(1976) 08 RAJ CK 0010

Rajasthan High Court

Case No: Civil Writ Petition No. 627 of 1967

Awami Kumar		APPELLANT
	Vs	
The State of Rajasthan and Others		RESPONDENT

Date of Decision: Aug. 11, 1976

Acts Referred:

- Transfer of Property Act, 1882 - Section 54

Citation: AIR 1977 Raj 80 : (1976) RLW 372 : (1976) 9 WLN 422

Hon'ble Judges: P.D. Kudal, J; A.P. Sen, J

Bench: Division Bench

Advocate: M.L. Shreemali, for the Appellant; D.S. Sishodia, Additional Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Sen, J.

This writ petition filed by Awami Kumar Mukherjee, Ex-Jagirdar of Thikana Bagri, is directed against the order of the Board of Revenue, Rajas-than, dated 4th January, 1967 affirming that of the Jagir Commissioner dated 7th December. 1964 insofar as his claim for inclusion of Rs. 97,828.50 P. being the amount of compensation paid to him for compulsory acquisition of land belonging to him as income accrued from sale of such land, in computation of the gross income under Schedule II Clause (f) of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, was rejected.

2. The facts of the case, in brief, are that the erstwhile Jaipur State by Council Resolution No. J dated 2-10-1941 acquired 19 bighas and 12 biswas of land admeasuring 59,343 sq. yds. belonging to the petitioner under the Jaipur Land Acquisition Act for Bani Park Extension Scheme of Jaipur City. Though under the Revenue Standing Order No. 12 the petitioner was not entitled to any compensation upon such acquisition, the Jaipur Durbar made an ex gratia payment of Rs.

97,820.50 p. The Thikana Bagri Jagir was resumed with effect from 1-10-1958 u/s 21 of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (which will hereinafter be called as ''the Act''). u/s 26 of the Act, the State Government was liable to pay compensation to the petitioner as the Ex-Jagirdar for the resumption of the Jagir and the lands appurtenant thereto in accordance with the principles laid down in the Second Schedule, i.e., at 10 times the net income Section 2 provides for determination of the gross income of the Jagirdar being the total income from his Jagir land derived from different sources in the basic year which in this case was the period from 1-7-1958 to 30-6-1959. Clause (f) thereof provides for taking into account the income from sale of culturable or abadi land calculated on the basis of average income therefrom during 20 yrs. immediately preceding the basic year. The petitioner made a claim for inclusion of the amount of Rs. 97,828.50p. paid to him by way of compensation for compulsory acquisition of his 19 bighas and 12 biswas of Jagir lands on 2-10-1941. His contention before the Jagir Commissioner was that the compensation amount should be treated as income accrued from sale, as it undoubtedly was an item of income derived by him within 20 years immediately preceding the basic year. The Jagir Commissioner rejected the claim on the ground that on acquisition of the Jagir lands, the lands ceased to form part of the Jagir and, therefore, no compensation was payable for their resumption u/s 26 of the Act, as they could not be regarded as having been resumed u/s 21 of the Act. On appeal, the Board of Revenue held that the petitioner had received compensation for the acquisition of the lands and he was not entitled to receive compensation for the same land twice. In its view, the lands in question having been acquired in the year 1941, they no longer remained as Jagir lands and, therefore, no compensation was payable for the same u/s 26 of the Act.

3. The decision of the petition turns on the right construction of Schedule II Clause (f), particularly of the word "sale" appearing in the expression "income from sale". Clause (f) of the Second Schedule reads as under:

"(f) income from sale of culturable or abadi land calculated on the basis of average income therefrom during twenty years immediately preceding the basic year."

4. Shri Shreemali, learned counsel for the petitioner, strenuously contends that the word "sale" should not be interpreted in a restricted but in a broad sense and, therefore, the word "sale" in Clause (f) of Second Schedule should mean any transfer of property from one person to another in consideration for some price or recompense in lieu thereof. According to him, the definition of "sale" in Section 54 of the Transfer of Property Act is not determinative of the question. In its popular sense, the word "sale" would mean to denote transfer of property resulting in the passing of title upon payment of price. It is, therefore, not necessary that an agreement to sell must be an essential ingredient of sale within Clause (f). He, accordingly, contends that acquisition of land should be treated as "sale." Learned counsel placed strong reliance on Great Western Rly. Co. v. Commrs. of Inland

Revenue (1894) 1 QB 507; Rata Taito Nalukuya v. Director of Lands. 1957 AC 325 and Commrs. of Inland Revenue v. Newcastle Breweries, Ltd. (1927) 12 Tax Cas 927 and contended that the word "sale" in Clause (f) should be given an extended meaning. He, therefore, naturally contends that keeping in view the exproprietory measure like the Rajasthan Lands Reforms and Resumption of jagirs Act, 1952, the Court should discard narrow and technical concept of "sale". Under the scheme of the Act, the Ex-Jagirdar was entitled to be paid compensation in accordance with the principles laid down in the Second Schedule u/s 26 of the Act. Under Clause (f) of Second Schedule, the Ex-Jagirdar was entitled to have his average income from sale of Jagir lands during 20 years immediately preceding the basic year determined. There was, therefore, it is said, no reason to exclude this transaction viz. acquisition which, in fact, was nothing but compulsory sale, and the compensation was the price paid therefor. In support of his contention, the learned counsel relies upon the following observations of Lord Esher M. R. in Great Western Rly. Co. v. Commrs. of Inland Revenue (1894) 1 QB 507:

"If that transaction had taken place between private persons or private companies without an Act of Parliament, supposing that were possible, how would it be done, and what would be the substance of the transaction? It would be done by an instrument, which, as regards its legal effect, would be, in part at all events, a transfer of the property of the one company to the other for the consideration I have just described. That might or might not be in virtue of a contract of purchase and sale, but it would have precisely the same effect as if it were a conveyance, the consequence of a contract of purchase and sale. The substance of such a transaction, then, would be a transfer of property for a consideration, as if it were upon a contract of purchase and sale."

He also referred to the observations of Lopes LJ to the following effect:--

"It appears to me that, looking at the substance of this transaction, it is as clear a case of a conveyance on sale as can well be imagined.""

5. Learned counsel for the petitioner also referred to the decision of the Privy Council in Rata Taito Nalukuya v. Director of Lands 1957 AC 325 where compensation money paid on compulsory acquisition of land was held to be covered by the words "purchase money received in respect of a sale or other disposition of the land" in Section 15 of the Native Land Trust Ordinance, 1945.

6. In reply, Shri Sishodia, learned Additional Government Advocate, contends that the taking of property in exercise of the power of eminent domain was not a sale, as bargain between the parties was an essential element of sale. According to him, the word "sale" in Clause (f) of Schedule II was used in the same sense as in Section 54 of the Transfer of Property Act. He contends that (in) Section 54 of the Transfer of Property Act, a sale means transfer of ownership in pursuance of a contract for sale in exchange for a price paid or promised. Transfers by operation of law or by an

execution of a decree or an order of a court within the meaning of Section 2(d) of the Transfer of Property Act, it is said, are outside the scope of Section 54. The learned Additional Government Advocate contends that for ascertaining the true meaning of the word "sale" in Clause (f) it would be very material to refer to the legislative practice, relevant to law in respect of transfer of property. He, further, contends that the Jaipur Durbar while enacting the Jaipur Land Acquisition Act clearly intended that the expression "sale" should bear the precise and definite meaning it has in law. He, therefore, urges that the word "sale" in Clause (f) only covers voluntary sales but not compulsory sales, for in his view, a compulsory sale is really a contradiction and is not sale at all. He strongly relies upon the observations of Harries, C. J. in Calcutta Electric Supply Corpn. Ltd. Vs. Commr. of Income Tax, to that effect. He also relies on the two decisions of their Lordships in the The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., and New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar,

7. In our view, the contention of the learned counsel for the petitioner cannot prevail. It is a recognised rule of interpretation of the statute that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.

8. In The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., their Lordships have observed:

"The concept of sale, as it now obtains in our jurisprudence, has its roots in the Roman Law. .....

In his work on ''Sale'', Benjamin observes:

''Hence it follows that, to constitute a valid sale, there must be a concurrence of the following elements, viz.,

(1) Parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer, and (4) a price in money paid or promised''

Coming to the Indian law on the sub-sect Section 77 of the Contract Act defined ''sale'' as ''the exchange of property for a price involving the transfer of ownership of the thing sold from the seller to the buyer''. It was suggested that under this section it was sufficient to constitute a sale that there was a transfer of ownership in the thing for a price and that a bargain between the parties was not an essential element .....

Thus, according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. Thus, if merely title to the goods passes but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer was not money but other valuable consideration, it may then be exchange or barter but not a sale. And if under the contract of sale, title to the goods has not passed, then there is an agreement to sell and not a completed sale."

Their Lordships in taking that view adverted to the legislative practice relating to the law in respect of sale of goods. They accordingly held that the word "sale" in entry 48 of the list 2 of the Government of India Act, 1935 should bear the precise and definite meaning it has in law and should be understood in the same sense as in the Sale of Goods Act, 1930. According to their Lordships, to constitute a sale, there must be a transfer of ownership as a result of a bargain between the parties. It was, therefore, necessary that there should be an agreement between the parties for the purpose of transferring title to the thing to be sold.

9. In Calcutta Electric Supply Corpn. Ltd. Vs. Commr. of Income Tax, Harries, C. J., while dealing with the question whether any profit made as a result of compulsory acquisition of an electrical undertaking should be regarded as profits or gains within the meaning of Sub-section (2) (vii) of Section 107 of the Income Tax Act, which provides for computation of such profits or gains ''after making allowance in respect of any machinery or plant which has been sold'', rejected the contention that the word "sale" is wide enough to cover not only voluntary sales but compulsory sales. That very eminent Judge was of the view that ordinary meaning of the word "sale" is a transaction entered into voluntarily between two parties known as the buyer and the seller, by which the buyer acquires property of the seller, for an agreed consideration, known as the price. In dealing with the question, he observed:

"It seems to me that the phrase ''compulsory sale'' is a contradiction in terms. The word ''sale'' in its ordinary meaning means a voluntary transaction and therefore a compulsory sale is really a contradiction and is not sale at all."

10. In New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, Shah, J., while delivering the majority judgment, held that the compulsory acquisition of the production of sugar manufactured or produced was not a ''sale of goods'' within entry 48 of list 2 of the Government of India Act, 1935 and, therefore, the fixed price paid for such acquisition by the Controller was not taxable. This decision followed the earlier view of their Lordships in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., . It was held that it is settled law that the expression "sale of goods" has to be understood in the sense in which it is used in the Sale of Goods

Act, 1930. The contention that the expression should be understood in its popular sense, as including within its ambit compulsory acquisition of the goods was rejected.

11. The decisions relied upon by the learned counsel for the petitioner are clearly distinguishable. In Great Western Rly. Co. v. Commrs. of Inland Revenue (1894) 1 QB 507 (supra) the Court of Appeal was concerned with the interpretation of the expression ''conveyance or transfer on sale'' in the first schedule to the Stamp Act, 1891. The question was whether the consideration paid for the amalgamation of two other Railway Companies with the Great Western Railway Co. by the Great Western Railways Act, 1892 was chargeable to ad valorem duty. Though the amalgation was by an Act of Parliament for purposes of the Stamp Act, the transaction was treated as a conveyance on sale. There was everything that constituted a sale by two parties, one parting with something and the other giving something for it, the arrangement ultimately came into being embodied in an Act of Parliament. Merely because it was by an Act of Parliament and not by an instrument executed between the parties, the transaction did not cease to be a sale.

12. In Commrs. of Inland Revenue v. Newcastle Breweries (1927) 12 Tax Cas 927 (supra) the Court was concerned with the question whether compulsory acquisition of stocks of rum taken over under the Defence of the Realm Regulations were liable to be assessed as trade receipts. In dealing with the meaning of the word ''sale'' in the Finance Act for the purpose of imposition of excess profits tax, the Court held that sale in the Finance Act should not be construed in the light of the provisions of the Sale of Goods Act but must be understood in the commercial and business sense. There, there was an agreement entered into a writing dated 12-4-1918 for the sale of the trading stock in a breweries business. We fail to appreciate how this decision really helps the petitioner.

13. In Ratha Taito Nalukuya v. Director of Lands 1957 AC 325 (supra) the compensation money paid on compulsory acquisition of land was covered by the the words "purchase money received in respect of the sale and other disposition of native land" in Section 15 of the Native Land Trust Ordinance, 1945. In other words, their Lordships were of the view that a bargain between the parties was not an essential element of such transaction. It is, however, pertinent to observe that the expression there ''sale or other disposition'' was wider. That decision, therefore, proceeded on the particular terms of the statute and does not affect the present case.

14. Their Lordships of the Supreme Court in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., have in express terms distinguished the three cases referred to above, and rejected the contention that a bargain between parties was not an essential element of sale. That decision was reiterated by them in the majority judgment in New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, These decisions of the Supreme Court are clearly binding on us. We must,

accordingly hold that the word ''sale'' in Clause (f) of the Second Schedule of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 has to be understood in the same sense in which it is used in Section 54 of the Transfer of Property Act.

15. The result, therefore, is that the petition fails and is dismissed with costs. Hearing fee Rs. 100/-.