

A. Mohan Vs. Dr. Vivekanandan and Others

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Court : Chennai

Decided On : Mar-26-1993

Reported in : (1994)120CTR(Mad)196; [1994]206ITR634(Mad); (1993)IIMLJ258

Judge : T. Somasundaram, J.

Acts : Income-tax Act, 1961 - Sections 230A; [Constitution of India](#) - Article 226

Appeal No. : Writ Petitions Nos. 3228 and 4238 of 1980

Appellant : A. Mohan

Respondent : Dr. Vivekanandan and Others

Advocate for Def. : S. Doraisamy, Adv.

Advocate for Pet/Ap. : R. Krishnamurthy, Adv.

Judgement :

Somasundaram, J.

1. As the parties in these two writ petitions and the points involved are one and the same, they are disposed of by this common order. On December 29, 1977, the first respondent executed a settlement deed in favour of the petitioner settling his half share in an extent of 17.34 acres in S. Nos. 101/1, 101/2, 101/3 and 103/1 in Anuppur village. The value of the half share, settled by the first respondent in

favour of the petitioner, is given in the settlement deed dated December 29, 1977, as Rs. 41,000 and the value of the entire property measuring 17.34 acres is given as Rs. 80,700. Again, on January 7, 1978, the first respondent executed another settlement deed in favour of the petitioner settling his half share in an extent of 11.80 acres in S. No. 98/1 in Anuppur village and S. No. 45/2 in Velalapatti village. In the settlement deed dated January 7, 1978, the value of the half share settled in favour of the petitioner is given as Rs. 31,000 and the value of the entire extent of 11.80 acres is given as Rs. 62,000. According to the petitioner, the first respondent is entitled only on a half share in the entire area of 17.34 acres of land dealt with in the settlement deed dated December 29, 1977, and a similar half share in the entire extent of 11.80 acres dealt with in the settlement deed dated January 7, 1978. The settlement deeds dated December 29, 1977, and January 7, 1978, were presented for registration before the second respondent. As the value of the entire extent of the lands settled under the two documents exceeded Rs. 50,000, the second respondent took the view that the documents dated December 29, 1977, and January 7, 1978, could be registered only on production of the certificates under section 230A(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The first respondent who is the executant of the settlement deeds, by letter dated August 3, 1979, informed the second respondent of his inability to produce the certificate under section 230A(1) of the Act. Thereupon, the second respondent, by separate orders, on September 12, 1979, refused to register the settlement deeds dated December 29, 1977, and January 7, 1978, on the ground that the certificate under section 230A(1) of the Act was not produced. As against the order of the second respondent refusing to register the settlement deeds dated December 29, 1977, and January 7, 1978, the petitioner filed appeals A.P. Nos. 2/79 and 3/79, respectively, before the third respondent. On June 3, 1980, the third respondent, by separate orders dismissed A.P. Nos. 2/79 and 3/79 and refused to direct the registration of the documents in question holding that, since the value of the property comprised in the settlement deeds exceeds Rs. 50,000, they will attract the provisions of section 230A(1) of the Act and, therefore, the documents cannot be registered when the executant failed to produce the income-tax clearance certificate. Aggrieved by the order of the third respondent in A.P. No. 2/79, the petitioner has filed W.P. No. 4238/80

praying for the issue of a writ of certiorarified mandamus to quash the order of the second respondent dated September 12, 1979, as confirmed in the order of the third respondent dated June 3, 1980, made in A.P. No. 2/79 and direct the second respondent to register the settlement deed dated December 29, 1977, executed by the first respondent in favour of the petitioner. Similarly, W.P. No. 3228/80 has been filed for the issue of a writ of certiorarified mandamus to quash the order of the second respondent dated September 12, 1977, as confirmed by the order dated June 3, 1980, made in A.P. No. 3/79 and to direct the second respondent to register the settlement deed dated January 7, 1978.

2. The main contention of Mr. R. Krishnamurthy, learned senior counsel for the petitioner is that the provisions of section 230A of the Act have no application to the facts of the present case and for the registration of the documents in question inasmuch as the said documents relate only to the half share of the first respondent in the properties dealt with by the settlement deeds dated December 29, 1977, and January 7, 1978, and the value of the half share of the first respondent in the properties dealt with in each of the settlement deeds is less than Rs. 50,000. Learned senior counsel further contended that respondents Nos. 2 and 3 have failed to see that it is only the value of the first respondent's right, title or interest in the property actually transferred under the settlement deeds that determined the applicability of section 230A and that merely because the properties transferred form part of a larger extent the entirety of it cannot be taken into account for the purpose of determining the applicability of section 230A, particularly when the first respondent is entitled only to a half share in the properties dealt with under the two settlement deeds in question.

3. Per contra, Mr. N. V. Balasubramaniam, learned counsel for respondents Nos. 4 and 5 submitted that, under section 230A of the Act, where a document is required to be registered under the Indian Registration Act, 1908, purporting to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property valued at more than Rs. 50,000, a certificate as prescribed therein from the concerned Income-tax Officer shall be produced before the registering authority. Learned counsel further contended that it is not the value of the interest of the person transferring the property, but the value of the property as a whole in

which such interest is sought to be transferred that is the criterion for the purpose of section 230A. In support of his contention, learned counsel for respondents Nos. 4 and 5 relied on the circular dated December 10, 1992, issued by the Central Board of Direct Taxes (vide 199 ITR 8). The relevant portion of the circular dated December 10, 1992, reads as follows :

'The second question is whether in the case of partial transfer the value of (i) the specific part of the property, or (ii) an undivided share in the property, is to be considered, or the value of the whole property should be taken for the purpose of section 230A.

The Board has issued a Circular, dated March 22, 1976 (Instruction No. 940-CBDT F. No. 358/8/92-WT), whereby it has been clarified that if the property to be transferred could be said to be a separate identifiable property, it may be taken as a separate property. This view appears to be in accordance with law.

In the case of properties of type (ii), according to the plain words of the section, what is relevant is the valuation 'of' the property and not merely the interest to be transferred 'in' the property. To hold otherwise would go against the advancement of the remedy provided by the section.'

4. Mr. S. Doraisamy, learned counsel for the first respondent, submitted written arguments on behalf of the first respondent raising contentions similar to those urged by learned counsel for respondents Nos. 4 and 5.

5. Let us first examine the position of law with regard to the scope of section 230A(1) of the Act before considering the question whether respondents Nos. 2 and 3 are justified in refusing to register the settlement deeds in question on the ground that the certificates under section 230A of the Act have not been produced by the first respondent. Section 230A(1) of the Act as it stood during the relevant time reads thus :

'Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908

(16 of 1908), purports to transfer, assign, limit, or extinguish the right, title or interest of any person to or in any property valued at more than fifty thousand rupees, no registering officer appointed under that Act shall register any such document, unless the Income-tax Officer certifies that -

(a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian Income-tax Act, 1922 (11 of 1922), the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1957 (29 of 1957), the Gift-tax Act, 1958 (18 of 1958), the Super Profits Tax Act, 1963 (14 of 1963), and the Companies (Profits) Surtax Act, 1964 (7 of 1964); or

(b) the registration of the document will not prejudicially affect the recovery of any existing liability. . . .'

6. In *N. C. Rangesh v. Inspector-General of Registration* : [1991]189ITR270(Mad) , Bakthavatsalam J., while holding that, in the case of sale of undivided interest in land of value below the limit prescribed in section 230A, the provisions of the said section 230A or Chapter XX-C of the Act will not apply even if the value of the entire land is above the limit prescribed under the said provisions, observed as follows (at page 282) :

'In my view, the criterion to obtain a certificate either under section 230A of the Income-tax Act, 1961, or under Chapter XX-C should be the value of the property or the interest of the person in such property that was sought to be transferred and it was only with respect to that extent that the income-tax clearance certificate could be insisted upon. As such, in my view, in all these cases before me, neither section 230A of the Income-tax Act, 1961, nor Chapter XX-C will apply, especially when an undivided share is sold under a valid sale deed or under a valid agreement of sale as provided in the Transfer of Property Act. This view of mine is supported by the view taken by a single judge of the High Court of Andhra Pradesh which is *Samudrala Ganesh Rao v. State of A.P.* : [1988]174ITR304(AP) . In that case, when the valuation of the interest of 3/40ths share was only Rs. 21,775, the learned single judge has held that section 230A of the Income-tax Act is not applicable. With respect, I agree with the view of the learned judge of the

High Court of Andhra Pradesh, in the abovementioned case. In my view, it is the proper construction to be put on the provisions of the Income-tax Act with which we are concerned.'

7. In *R. Lokeswari v. State of Tamil Nadu* : [1992]196ITR501(Mad) , S. Ramalingam J., while holding that, in the case of co-sharers selling under a single document, if the value of the share of each sharer is less than the limit prescribed under section 230A, though the value of the entire property exceeds the limit, an income-tax clearance certificate is not necessary for the registration of the sale deed, observed as follows (at page 504) :

'If the owners of the shares of immovable property desire to sell their respective shares and execute a sale deed covering such share and if that share happens to be of a value less than rupees two lakhs, no certificate under section 230A of the Income-tax Act is required.'

8. In *Samudrala Ganesh Rao v. State of A.P.* : [1988]174ITR304(AP) , the Andhra Pradesh High Court, dealing with a similar question, held as follows (at page 306) :

'Section 230A(1) provides that registration cannot be effected unless a certificate is obtained from the concerned Income-tax Officer with regard to the clearance of all the existing liabilities regarding direct taxes. Sub-section (1) provides that the clearance certificate is necessary if the valuation exceeds Rs. 50,000. The valuation of Rs. 50,000 is with reference to the right, title or interest of any person in the property. The criterion should be the value of the property or the interest of the person in such property that is sought to be transferred. The authorities have taken into consideration the value of the entire property, though it is stated that the interest of the sisters relinquishing the property is only 3/40ths share. It is obvious that they are not concerned with the major chunk of the property and their right is restricted only to 3/40ths share and they can either transfer or relinquish to the extent of 3/40ths share only. It is only with respect to this extent that the income-tax clearance certificate can be insisted upon. It is not disputed that the valuation of this interest is only Rs. 21,775 and it does not exceed Rs. 50,000. Therefore, section 230A is not applicable and, hence, the authorities erred in insisting upon the production of the income-tax clearance certificate.'

9. I am in entire agreement with the view expressed by the learned judges in the decisions referred to above. The position of law which emerges from the decisions referred to above is this : According to section 230A(1) of the Act, an income-tax clearance certificate is necessary only when the value of the right, title or interest of the transferor sought to be transferred under the document exceeds the limit prescribed under the said section. According to the plain words of section 230A(1), the criterion should be the value of the property or the interest of the person in such property that is sought to be transferred and not the value of the property as a whole in which such interest of the transferor is sought to be transferred. In view of the above legal position, I have no hesitation in rejecting the contention of learned counsel for respondents Nos. 4 and 5 that it is not the value of the interest of the person transferring the property but the value of the property as a whole in which such interest is sought to be transferred that is the relevant criterion for the purposes of section 230A. For the same reason, it has to be held that the clarification issued by the Central Board of Direct Taxes in its circular dated December 10, 1992 (see [1993] 199 ITR 8) does not give the correct interpretation of the term 'value' as mentioned in section 230A.

10. Now, coming to the facts of the present case, respondents 2 and 3 have taken into consideration the value of the entire lands, though it is stated in the settlement deed dated December 29, 1977, that the first respondent is settling only a half share in the lands mentioned in the documents which is valued at Rs. 40,350. Similarly, respondents Nos. 2 and 3 have taken into consideration the value of the entire lands though it is mentioned in the settlement dated January 7, 1978, that the first respondent is settling only a half share in the lands valued at Rs. 31,000. It is seen from the affidavits filed in support of the writ petitions that the first respondent is entitled only to a half share in the entire extent measuring 17.34 acres in survey Nos. 101/1, 101/2, 101/3 and 103/1, which is settled in favour of the petitioner under the settlement deed dated December 29, 1977. Similarly, it is clear from the averments in the affidavit that the first respondent is entitled only to a half share in the lands measuring 11.80 acres in survey Nos. 98/1 in Anuppur village and survey No. 45/2 in Velalapatti village, and that the first respondent has settled only his half share in favour of the petitioner under the settlement deed dated January 7, 1978. It is also clear from the averments in the affidavit that the

first respondent is entitled only to a half share in the properties referred to above and that the first respondent can transfer or settle to the extent of the half share only in the lands dealt with in the settlement deeds in question. From this it follows that only with respect to the extent of the half share in the properties settled under the two settlement deeds, the income-tax clearance certificate can be insisted upon. It is seen from the settlement deed dated December 29, 1977, that the value of the half share is given as Rs. 40,350. Similarly, the value of the half share dealt with under the settlement deed dated January 7, 1978, is given as Rs. 31,000. As the valuation of the interest of the first respondent conveyed under both the settlement deeds does not exceed Rs. 50,000, it has to be held that section 230A is not applicable to the documents in question and respondents Nos. 2 and 3 erred in insisting upon the production of the income-tax clearance certificate. Therefore, the impugned orders are illegal and they are liable to be quashed.

11. As I am accepting the main contention of learned counsel for the petitioner, it is not necessary to deal with the other contentions urged on behalf of the petitioner.

12. For all the reasons stated above, the writ petitions are allowed, the impugned orders are quashed and the second respondent is directed to register the settlement deeds dated December 29, 1977, and January 7, 1978, executed by the first respondent in favour of the petitioner without insisting upon the production of the income-tax clearance certificates. No costs.