

(2010) 03 KL CK 0094

High Court Of Kerala

Case No: Writ Petition (C) No. 19029 of 2004

Abraham

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: March 26, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 19, 56, 59, 59(5), 60

Citation: (2010) 2 ILR (Ker) 341 : (2010) 2 KLT 392

Hon'ble Judges: S.S. Satheesachandran, J

Bench: Single Bench

Advocate: Shaji P. Chaly, for the Appellant; Shyson P. Manguzha, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Satheesachandran, J.

The Writ Petition is filed seeking the following reliefs.

- To issue a direction or order calling for the files leading to the issue of Exts.P2 and P4, examine their legality, propriety and quash the same.
- To declare that the valuation shown by the petitioner in probate application 493/97 on the files of the District Court, Ernakulam is true and correct.
- To pass any other and such orders as this Hon"ble Court deem fit to pass in the nature and circumstances of the case.
- To award cost of these proceedings to the petitioner.

2. Petitioner as the executor appointed under a Will moved an application for issue of a probate over that will executed by one late Alice Varghese, before the Second Additional District Court, Ernakulam. After enquiry, the probate annexed with a copy

of the will was issued to the petitioner relegating the question of court fee payable on such probate subject to the determination of the market value of the property by the District Collector, to whom a reference had been made for determining that question as contemplated by Rules. The District Collector after enquiry furnished a report assessing the valuation of the property covered by the probate at Rs. 38,49,030.60/-. The property covered by the probate has an extent of 7.28 ares comprised in survey No. 797/5/9 of Ernakulam village. Market value was fixed in the report of the Collector at the rate of Rs. 5,28,713/- per are. Ext.P2 is the copy of the report. On receipt of the report, notice was given to the petitioner to pay court fee on the valuation over the property determined by the District Collector. Petitioner filed objections to the report contending that the market value assessed by the District Collector is excessive and unreasonable. According to the petitioner, the market value of the property was only Rs. 9,00,000/-. In the enquiry conducted by the District Judge, petitioner produced registered copies of sale deeds executed in 2000 to substantiate his case that the market value of the property covered by the probate proceedings is only Rs. 9,00,000/- as claimed by him. The District Judge on consideration of the materials produced found that the report of the District Collector fixing the market value of the property has to be accepted as the correct value for the purpose of the valuation of the property and, accordingly, the objections raised to the report by the petitioner were negatived. Petitioner was directed to pay court fee on the market value assessed by the District Collector in Ext.P2 report in respect of the probate issued by order of the court. Ext.P4 is the order passed by the District Judge. Propriety and correctness of that order is challenged in the Writ Petition invoking the supervisory jurisdiction vested with this Court under Article 227 of the Constitution of India.

3. I heard the learned Counsel for the petitioner Adv. Sri. S.P. Chaly and the learned Government Pleader Sri. Shyson P. Manguzha for the State/respondent. Inviting my attention to Kerala Court Fees and Suits Valuation (Board of Revenue) Rules 1960, the learned Counsel for the petitioner contended that the District Collector while fixing the market value has flouted the rules in not providing any opportunity to the petitioner to show the actual market value of the property covered by the probate proceedings. The District Collector after collecting the report from a Village Officer without conducting any enquiry as mandated by the rules has arbitrarily fixed the value of the property, which, according to the counsel, does not reflect the true value of the property as and when the proceedings commenced before the court. The learned Counsel relying on "Indian Transformers Ltd. v. Assistant Collector" 1983 KLT 861 and "Suresh Shenoy v. Wealth Tax Officer" 1983 KLT 664 contended that the District Collector while conducting an enquiry u/s 59 of the Court Fees Act for the purpose of determining the market value of a property in a probate proceedings to determine the court fee payable on the value of such property, has necessarily to comply with the principles of natural justice in providing reasonable opportunity to the party covered by the proceedings to tender relevant materials

and show what is the true value of the property. Since that opportunity has been denied to the petitioner and there was no enquiry complying with the principles of natural justice in determining the market value by the District Collector, Ext.P2 report is liable to be discarded as unworthy of any value, is the submission of the counsel. The District Judge without examining those aspects has given unmerited value to Ext.P2 report and on such basis passed the impugned order directing the petitioner to pay court fee on the valuation made by the District Collector, which, according to the counsel, is patently erroneous and unsustainable under law. Petitioner therefore urged for setting aside the order of the District Judge and remitting the matter for fresh consideration in accordance with law. Per contra, the learned Government Pleader submitted that the District Judge after conducting an enquiry as provided u/s 60 of the Court Fees Act on getting a report from the District Collector and giving an opportunity to the petitioner to produce relevant materials, has passed the impugned order holding that the valuation made by the District Collector is proper, valid and correct. The order of the District Judge after such enquiry is final and that cannot be impeached attacking Ext.P2 report rendered by the District Collector is the submission of the learned Government Pleader. No interference with the order passed by the court below in the given facts of the case is called for in exercise of the extraordinary jurisdiction vested with this Court, submits the learned Government Pleader.

4. I have perused the order passed by the District Judge impugned in the Writ Petition with reference to the submissions made by the learned Counsel for the petitioner and also the learned Govt. Pleader. To appreciate the challenges raised against the impugned order by the petitioner it is necessary to advert to the relevant provisions contained in Sections 59 and 60 of the Kerala Court Fees and Suit Valuation Act 1959 hereinafter referred to as the Court Fees Act. When an application for probate/letters of administration is moved, such application has to be accompanied by a valuation of the estate in duplicate as in the form provided in the schedules of the Court Fees Act. A copy of such a valuation has to be sent to the District Collector in which the estate is situate for assessment of the market value to determine the court fee payable on that application. Section 59 of the Court Fees Act lays down the procedure to be followed by the District Collector on the receipt of such a valuation statement in a pending probate proceeding from the court. No doubt, the enquiry to be conducted by the District Collector should be fair in which an opportunity has to be provided to the petitioner of the proceedings to place such materials as are relevant for enabling the District Collector to determine the value of the property. Once the value is determined by the District Collector after such enquiry, if the value shown in the statement filed with the application for probate/letters of administration is found to be deficient and only a lesser fee has been paid, the District Collector has to call upon the petitioner to pay the land valuation in the application. If the petitioner fails to pay the balance fee payable within the time granted, Sub-section (5) of Section 59 of the Court Fees Act

empowers the District Collector to move the court before which the application for probate/letters of administration was made to hold "an enquiry into the true value of the property". When such a reference is made by the District Collector seeking an enquiry into the true value of the property, the court has to follow the procedure laid down u/s 60 of the Court Fees Act and determine the true value of the property. The decision taken by the court after such enquiry, it is stated, under Sub-section (3) of Section 60, shall be final.

5. In the light of the statutory provisions regulating the determination of the market value of the estate covered by a probate/letters of administration proceedings as indicated above how far it is open to the petitioner to impeach the correctness of Ext.P2 report of the District Collector for the reason of violation of the principles of natural justice has to be looked into. Petitioner is given a further opportunity whatever be the defect or irregularity or omission or incorrectness in the assessment made by the District Collector to establish the true market value of the property in the enquiry before the court as covered u/s 60 of the Court Fees Act. The District Court to which a reference is made by the District Collector is not bound by the report of the District Collector as the enquiry to be conducted by the court is one for determining the true value of the property. It is an independent proceeding which, no doubt, commenced on a report being filed by the District Collector, but, that report has no decisive value on the decision to be taken by the court after having a due enquiry over the value of the property on the basis of the materials to be produced in such enquiry. Challenges raised against Ext.P2 report by the petitioner on the ground that natural justice was not complied with by the District Collector cannot be given any value when opportunity is extended to him to show the true value of the property in the enquiry conducted by the court. In the present case, though there was no reference from the District Collector as such on receipt of the report of the District Collector, the court has proceeded with the enquiry and that enquiry is one covered u/s 60 of the Court Fees Act. The decisions relied by the learned Counsel for the petitioner, both of them, were rendered under the provisions of the Wealth Tax Act. In both decisions the liability of the person to pay tax under the provisions of that Act arose for consideration and, no doubt, different parameters applied in the enquiry in such proceedings which has no parallel or connection with the enquiry to be conducted by a District Collector in assessing the market value of a property (estate) covered by a probate/letters of administration proceedings. So much so, I find the decisions referred to by the counsel have no application to the facts involved in the present case.

6. In the enquiry conducted by the court, other than producing some copies of sale deeds the petitioner has not even mounted the box to assert that the true value of the property is only what is claimed by him. The documents produced by him, copies of the sale deeds, related to the period of 2000, i.e., three years after the commencement of the probate proceedings. In the present case, the date of application for probate was admittedly, presented one year after the death of the

testator and, so much so, as covered u/s 56 of the Court Fees Act, the value of the property has to be assessed with reference to the date of the application. The District Judge found that the documents produced by the petitioner, i.e., three years after the presentation of the application showing a much lesser price than the value shown in Ext.P2 report of the District Collector is unacceptable. The District Judge has also noted in the impugned order that none of the parties to the deeds produced was examined before the court to vouchsafe the correctness of the sale price shown in such documents. In the context, it is also to be noted that Section 19 of the Court Fees Act enable a party to take out a commission to determine the market value of a property for the purpose of paying the court fee in a suit or proceeding. Admittedly the petitioner did not take any steps for appointment of a commission for determination of the market value of the property, nor produce relevant materials to determine that disputed question. In that backdrop where the petitioner failed to produce relevant materials to substantiate his claim after being provided with an opportunity to show the true value of the property, the District Judge accepted Ext.P2 report of the District Collector. Ext.P2 report cannot be ignored on the challenges raised by the petitioner as to noncompliance of the principles of natural justice in the enquiry conducted by the District Collector. That report is prepared by a statutory authority after an enquiry as mandated by the provisions of the Act. A further opportunity has been provided to the party who is affected by such report to lead materials to show the incorrectness of that report, if any. Statute also emphatically states that the decision rendered by the District Judge after such enquiry, shall be final. When that be the case, I find, the challenges canvassed against Ext.P4 order passed by the District Judge that too with reference to the infirmities imputed against Ext.P2 report of the District Collector cannot be given any value. There is no merit in the Writ Petition and it is dismissed.