his contention. It is no doubt true that the aforesaid decision fully supports the petitioner on the point canvassed before us, but as we are unable to share this view, we now proceed to consider the question raised before us.

10. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law, or equal protection of the laws within the territories in India. In *State of U.P. v. Deoman Upadhyaya* : 1960 CriLJ 1504, interpreting Article 14, Subba Rao J. observed:

'Equality before law is a negative concept; equal protection of law is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally, subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed.'

11. This article, however, does not incorporate the idea of absolute equality among human beings. Equality before the law means that amongst equals the law should be equally administered, and that like should be treated alike. This article, therefore, does not forbid the State from making classifications and differentiations between persons and things. In order to have permissible classification the State is required to fulfil two pre-requisites; firstly that the classification must be founded on reasonable differentia, and secondly, that the differentia must have the reasonable object sought to be achieved by the Act.

12. These tests were laid down by the Supreme Court in *Ram Krishna Dalmia v. Justice S.R. Tendolkar* : [1959]1SCR279 and were subsequently followed in a number of other cases. The field of fiscal legislation being peculiar, complicated and presenting special problems, the Supreme Court has laid down that the legislature has larger scope for classification in this regard. Dealing with the above problem, the Supreme Court held in *State of Gujarat v. Ambika Mills Ltd.* : [1974]3SCR760 as under:

'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint, if not judicial deference to legislative judgment. The legislature, after all, has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events--self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability (see Joseph Tussman and Jacobsten Breck I The Equal Protection of the Laws, 37 California Law Rev. 341). '

13. The Supreme Court, agreeing with the above passage, in *G.K. Krishnan v. State of Tamil Nadu* : [1975]2SCR715 , quoted the observations of Justice Stewart made in the decision of the Supreme Court of the U.S.A. in *Sam Antonio School District v. Rodriguez*, [1973] 411 US 1. The observations are: .

'Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favour of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.'

14. It is, therefore, clear that it is not essential for the validity of a tax that it must attain absolute equality and abstract justice. The reason being that it is unattainable in tax proceedings. Determination of rates at which a certain tax should be levied is incidental to the power of imposition of tax. Field for the exercise of larger discretion has been admitted for this branch as well on the same principal that absolute or perfect equality or uniformity in taxation is impossible. In *Pujit Sound Power and L. Co. v. King County*, 264 US 22 such a conception has been characterised as 'Utopian', while in another case reported in *Head Money cases*, 612 US 580, as 'baseless dream'. Hence, substantial compliance might be sufficient to meet the requirement of equality and uniformity. In *Venugopala Ravi Varma Rajah v. Union of India* : [1969]74ITR49(SC) the Supreme Court also said that:

'.....absolute equality or uniformity of treatment is impossible of achievement.....Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification IIf the classification is rational, the legislature is free to choose objects of taxation,

impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment..... A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.'

15. The challenge to the validity of Section 34(1)(c) of the Act may now be considered in the background of the above principles. It may be worth noting that the [Estate Duty Act, 1953](#), was enacted with the object to prevent concentration of wealth in few hands. It was further hoped that the imposition of estate duty may not only help in reducing unequal distribution of wealth, but in raising revenue as well needed for development schemes. Section 34(1)(c) was subsequently added by the Estate Duty (Amendment) Act, 1958, which came into force on the 1st July, 1960. There is nothing in the Bill introducing the amendment which could throw any light on the object of the amendment. The revenue, however, had stated in paragraph 9 of its counter-affidavit that the amendment was effected to remove the disparity which the law before amendment caused in the incidence of taxation between the estates of persons belonging to those governed by the Mitakshara, Marumakkattayam or Aliyasantana law and those governed by Dayabhaga school of Hindu law.

16. After the enforcement of the Act in 1953, estate duty is leviable on the principal value of property passing on the death of a person irrespective of his religion, caste or creed. In accordance with the law of succession applicable to the deceased, the estate left by him is inherited by his sons on his death. A son does not get any interest in the properties of his father during the lifetime of the latter. But, law applicable to a person governed by the Mitakshara law is different. A son born in such a family acquires rights by birth in the ancestral property. Rule of inheritance under the Mitakshara school is survivorship and not succession. Therefore, on the death of a person governed by this school, only his interest in the joint Hindu undivided family passes on to his heirs and legal representatives. Consequently, in the former case, estate duty is payable on all the properties left by the deceased while in the latter case it is payable only on the interest of the deceased. In order to remove this disparity and to achieve the object of avoiding

concentration of wealth, Section 34(1)(c) was added by the subsequent amendment. This amendment now requires that the interests of a person, leaving male lineal descendants be aggregated with that of his male descendants and after determining the rate at which estate duty is leviable, the same may thereafter be imposed on the principal value of property which passes on the death of the deceased. Learned Advocate-General, appearing for the petitioner, submitted that the above method of aggregation discriminated between a person leaving male lineal descendants and those who do not. According to his contention, estate duty payable in one case will be higher than the other although both the persons are similarly situated. He also submitted that by clubbing the value of the properties of the male lineal descendants with that of the deceased, the authorities have been permitted to levy duty even on the properties of those persons who are alive. We do not find any merit in these contentions. Section 34(1)(c) of the Act does not levy any duty on the estate of the deceased. It enables aggregation of the interest of the male lineal descendants for the purposes of determining the rate at which the estate duty is leviable on the principal value of the interest of the deceased person. No estate duty is levied on the interest of the male lineal descendants. In our view, it is incorrect to say that the interest of his lineal descendants is clubbed with the interest of the deceased for the purposes of constituting or forming one estate for levying estate duty. Section 34(1)(c) of the Act does not purport to levy duty on the properties of the lineal descendants. As stated above, it has a limited and restricted purpose. Clubbing of value of two interests for the purposes of determining the rate on the property passing on the death of the deceased cannot be interpreted to have enlarged the scope of the charging section. Section 34(1)(c) only provides the machinery of determining the rate. It may be noted that there is no fixed or prescribed method in which alone the rates for payment of taxes can be fixed. There are various methods for doing so and it is on the wisdom of the legislature to prefer and adopt one over the other. If the legislature has chosen the method provided in Section 34(1)(c), it cannot be said that in the guise of aggregation this section brings the male lineal descendants to charge and converts the same from the status of the machinery section to that of the charging section. The power given in Section 34(1)(c) is only incidental and ancillary to the charging Section 5.

17. We are also unable to subscribe to the submission of the learned Advocate-General that Section 34(1)(c) of the Act is violative of Article 14 of the Constitution. The power of the legislature, as mentioned above, in the matter of classification and differentiation in fiscal matters is very wide. Persons governed by Mitakshara school of Hindu law leaving male lineal descendants can be grouped in one category and those who do not leave lineal descendants in another. This classification is on account of different results which flow from the incidents of the Hindu undivided family governed by the Mitakshara law. Learned Advocate-General accepted that the persons governed by the Dayabhaga law are not persons similarly situated as members belonging to Mitakshara school as right of inheritance and devolution under their personal law is different. Once 'the above position is accepted, there is no difficulty in holding that incidents in the case of a, person governed by Mitakshara law leaving male lineal descendants being different to those governed by other laws, these are persons falling in two categories. The case of a person governed by Mitakshara law leaving no lineal descendants is also dissimilar to one leaving lineal descendants as on his death the whole of his property, including the coparcenary property, will pass to his heirs by succession, not by survivorship. Applying the law laid down in *Khandige Sham Bhatt v. Agricultural Income-tax Officer* : [1963]48ITR21(SC) by the Supreme Court that the power of the legislature to classify is of 'wide range and flexible' it must be held that the classification made in the instant case adheres to the fundamental principles underlying the doctrine of equality.

18. The classification has also a nexus or relation to the object sought to be achieved. The object of the Act, as mentioned above, is to reduce inequalities in the distribution of wealth, whereas the object of enacting section 34(1)(c) of the Act was to remove disparity in the incidence of estate duty on estates of persons belonging to those governed by Mitakshara, Marumakkattayam or Aliyasautana on the one hand and those governed by Dayabhaga or other personal laws, which do not recognise acquisition of interest by birth, on the other hand. The net value of the properties received in case of death of a person governed by the Mitakshara law was more than in the case of a person governed by Dayabhaga before the amendment. Section 34(1)(c) now enables the authorities to impose higher estate duty under the amended law. This results in narrowing the gap in the liability of

estate duty. It is indisputable that the revenue system which most nearly approaches the equality is the best. Therefore, the amendment made with a view to achieve equality and uniformity must be held to have a nexus. Further, the amendment does not only help in achieving the object of removing the disparity to some extent, as stated above, but also in the ultimate purpose of removing unequal distribution of wealth. Learned Advocate-General submitted that in the absence of anything said in the Bill or in the speech of the Minister moving the same, it was extremely doubtful that the said amendment was moved with the object of removing the disparity between the persons governed by the Mitakshara law and those governed by other personal laws. We are, however, not impressed with the above argument as it is open to the State to establish the object and purpose by other evidence if the Bill in any particular is silent about. Apart from the above, if the purpose is in doubt the court has to ascribe a purpose to the statutory classification which coordinates with the general purpose of the Act. Where a similar question of doubt regarding the classification made by Section 23(1A) of the Foreign Exchange Regulation Act was raised before the Supreme Court and its validity was challenged, before it on the ground of the contravention of Article 14 of the Constitution, in *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Girish Kumar Navalkha* : 1975 CriLJ874 (Criminal Appeal No. 203 of 1973, decided on 3-3-1975), the Supreme Court held as under :

'When the purpose of a challenged classification is in doubt, the courts attribute to the classification the purpose thought to be most probable. Instead of asking what purpose or purposes the statute and other materials reflect, the court may ask what constitutionally permissible objective this statute and other relevant materials could plausibly be construed to reflect. The latter approach is the proper one in economic regulation cases. The decisions dealing with economic regulation indicate that the courts have used the concept of 'purpose' and 'similar situations' in a manner which give considerable leeway to the legislature. This approach of judicial restraint and presumption of constitutionality requires that the legislature is given the benefit of doubt about its purpose.'

19. It may be mentioned that the counsel for the revenue referred to two decisions of the Andhra Pradesh High Court in *Komanduri Seshamma v. Appellate*

Controller of Estate Duty : [1973]88ITR82(AP) and N. Krishna Prasad v. Assistant Controller of Estate Duty : [1972]86ITR332(AP) , in support of his submission that Section 34(1)(c) of the Act was not violative of Article 14 of the Constitution. We are in respectful agreement with the view taken in these cases. We, therefore, hold that Section 34(1)(c) does not violate Article 14 of the Constitution.

20. No other point was raised before us;

21. For the reasons stated above, the writ petition fails and is dismissed with costs.

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