

(2010) 05 P&H CK 0084

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of
Wealth Tax

APPELLANT

Vs

Nand Lal, Mohan Lal,
etc.

RESPONDENT

Date of Decision: May 19, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Income Tax Act, 1922 - Section 12B
- Income Tax Act, 1961 - Section 2(47), 45(5)
- Land Acquisition Act, 1894 - Section 11, 11A, 12, 16, 17

Citation: (2010) 232 CTR 185

Hon'ble Judges: Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

As identical questions of law and facts are involved in the aforesaid appeals, pertaining to the asst. yrs. 1990-91, 1991-92 and 1992-93, having arisen out of the same impugned order, therefore, we propose to dispose of the same, vide this common judgment, in order to avoid the repetition. However, for facilitation, the crux of the facts has been extracted from WT Appeal No. 55 of 2009.

2. The epitome of the facts, culminating in the commencement of, relevant for disposal of present appeals and emanating from the record, is that, in pursuance of notification dt. 23rd May, 1983, the land of the respondent-assessee Nand Lal, Mohan Lal etc. (for brevity "the assessee") was acquired under the provisions of Land Acquisition Act, 1894 (for short "the LA Act"). Having completed all the formalities, the Land Acquisition Collector (hereinafter to be referred as "the LAC") passed award No. 2 on 7th May, 1986.

Being dissatisfied with the compensation awarded by the LAC, the assessees filed the reference petition u/s 18 of the LA Act and the Civil Court enhanced the compensation at the rate of Rs. 100 per sq. yd. along with all statutory benefits, vide order dt. 22nd Sept., 1990.

3. In the wake of regular first appeals by the landowners/assesseees as well as by the State of Haryana, this Court assessed the market price of the acquired land at the rate of Rs. 120 per sq. yd. along with all statutory benefits under the LA Act. The matter is stated to be pending in the Hon"ble Supreme Court.

4. The Revenue claimed that although the final payment of the enhanced compensation was actually received, during the financial year 1995-96, but since the assesseees acquired the right to receive the compensation/ enhanced compensation, during the relevant period of asst. yrs. 1990-91, 1991-92 and 1992-93, so, the amount of compensation was liable to be added in their wealth, during the indicated previous years, under the provisions of WT Act, 1957 (hereinafter to be referred as "the WT Act"). Therefore, the notices were issued to the assesseees, to show cause, as to why the right to receive the compensation/enhanced compensation plus interest accrued thereon, be not treated as assets and wealth-tax be not imposed, in this regard.

5. In pursuance of the show-cause notice, the assesseees filed the reply, in which, it was explained that the right to receive the enhanced compensation and accrued interest cannot be treated as assets, for the purpose of wealth-tax. It was also claimed that since the matter of enhancement has not been finally decided, so, in any case, it cannot be included in the wealth of the assesseees. It will not be out of place to mention here that the assesseees stoutly denied all other allegations contained in the show-cause notice and prayed for its reversal.

6. The explanation put forth by the assesseees did not find favour and the assessing authority held that the right to receive the compensation from the State is a valuable right and included the amount of compensation and interest in their assets, for the previous period of relevant assessment years, vide order dt. 26th March, 2002 (Annex. A1).

7. Aggrieved by the order (Annex. A1), the assesseees filed the appeals before the CWT(A). The first appellate authority has held that since no compensation was received during the financial years 1989-90 and 1990-91, so, no amount of compensation is taxable on this account for the asst. yrs. 1990-91 and 1991-92 and deleted the addition of the enhanced compensation for these years. Hence, partly allowed the appeals, vide order dt. 7th Feb., 2008 (Annex. A2).

8. Aggrieved by the order (Annex. A2), the Revenue filed the appeals, which were dismissed by the Tribunal, vide order dt. 23rd Jan., 2009 (Annex. A3).

9. The Revenue still did not feel satisfied with the impugned order (Annex. A3) and filed the present appeals, raising the following substantial question of law for determination by

this Court:

Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that right of the assessee to receive compensation and interest accrued thereon is not liable to wealth-tax without adjudicating upon the specific ground of appeal taken by the Revenue that in view of the judgments of Hon"ble Supreme Court in the cases of [Commissioner of Wealth-tax, Kolkata Vs. Smt. Anjamli Khan](#), and [Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa](#), such a right was includible in net wealth.

That is how, we are seized of the matter.

10. We heard the learned Counsel for the parties and have gone through the record with their valuable help.

11. As is evident from the record, the land of the assesseees was acquired in pursuance of notification dt. 23rd May, 1983. Having completed all the codal formalities, the LAC passed the award No. 2 on 7th May, 1986. The assesseees received the final payment of enhanced compensation, during the financial year 1995-96. It is not a matter of dispute that since the case pertains to the previous asst. yrs. 1990-91, 1991-92 and 1992-93, so, the same has to be decided, keeping in view of old definition of assets under the provisions of Section 2(c) and not amended provisions of Section 2(ca) of the WT Act, which was made applicable after 1st April, 1993. Thus, the facts of this case are neither intricate nor much disputed.

12. The main argument of the learned Counsel for the Revenue that even mere right to receive the enhanced compensation of acquired land of the assesseees was liable to be treated as assets and includible in the WT returns of previous years of the assesseees and that as the Tribunal held that mere right to receive the compensation and interest accrued thereon, was not liable to be included in their WT returns, that too, without adjudicating the matter, therefore, the impugned order is bad in law, are neither tenable nor the observations of the Hon"ble apex Court in the cases of [Commissioner of Wealth-tax, Kolkata Vs. Smt. Anjamli Khan](#), and [Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa](#), , are at all applicable to the present controversy.

13. In Smt. Anjamli Khan"s case (supra), the relevant period of asst. yrs. 1957-58, 1958-59 and 1959-60 was in dispute. Kumar Amarendra Lal Khan (since deceased)-assessee owned vast agricultural properties, which, by virtue of the provisions of the West Bengal Estates Acquisition Act, 1953, came to vest in the State of West Bengal, whereby the assessee was entitled to receive compensation in respect of the lands. The mode of determination and payment of compensation has been prescribed under Sections 16 and 17 r/w Section 23 of the said Act. The WTO required the assessee to furnish particulars of the compensation due from the Government, but he was unable to furnish the same, but stated that his agricultural income from the lands used to be assessed at Rs. 1,00,000 per annum. Taking the net agricultural income at Rs. 80,000

and applying the provisions of Section 17(1) of that Act, the WTO estimated the compensation payable to the assessee and after deducting therefrom the interim compensation already received by the assessee, the amount of compensation was added to his assets. Although the appeals preferred by the assessee were dismissed by the AAC, but the further appeals filed by the assessee were allowed by the Wealth-tax Tribunal. The question of law raised in the reference petition was also answered in favour of the assessee by the Calcutta High Court.

14. Having interpreted the definition of assets under old Section 2(e) of the WT Act relating to the asst. yrs. of 1957-58, 1958-59 and 1959-60 and after considering law in the case of Pandit Lakshmi Kant Jha's (supra), it was ruled by the Hon'ble Supreme Court as under:

For the above reasons, we allow these appeals, set aside the order of the High Court and answer the question referred to the High Court by the Tribunal in the following manner:

The Tribunal ought to have held that the value of the assessee's right to receive compensation under the provisions of the West Bengal Estates Acquisition Act as on the relevant valuation dates had to be included in the assessee's net wealth for the asst. yrs. 1957-58, 1958-59 and 1959-60. However, for the reasons stated above, the amounts of compensation determined by the WTO at Rs. 3,25,000, Rs. 3,00,000 and Rs. 3,00,000, respectively, cannot be included in the net wealth; but only the value, as on the relevant valuation dates, of the assessee's right to receive compensation estimated in accordance with proper principles can be included in the net wealth of the assessee. What such estimated value should be will have to be decided by the Tribunal while disposing of the matter conformably to our judgment.

In doing so, the Tribunal should give both parties an opportunity to put forward their respective contentions.

The appeals are disposed of accordingly. In the circumstances, however, we make no order as to costs.

Appeals allowed.

15. That means, the Hon'ble apex Court in Smt. Anjamli Khan and Pandit Lakshmi Kant Jha's cases (supra) decided the matter under the West Bengal Estate Acquisition Act, 1953 and Bihar Land Reforms Act, 1950 and observed that the provisions of both the enactments were identical and interpreted the law as per definition of assets under old Section 2(e) of the WT Act.

16. Possibly, no one can dispute about the law laid down in the aforesaid judgments but the same are inapplicable to the facts of the present case, because both the learned Counsel for the parties acknowledged that the provisions of Bengal and Bihar Acts are not at all comparable to the provisions of compulsory acquisition under LA Act (Central

Act).

17. In the instant case, admittedly), the land of the assesseees was acquired u/s 4 of the LA Act and the compensation was paid, during the relevant period of asst. yr. 1995-96. The LA Act was passed at the time when India was not an independent sovereign State and its provisions were designated to compulsorily acquire the land by the State exercising the power of eminent domain to serve the public purpose. In order to decide the real controversy between the parties, a glance of provisions of LA Act is essential.

18. According to Section 3(a), the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Section 3(b) provides that the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

19. Sequelly, the State is enjoyed to comply with the statutory requirements contained in Sections 4 and 6 of the LA Act. Section 4 lays down the intention/declaration of the State to acquire the land, while u/s 6, the public purpose gets crystallized and becomes compulsive. Thereafter, the State is entitled to authorize the Land Acquisition Officer to proceed with the acquisition of the land and to make the award.

20. Section 11A of the LA Act prescribes limitation to make the award within two years from the last date of the publication envisaged u/s 6. Not only that, in an appropriate case, where the Government needs possession of the land urgently, it would exercise the power u/s 17(4) and dispense with the enquiry u/s 5A. Thereon, the State is entitled to issue notice to the parties u/s 9 and on expiry of fifteen days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award u/s 12 is made.

21. Likewise, Section 16 of the LA Act posits that "when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

22. The LAC is required to assess the market value of the land not on the basis of actual value but he has to assess it within the constraint of Section 23 of the LA Act and not otherwise. The matters depicted in Section 24 have to be neglected in determining the compensation. Although a person interested may approach the appropriate Court for the determination, with regard to the measurement of the land, amount of compensation, the person, to whom, it is payable or the apportionment of the compensation among the persons interested under Sections 18 and 30 of the LA Act, but they are legally debarred to approach the regular Civil Court to redress their grievances u/s 9 of CPC, as has been held by the Hon"ble apex Court in the cases of [State of Bihar Vs. Dharendra Kumar and others](#), ; [Laxmi Chand and others Vs. Gram Panchayat, Kararia and others](#), and

23. Therefore, the State has absolute sovereign power to compulsorily acquire the land and the landowners are deeply helpless in this respect. The LAC has to assess the market value within the constraint of Sections 23 and 24 of the LA Act. Not only that, even in the matter of apportionment of the compensation, an interested person, who is not an absolute owner of the acquired land, such as tenant, lessee or otherwise interested in the land, can claim his share and the compensation of the acquired land can be apportioned amongst all the persons interested in the acquired land.

24. As per the scheme of the LA Act, if landowner and person interested are not satisfied with the award of the LAC, they have the statutory right under Sections 18 and 30 to file reference petition for enhancement/ apportionment of compensation to be determined by the Civil Court. The determination of adequate compensation assessed by the Civil Court can further be challenged in appeal in the High Court and then to Supreme Court, either by the landowner, person interested or by the State. It is not always true that the market value assessed by the Civil Court would be upheld by the High Court. The Hon"ble Supreme Court can still reverse the order of the High Court in this connection. Thus, the apportionment of compensation amount of landlords and person interested may vary from stage to stage, during the course of final determination of compensation by the Courts. Even if the appeal filed by the State was allowed in its entirety either by the High Court or by the Supreme Court, then the right to payment of enhanced compensation would have fallen altogether. In such a situation, if the entire amount of compensation, as determined by the Civil Court or by the High Court, as the case may be, is added in the wealth of landowner in the assessment year, on the basis of mere right to receive (without actual payment), which may subsequently be reversed, in that eventuality, it will give rise to more complications. Meaning thereby, under these circumstances, it cannot possibly be said that the mere right of the assesseees to receive enhanced compensation is absolute, but this right is speculative and inchoate. Therefore, we are of the considered view that since the provisions of LA Act are remarkably different than that of Bengal and Bihar Acts, so, the observations of Smt. Anjamli Khan and Pandit Lakshmi Kant Jha's cases (supra) would not come to the rescue of the Revenue in this relevant behalf.

25. Not only that, an identical question arose before the Hon"ble apex Court in case [Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd.,](#) , in which, certain lands belonging to the respondent company were compulsorily acquired by the State Government. The arbitrator awarded the compensation. Thereupon, the State Government preferred an appeal to the High Court. Pending the appeal, the State Government deposited the amount in the Court being the additional amount payable under the award and the company was permitted to withdraw that amount only on furnishing a security bond for refunding the same in the event of the appeal being allowed. The question raised was whether a mere right to receive compensation could be taxed on the ground that it became payable pursuant to the arbitrator"s award. The Tribunal held that the amount did not accrue to the respondent as

its income during the relevant previous year ending on 31st March, 1956, and was, therefore, not taxable in the asst. yr. 1956-57. On a reference, the High Court affirmed the decision of the Tribunal. In the wake of appeal, the Hon"ble Supreme Court ruled as under:

Held, affirming the decision of the High Court, that although the award was made by the arbitrator on 29th July, 1955, enhancing the amount of compensation payable to the respondent, the entire amount was in dispute in the appeal filed by the State Government. And the dispute was regarded by the Court as real and substantial because the respondent was not permitted to withdraw the amount deposited by the State Government without furnishing a security bond for refunding the amount in the event of the appeal being allowed. There was no absolute right to receive the amount at that stage. If the appeal was allowed in its entirety, the right to payment of enhanced compensation would have fallen altogether. The extra amount of compensation of Rs. 7,24,914 was not income arising or accruing to the respondent during the previous year relevant to the asst. yr. 1956-57.

26. Therefore, we are of the considered opinion that the law laid down in the aforesaid judgment is fully applicable in the instant case in this relevant connection.

27. Faced with this situation, an attempt has been made on behalf of the Revenue to contend that since the Hon"ble apex Court has distinguished the Hindustan Housing & Land Development Trust Ltd. case (supra) in subsequent case [Commissioner of Income Tax, Faridabad Vs. Ghanshyam \(HUF\)](#), so, the same is inapplicable in this case. The argument, at the first instance, appeared somewhat attractive, but when it was analyzed, in regard to inherent and remarkable difference in the relevant provisions of WT Act and IT Act, then, we are of the considered opinion that this contention is again not tenable as well. The Hon"ble Supreme Court in Ghanshyam"s case (supra) has considered the judgment in Hindustan Housing & Land Development Trust Ltd."s case (supra) vis-a-vis the insertion of Section 45(5) of the IT Act w.e.f. 1st April, 1988, having an overriding effect and it was observed as under:

The question is : whether the judgment of this Court in Hindustan Housing would apply to the present case which arises under the IT Act, 1961 ? At the outset, it may be noted that the judgment of this Court in Hindustan Housing was delivered on 29th July, 1986. It was prior to 1st April, 1988, when Section 45(5) stood incorporated by the Finance Act, 1987, w.e.f. 1st April, 1988. Further, the judgment of this Court in Hindustan Housing (supra) has been given in respect of asst. yr. 1956-57 under the Indian IT Act, 1922, whereas, in the present case, we are concerned with the 1961 Act, which defines the word "transfer" in much wider sense u/s 2(47). Lastly, for the reasons given hereinafter, particularly in the context of introduction of Section 45(5) of the 1961 Act w.e.f. 1st April, 1988, a totally new scheme stood introduced keeping in mind cases of compulsory acquisition under the 1894 Act under which compensation is payable at multiple stages and amounts stand withdrawn by the assessee-claimants and vised by the assessce(s) for several years,

during which litigation is pending. It is in the context of Section 45(5) that we need to decide the year of taxability. It is significant to note that Section 12B of the 1922 Act did not contain specific reference to compulsory acquisition as contained in Section 2(47) of the 1961 Act. Therefore, in our view, the judgment of this Court in Hindustan Housing (supra) is not applicable to the present case.

28. Be that as it may, as the learned Counsel for the Revenue has fairly acknowledged that there is no such parallel amendment in the WT Act as compared to Section 45(5) of the IT Act, therefore, the observations of Hindustan Housing & Land Development Trust Ltd.'s case (supra) "mutatis mutandis" are applicable to the present controversy and complete answer to the problem in hand under the WT Act. In this view of the matter, it is held that simple right to receive compensation/enhanced compensation cannot be treated as wealth of the assessee and not liable to be includible in the previous assessment years. The same view was reiterated by this Court in case CWT v. Dr. M.R. Sapat WT Appeal Nos. 12 and 13 of 2004, decided on 5th May, 2010.

29. There is another aspect of the matter, which can be viewed from a different angle. The Tribunal has dismissed the appeals of the Revenue, vide impugned order (Annex. A3), the operative part of which is as under:

2.1 In the assessment years at hand, the AO had included the right to receive enhanced compensation and interest accrued thereon notwithstanding the fact that no compensation was received and the matter was in dispute. The learned CIT(A) concluded that the right of the assessee was inchoate, in as much as it was not certain whether such amount will be received or not. The whole matter depended upon the outcome of the appeal. Both the parties agreed that such an inchoate right did not represent any wealth in praesenti and, therefore, nothing could be brought to tax as wealth on the mere expectation that some amount may be received in future. Accordingly, it is held that there was no error in the order of the learned CIT(A), which required correction from our side.

3. In the result, both the appeals are dismissed.

30. Meaning thereby, the Tribunal has decided the matter on the agreement of both the parties. Once the Tribunal has decided the case with the consent of the parties, then the very maintainability of the appeals by the Revenue is doubtful and the Revenue cannot possibly be heard to say and is estopped from claiming, that the impugned order (Annex. A3) is illegal in this respect. No other illegality in the impugned order has been pointed out by the learned Counsel for the Revenue.

31. No other point, worth consideration, has been urged or pressed by the learned Counsel for the parties.

32. In the light of the aforesaid reasons, for all said and done and thus seen from any angle, the Tribunal has rightly held that mere right to receive enhanced compensation did not represent any wealth and legally directed its deletion. Therefore, we are also of the

considered view that such right, which would depend upon the outcome of the appeal, is not absolute right. The mere right to receive compensation/enhanced compensation is variable, speculative and inchoate. Such right cannot be treated as wealth and includible in the previous returns of the assesseees as such. Hence, the question of law posed in these appeals is answered against the Revenue and in favour of the assesseees.

33. For the reasons recorded above, as there is no merit, therefore, the instant appeals are hereby dismissed with no order as to costs.