

Mukhtiar Singh Sandhu v. Wealth Tax Officer and another
(I. S. Tiwana, J.)

this view of the matter, the impugned order Annexure P. 3 terminating the services of the petitioner is clearly in violation of the Rules governing his service and also contrary to the basic principles of natural justice and has to be quashed.

(11) Consequently, this writ petition is allowed with costs, the impugned order Annexure P. 3 terminating the services of the petitioner is quashed, a writ of mandamus is issued directing respondent No. 3 to implement the orders Annexures P. 5 and P. 8. He shall be entitled to all the consequential reliefs which flow from quashing the orders of termination of his services. The costs are assessed at Rs. 500.

N.K.S.

Before I. S. Tiwana, J.

MUKHTIAR SINGH SANDHU,—Petitioner

versus

WEALTH TAX OFFICER and another,—Respondents.

Civil Writ Petition No. 1183 of 1985.

January 31, 1986.

Wealth Tax Act (XXVII of 1957)—Section 17(1)(a)—Land Acquisition Act (I of 1894)—Section 18—Assessee awarded compensation for the acquired agricultural land—Wealth Tax Officer subjecting to tax the actual amount of compensation received by the assessee during the relevant assessment years—Proceedings for enhancement of compensation pending under section 18 of the Land Acquisition Act at the time of assessment—Assessee not disclosing pendency of such proceedings in his return—Compensation further enhanced—Assessee—Whether could be said to be guilty of not disclosing fully and truly all material facts necessary for assessment—Assessment—Whether could be re-opened under section 17(1)(a).

Held, that since the Wealth Tax Officer was fully aware of the amount of compensation received by the assessee for his acquired agricultural land and he subjected that wealth to tax, it cannot later be said by the authorities that by reason of the enhancement of the amount of compensation by the District Judge or the High Court,

the assessee was guilty of not disclosing 'fully and truly all material facts necessary for assessment of his net wealth' which as per section 17(1)(a) of the Wealth Tax Act, 1957 is a pre-condition for the reopening of the assessments made against him. In the absence of fulfilment of this pre-condition the entire action of the authorities in issuing notices for reopening the assessment are without jurisdiction. Under the Act, once the Wealth Tax Officer has evaluated the right to receive compensation or subjected the actual amount of compensation received by the assessee by then to tax he cannot later on vary his opinion in the light of the further enhancement allowed by the Civil Court under the Land Acquisition Act. However, in subsequent years whenever the assessee actually gets the enhanced amount of compensation, the authorities under the Act would be able to subject that amount of wealth to tax.

(Para 2).

Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the records including the reasons recorded by the Wealth Tax Officer for reopening the assessments and after perusing the same be pleased to issue a writ in the nature of certiorari quashing the reassessment notices Annexures 'P-2' to 'P-2/C' and the proceedings being sought to be taken in pursuance thereto by Respondent No. 1 and a writ of prohibition be issued restraining the Respondents from reopening the assessments already finalised for the assessment years in question. Any other writ or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be granted.

It is further prayed that the filing of the certified copies of the Annexures be dispensed with and pending the decision of the writ petition the proceedings before the Wealth Tax Officer be stayed and the petition be allowed with costs.

B. K. Jhingan, Advocate, for the Petitioner.

Ashok Bhan, Senior Advocate with Ajai Mittal, Advocate, for the Respondent.

JUDGMENT

I. S. Tiwana, J. (oral)

(1) The petitioner impugns the notices issued to him under section 17 of the Wealth Tax Act 1957 (for short, the Act), for the assessment years 1975-76 to 1978-79 on a wide variety of grounds.

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Though the only reason mentioned in the impugned notices is that the petitioner had "escaped assessment" for these years, yet what is stated in this regard in the written statement is as follows:—

"The assessee is an agriculturist. The agricultural land was acquired by the Military Authorities on 5th October, 1974.

2. As the assessee was divested of land on 5th October, 1974, he had the right to receive enhanced compensation which was an asset as on 31st January, 1975. The value of this asset has not been shown in the return which is estimated at Rs. 5 lacs. I have, therefore, reasons to believe that the assessee's failure to disclose fully and truly all material facts necessary for assessment, therefore wealth has escaped assessment."

It is not in dispute before me that at the time the petitioner filed his return for the assessment year 1975-76, his application under section 18 of the Land Acquisition Act, challenging the adequacy of the compensation awarded to him, was pending with the District Judge, Faridkot. Before the finalisation of the assessment of that year,—*vide* order dated March, 28, 1980 (Annexure P. 1), the District Judge had enhanced the compensation by Rs. 1,11,541,—*vide* his award dated June 2, 1979. The Petitioner again challenged this award of the District Judge in this Court and as a result thereof the compensation was enhanced to Rs. 7,90,968.94 Paise including the amount of solatium and interest. It is again not in dispute that while filing the return with regard to the above noted assessment years the petitioner had not mentioned anything with regard to the pendency of his application under section 18 of the Land Acquisition Act. He of course could not mention anything about the filing of the appeal in this Court against the award of the District Judge as the same was filed much later than the filing of the return for the assessment year 1978-79.

(2) The solitary submission of Mr. Jhinan, learned counsel for the petitioner is that since the Wealth Tax Officer, Ferozepur, (B—Ward), was fully aware of the amount of compensation received by the petitioner for his acquired agricultural land and he subjected that wealth to tax,—*vide* order Annexure P. 1, it cannot now be said by the respondent authorities that by reason of the enhancement of the amount of compensation by the District Judge or this Court, the

petitioner was guilty of not disclosing 'Fully and truly all material facts necessary for assessment of his net wealth which as per section 17(1)(a) of the Act, is a pre-condition for the reopening of the assessments made against him. He further maintains that in the absence of fulfilment of this pre-condition the entire action of the respondent authorities in issuing the impugned notices is without jurisdiction. As against this, as already pointed out, the whole case of the respondent authorities is that the petitioner had failed to mention in his returns for the relevant years about the pendency of proceedings under section 18 of the Land Acquisition Act and had he done so, the assessments made against him would have been otherwise. Having heard the learned counsel for the parties at some length I do not feel impressed with the submission made on behalf of the respondents. In support of the above noted stand the learned counsel for the respondents seeks firm reliance on a judgment of the Andhra Pradesh High Court in *Mrs. Khorshed Shapoor Chenai v. Assistant Controller of Estate Duty*, (1) wherein it has been observed that the pendency of such proceedings under section 18 of the Land Acquisition Act is a primary fact and the disclosure of the same by an assessee is obligatory. It has been further opined that in case such a fact had been disclosed in that case, the Assistant Controller of Estate Duty might not have accepted the value or the estimated value of the acquired land. Though his judgment was the subject-matter of an appeal before their Lordships of the Supreme Court in *Mrs. Khorshed Shapoor Chenai v. Assistant Collector of Estate Duty, A.P.* (2) and was actually set aside, yet the specific question as to whether the seeking of a land reference and its pendency in a civil Court is a primary fact non-disclosure of which would amount to failure or omission to disclose facts leading to escapement from assessment, was not adjudicated upon and was left open. However, the following very material observations to settle the above noted question have been made by their Lordships in this judgment:—

“In our opinion, the High Court was right in holding that there are no two separate rights—one a right to receive compensation and the other, a right to receive extra or further compensation. Upon acquisition of his lands under the Land Acquisition Act the claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification and

(1) (1973)90 I.T.R. 47.

(2) (1980)122 I.T.R. 21.

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it is this right which is quantified by the Collector under section 11 and by the Civil Court under section 26 of the Land Acquisition Act.

....
The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in a Civil Court....

“This, however, does not mean that the Civil Court’s evaluation of this right done subsequently would be its valuation as at the relevant date either under the E.D. (Estate Duty) Act or the W.T. (Wealth Tax) Act. It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of relevant notification) as on the relevant date (being the date of death under the E.D. Act and valuation date under the W.T. Act).”

In the light of these observations I am of the view that under the Act once the Wealth Tax Officer has evaluated the right to receive compensation or subjected the actual amount of compensation received by the assessee by then to tax he cannot later on vary his opinion in the light of the further enhancement allowed by the Civil Court under the Land Acquisition Act. I may not, however, be taken to express the opinion that even in subsequent years whenever the assessee actually gets the enhanced amount of compensation the authorities under the Act would not be able to subject that amount of wealth to tax. I am clearly of the opinion that in the given facts and circumstances of this case it cannot possibly be held that the enhanced amount of compensation was the wealth in the hands of the petitioner in the years in question, i.e., 1975-76 to 1978-79. He thus deserves to succeed.

(3) At the initial stage of hearing it was contended by Mr. Ashok Bhan, learned Senior Advocate for the respondent authorities that this Court may not choose to adjudicate upon the merits of this case and should relegate the petitioner to his remedies under the Act as according to the learned counsel the issuance of the impugned notices by the respondent authorities was not without jurisdiction. The learned counsel, however, conceded that the question as to whether the petitioner should be relegated to his remedies under the Act was

dependant on my above noted conclusion, i.e., whether the petitioner can be held guilty of not disclosing 'fully and truly the material facts necessary for the assessment of his net wealth'. Since my conclusion on this question, as already indicated above, has gone against the respondent authorities, this submission of Mr. Ashok Bhan obviously is untenable and is rejected.

(4) In the light of the above discussion I allow this petition and set aside the impugned notices but with no order as to costs.

N.K.S.

Before G. C. Mital, J.

PATIALA BUS (SIRHIND) PVT. LTD. SIRHIND,—*Petitioner.*

versus

STATE TRANSPORT APPELLATE TRIBUNAL, LUDHIANA and others,—*Respondents.*

Civil Writ Petition No. 5109 of 1973

February 7, 1986.

Motor Vehicles Act (IV of 1939) (as amended by Punjab Act XXXI of 1955)—Sections 44-A, 47(3), 48, 57, 64, 64-A and 134(2)—Stage carriage permits granted by the State Transport Commissioner—Operator who is neither an applicant nor an objector—Whether could file an appeal under section 64(1)(gg)—Appeal if not competent—Whether could be treated as a revision under section 64-A—Order granting permits in excess of the number fixed under section 47(3)—Whether valid—Such an order—Whether saved by the provisions of section 134(2).

Held, that no appeal was competent under clause (a) to (g) of Section 64(1) of the Motor Vehicles Act, 1939 since the appellant was neither an applicant nor an objector under Section 57 of the Act. The order of the State Transport Commissioner granting stage carriage permits is an order passed by an authority specially authorised under Section 44-A of the Act and since the order of such an authority has been made appealable by virtue of clause (gg) of Section 64(1) of the Act, the appeal would be competent. Assuming that the appeal was not competent, then by virtue of section 64-A of the Act, the appellant was entitled to file revision and the appellate authority should have considered the appeal as revision petition and should not have declined to do so.

(Paras 5 and 6).