(1981) 01 KL CK 0023

High Court Of Kerala

Case No: O.P. No. 2161 of 1979G

K. MADHAVAN NAMBIAR		APPELLANT
	Vs	
WEALTH-TAX OFFICER, C-WARD, CANNANORE.		RESPONDENT

Date of Decision: Jan. 28, 1981

Acts Referred:

- Constitution of India, 1950 - Article 14
- Income Tax Act, 1961 - Section 10, 143, 144, 171

Citation: (1982) 134 ITR 695

Hon'ble Judges: Chandrasekhara Menon, J

Bench: Division Bench

Judgement

CHANDRASEKHARA MENON J. - In this writ petition, filed under art. 226 of the Constitution, the petitioner seeks to quash the proceedings initiated against him as the karta of Kanakathidam family, a Marumakkattayam tarwad, for the alleged escaped assessment of wealth-tax within the meaning of s. 17 of the W.T. Act, 1957, hereinafter referred to as "the Act". He has been notified that the net wealth of the family chargeable to tax for the assessment year 1970-71 had escaped such assessment and, therefore, it was proposed to reassess the net wealth. A consequent request has been made to him to file a return of the net wealth chargeable to tax within 35 days of the receipt of the notice. This notice is sought to be quashed as also the attachments effected in the proceedings subsequently.

The petitioners case is as follows: Kanakathidam tarwad was never an assessee to wealth-tax or Income Tax. It had only a common dilapidated tarwad house and the jenmam rights in a few items of agricultural lands, all in the possession of tenants besides some tracts of forest land, of about 900 acres, which were in the possession of one Erinhal Kareevande Valappil tarwad, referred to hereinafter as "A.K. family" on saswatham right on an annual rent of Rs. 20. In respect of the remaining portion

of the forest lands there were serious title disputes with six claimants over the same claiming exclusive rights, the claimants being the said A.K. family, the Govt. of Kerala and the Kerala Wakf Board, the petitioners family and two others. The lands owned and possessed by the tarwad were not fetching any appreciable income. In regard to the forest land, in view of the serious disputes over the same, the title remained uncertain and doubtful. There was also no real income from the same and, therefore, nobody would have come forward to purchase the tarwads rights in these lands for any price at that time. Therefore, according to the petitioner, the tarwad was never considered to process and own a net wealth beyond the taxable limits under the provisions of the Act.

On June 25, 1969, the Govt. of Kerala initiated proceedings under the Kerala Land Acquisition Act to acquire for the purpose of a State farm, an area of about 7,500 acreas of forest land and on July 30, 1970, took advance possession of the said area with the improvements thereon. In this land acquisition proceedings, the members of the petitioners tarwad claimed the entire compensation amount, so also A. K. family, Kottal tarwad, the Kerala Wakf Board and the Govt. of Kerala, each asserting exclusive rights and possession of the lands and, therefore, laying claims for the entire compensation amount. There were also title claims made by the Palayad Devaswom in respect of 1,200 acres and the Kokkarippan tarwad in respect of 2,500 acres. In view of the conflicting claims, the land acquisition officer after fixing the total compensation at about Rs. 70,02,183.25 referred the question of apportionment of compensation to the various claimants under ss. 32 and 33(1) of the Kerala Land Acquisition Act to the Sub-Court, Tellicherry. The court finally passed the order in the reference (in L.A.O.P. Nos. 224 to 228 of 1970), determining the total compensation amount, equally distributable amongst the 106 members of the tarwad of the petitioner and the legal representatives of those amongst them who had died, at Rs. 60,92,196.01. The award was passed on April 9, 1977. The petitioner states that by the award he was found entitled to Rs. 57,469.16.

Against the award so passed there were appeals to this court by A. K. family and Kottal tarwad. Some of the members of the petitioners tarwad including the petitioners also filed cross-appeals. A full Bench of this court decided that the appeals and cross-appeals required the payment of court fee on an ad valorem basis. The appellants were not prepared to pay the same, with the result, the appeals and corss-appeals were ultimately dismissed.

The petitioner and some other members of the family withdrew their share of the compensation in deposit, amounting in all to about Rs. 24 lakhs and re-deposited most of the same in the State Bank of Travancore, Tiruppur branch. The shares of the other members, who have not, unlike the petitioner, withdrawn the same from the court, are still lying as deposits made by the Sub-Court, Tellicherry, in income yielding securities.

It was then that ex. P-1 notice was served on the petitioner on March 9, 1979. On the same day, the respondent, the WTO, C Ward, Cannanore, issued another notice to him under s. 131 of the I.T. Act, 1961, requiring him to produce before the officer the order passed by the court in the land acquisition reference. A copy of the said notice is marked as ex. P-2.

In pursuance of ex. P-1, the petitioner filed a return of his net wealth on March 29, 1979, showing the amount awarded to him by the Sub-Court, Tellicherry, which is very much below the taxable limit under the provisions of the Act. By a letter sent along with the return, copy of which is ex. P-3, the petitioner questioned the validity of the proceedings initiated. According to him, he was never the karnavan of the tarwad. In the O.P. he has also stated that his tarwad had finally got itself statutorily disrupted by the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976), which came into force on December 1, 1976.

By the action taken under s. 34C of the Act, the respondent has virtually frozen the compensation amount given to the members of the petitioners tarwad because he has attached the amounts deposited by the petitioner and some other members of his tarwad in the bank from out of the compensation amounts withdrawn by them individually from the court as well as the entire amount lying in the Sub-Court, Tellicherry, to the credit of the other members of the erstwhile Kanakathidam tarwad.

The petitioner questions the validity of the proceedings initiated by the respondent on various grounds. The petitioner, it is contended, had no legal obligation or duty to make a return under s. 14 of the Act in respect of the assessment year 1970-71. Section 17(1)(a) of the Act authorises the WTO to issue a notice to a person who has omitted or failed to make a return. Therefore, there is no warrant for the issuance of a notice like ex. P-1. The petitioner would also submit that on the facts and circumstances of the case, the WTO would have no reason to believe that, by reason of the omission or failure on the part of the petitioner or any other member of his erstwhile tarwad to make a return of his net wealth or of the net wealath of any other person in respect of which he is assessable, the net wealth chargeable to tax for the assessment year 1970-71 had escaped assessment. Therefore, the respondent would have no jurisdiction, according to the petitioner, to initiate the reassessment proceedings for the year.

The petitioner would also submit that on March 31, 1970, the valuation date relevant for the assessment year 1970-71, the forest lands acquired for the State farm were unsurveyed and did not stand registered in the name of Kanakathidam tarwad or of any member thereof. There were very many claimants asserting full title to, and possession of the same. In such circumstances, no willing purchaser would have come to purchase these lands for any price. Therefore, the tarwad had no net wealth assessable to tax on that date.

In any event, it is further contended by the petitioner that the acquired lands crystallised into wealth as far as the members of the petitioners tarwad were concerned only on the date of the award, namely, June 9, 1977. Since there was no other assessable net wealth for that tarwad prior to that date, the reassessment proceedings initiated by the respondent for the assessment year 1970-71 was without jurisdiction.

Another plea of the petitioner is that there was a statutory disruption of the tarwad on December 1, 1976, by reason of the Kerala Joint Hindu Family System (Abolition) Act, 1975. That being so, ex. P-1 served on the petitioner as the karta of the tarwad, especially when at no time during the period when such a tarwad was in existence was he its karta, was void in law and had no legal effect. In regard to the attachments effected, the petitioner would urge that since the assessment proceedings were totally without jurisdiction, the attachment had no legal validity. Anyhow, the attachment of the whole compensation amount was excessive in nature.

The WTO, the respondent in the counter, tries to sustain the validity of the assessment proceedings. By the judgment of the sub-court dated April 9, 1977, the petitioners family was awarded Rs. 60,92,196.01 as the value of the forest lands taken over by the Government. It was found that the family consisting of 106 members was liable to wealth-tax for the assessment year 1970-71 onwards. The award of the court was to the family as such. There was no evidence of a partition. The wealth-tax proceedings were hence initiated adopting the status of an HUF for the year 1970-71. As the first member of the family, as per the sub-court judgment, was no more, a notice under s. 17 of the Act for the assessment year 1970-71 was issued to the petitioner, who had been shown as the second claimant in the L.A.O.P. as the karta of the family on the relevant date of the issue of the notice. The petitioner had made a submission to the WTO that the karnavan of the family was Shri Narayanan Vazhunnavar and that family was partitioned long back. However, no evidence was produced in support of this claim.

The WTO also states that the petitioner had filed a return of wealth as on March 31, 1970, in the status of an HUF declaring a sum of Rs. 57,469.16 under the head "Movable properties". The counter-affidavit further admits that the petitioner had sent a letter dated March 29, 1979, wherein he claimed that inasmuch as the sub-court had awarded the amounts to each claimant or sharer, the family itself was not assessable in the status of an HUF. The officer also informs the court that wealth-tax proceedings have been initiated for assessment years 1971-72 to 1978-79 on July 9, 1979. The attachments have been effected to protect the interest of the revenue. The counter-affidavit would state that being a member of an HUF, the petitioner was jointly and severally liable for the tax assessed on the net wealth of the family. On the basis of the judgment of the land acquisition court, the respondent had reason to believe that by the omission or failure on the part of the

petitioner, being the karta of the family to make a return of the net wealth of the family, the net wealth chargeable to tax had escaped assessment. The respondent would, therefore, plead that he had jurisdiction to initiate the wealth-tax assessment proceedings.

According to the revenue, the acquisition proceedings were initiated on June 23, 1969, and as the compensation fixed by the land acquisition officer was Rs. 60,92,196.01, as on March 31, 1970, the valuation date relevant in respect of the assessment year 1970-71 and on the valuation dates relevant to the subsequent years, the value of the properties which is the net wealth of Hindu undivided family had to be reasonably taken at the same amount. In regard to the petitioners contention that the acquired lands became the wealth, as far as the members of the tarwad were concerned only under the award passed by the sub-court on June 9, 1977, and that there was no assessable wealth prior to that date, the officer would state that there was no dispute in respect of the amount of compensation, and the court has only fixed the right of claimants. In regard to the alleged disruption of the family, in the absence of any clear evidence of partition, the assessment proceedings had to be commenced on the HUF. The notice under s. 17 of the Act had been correctly served on the petitioner, according to the counter-affidavit, and it is also submitted that the Kerala Joint Hindu Family System (Abolition) Act had no application to the years in respect of which the proceedings for escaped assessment were initiated.

In contending that the attachment has been taken out for the entire amount to protect the interest of the revenue, the counter-affidavit gives the following figures bout the alleged liability of the petitioners family:

Assessment year	Wealth-tax	Penalty
	Rs.	Rs.
1970-71	1,49,770	15,23,654
1971-72	2,33,450	15,31,757
1972-73	3,39,600	14,46,150
1973-74	3,14,400	10,50,830
1974-75	3,28,700	7,15,986
1976-77	3,53,800	4,47,180

1977-78	1,38,124	65,288
1978-79	1,33,452	32,028
	23,29,296	70,61,533

By an application for an amendment, the petitioner has sought to take further grounds. The petitioner would submit that the erstwhile Kanakathidam tarwad of the petitioner being a Marumakkattayam tarwad was not an "HUF" and was not a chargeable entity under s. 3 of the Act. The further submission that he makes is that the erstwhile Kanakathidam tarwad was not a person coming within the ambit of that word in s. 17 of the Act and hence not amenable or vulnerable to the process contemplated under the provisions of the Act.

I might first deal with an objection of a preliminary nature raised by Mr. N. R. K. Nair, learned counsel for the respondent. It was submitted that the petitioner could very well try to get redressal of his grievance, in the matter, before the authorities under the Act. He would have opportunity to raise the question before the officer, and if unsuccessful then before the appellate officer and then before the Appellate Tribunal or in the High Court under s. 27 of the Act. In the nature of the petitioners contentions of the total invalidity of the impugned proceedings - where jurisdiction and legality are challenged - I think it will not be correct or proper to dismiss the writ petition on that score. I need here only quote the following observations from the decision of the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, :

"Mr. Sastri next pointed out that at the stage when the Income Tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income Tax Officer had reason to believe that under-assessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings, and, if unsuccessful there, before the Appellate Officer or the Appellate Tribunal or in the High Court u/s 66(2) of the Indian Income Tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a

party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action."

The petitioner has taken up the position, as noticed earlier, that the petitioners tarwad, even before its disruption, cannot be considered to be an HUF coming within the ambit of s. 3 of the Act. I would here extract the charging provision in the Act:

"3. Charge of wealth-tax. - Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (herinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified on Schedule I."

According to Mr. Gopalakrishna Warrier, learned counsel for the petitioner, the expression "Hindu undivided family" in s. 3 of the Act is not indicative of the religion of the members of the family. It only means undivided family to whom the Hindu law applies and a Marumakkattayam family is not a family to which the Hindu law applies though its members may be Hindus. In this connection, he referred to the decision of the Supreme Court in Commissioner of Wealth Tax, West Bengal III Vs. Smt. Champa Kumari Singhi and Others, , where Grover J., speaking for the court, said that the expression "Hindu undivided family" in s. 3 of the Act includes a joint undivided family. The word "Hindu" preceding the words "undivided family" signifies that the undivided family should be of those to whom the Hindu law applies. Even though Jains may not be Hindus by religion, they are governed by the same laws as Hindus. In this view, the expression "Hindu undivided family" will include the joint undivided family. The court further observed that the words "Hindu undivided family" are used in taxation statues with reference not to one school of Hindu law but to all schools.

Mr. Warrier would contend that to a Marumakkattayam tarwad, even though the members follow the Hindu religion, the family, being not one to which the Hindu law applies, cannot be taken in by that term. I might here, in the first instance, refer to a decision of the Madras High Court in RAJAH SIR M. A. MUTHIAH CHETTIAR Vs. WEALTH-TAX OFFICER, SPECIAL INVESTIGATION CIRCLE "A", MADRAS R. RAMANATHAN CHETTIAR v. EXPENDITURE-TAX OFFICER, SPECIAL INVESTIGATION CIRCLE "A", MADRAS., , where, after a detailed discussion of the differences between the Hindu family governed by the Hindu law and the Marumakkattayam tarwad governed by the Marumakkattayam law, a Division Bench of the Madras High Court observed that on important matters like the right of division and the quantum of share, the tarwad, Hindu or Muslim, in Malabar differs substantially from the HUF. In fact, the very system of Marumakkattayam having a female propsitus or ancestress is wholly foreign to the conception of Hindu Mitakshara family, inasmuch as it (the latter) is based on a common ancestor. The Hindu family emphasises the agnatic relationship to such a large extent as to postpone even close relations to

sapindas and samanodakas. Agnatic relation of the fourth or the fifth degree is given precedence in the matter of succesion to a bandhu like paternal aunt or maternal uncle. Therefore, according to the learned judges, they were unable to hold that there was anything much in common between an HUF and a tarwad, to say that they constitute similar subjects entitled to equal protection under the equality clause of the Constitution. No doubt, in that case, the question of a Mappila Marumakkattayam tarwad was being considered. According to the learned judges, the karnavan of the tarwad is obliged to maintain a true and correct inventory of all the movable and immovable properties belonging to the tarwad and has also to keep true and correct accounts of the income and expenditure of the tarwad. The karnavan of the tarwad was liable to be assessed as an "individual". It might be noted in this connection that in the well-known Khan Bahadur Chowakkaran Keloth Mammad Keyi Vs. Wealth Tax Officer, Calicut, , the Full Bench of the Kerala High Court had taken the view that the Hindu Marumakkattyam family will be taken within the ambit of the word "Hindu undivided family". In fact, there was no serious controversy with regard to that in that case. The question raised there was [the matter was finally concluded by a Full Bench decision of this court in Khan Bahadur Chowakkaran Keloth Mammad Keyi Vs. Wealth Tax Officer, Calicut,] whether the Act contravened art. 14 of the Constitution and was void on the ground that it was discriminatory in so far as it made a distinction between Mappilla Marumakkattayam family and Hindu undivided Marumakkattayam family. Velu Pillai J., in this judgment, refers to the Madras decision. The learned judge said (p. 747):

"Speaking with respect, notwithstanding the several differences which the Madras High Court has enumerated in the case cited, between a joint family governed by the Hindu law and a Marumakkattayam tarwad, Hindu or non-Hindu, I feel that it is still open to question whether they really count at all in the context of article 14 of the Constitution. However, as between a Moplah tarwad and a Hindu Marumakkattayam tarwad, whatever be the differences in matters of personal law regarding marriage, divorce, and succession to personal and separate property, in point of structure and constitution, of the unity of ownership and possession, of the rights and powers of the karnavan, of management and alienation of common properties, of the rights of junior members to protect and conserve their interest in such properties and in fact of the very concept and institution of tarwad itself, there is no scope for a classification into Hindu and non-Hindu undivided families because such differences have no relation to the object of the Act, which is to tax net wealth above certain limits in the hands of the community, whether individuals or joint families or companies. Before parting with the Madras case, I have also to state, respectfully, that, in my opinion, a karnavan cannot, as held in it, be assessed as anindividual on the net wealth of the tarwad, even if the tarwad is liable to be assessed as a group of individuals. The reason is plain that tarwad property is not his, though he manages it for himself and the other members of his tarwad. Such property does not constitute his wealth. If tarwad wealth is assessed, the

assessment is really against the tarwad, just as a Hindu undivided family is assessed as such in respect of its net wealth. The argument, if accepted, implies that a karta is liable to be asssessed as an individual in respect of the net welath of the family.

The point as to discrimination is that, by the exclusion of Moplah tarwads from the imposition under the Act, Hindu undivided families have been singled out. On the last occasion, the Division Bench decided the point against the revenue on two grounds, firstly, that on the materials before it, it could not be held as contended, that Moplah tarwads constituted only an insignificant minority and, secondly, that the classification of joint families into Hindu undivided families and Moplah tarwads had no reasonable relation to the object of the Act. On appeal, the Supreme Court remanded the cases observing that it is for the party who comes forward with the allegation, that equality before the law or the equal protection of the laws is being denied to him, to adduce facts to prove such denial. Accordingly, the burden of establishing the plea has been cast on the petitioners and has been rightly undertaken by them."

Nambiar J., as he then was, pointed out in his judgment (p. 765):

"To sum up, my conclusions are:

(1) that on a construction of section 3 of the Act, a Moplah Marumukkattayam tarwad is included in the terms individual occurring therein.

(2) That its inclusion in the term individual in the said section and the differential treatment accorded to it by the Schedule to the Act as compared to Hindu Marumakkattayam tarwad are violative of article 14 of the Constitution.

(3) As a result of the above discrimination, neither the entire Act nor section 3 thereof is liable to be struck down; but only the scope and content of the term individual is liable to be narrowed down so as to exclude Moplah Marmakkattayam tarwads.

(4) That neither on the ground of any initial omission of the Moplah Marumakkattayam tarwad from the purview of section 3 of the Act, (assuming such to be the position) nor on the ground of its subsequent exclusion as a result of discrimination, can the Act or section 3 thereof be said to be discriminatory. The legislature has a wide discretion in choosing its objects of taxation, and cannot be said to have exercised its power eiter arbitrarily or unreasonably in taxing the main types of joint families in this country.

On the above conclusion that a Moplah Marumakkattayam tarwad is liable to be excluded from the definition of the term individual, the petitioners tarwad, being outside the ambit of the Act, is not liable to be assessed under its provisions. It follows that the O.P. must be allowed on this ground, and I do so. There will be no order as to costs."

Krishnamoorthy Iyer J also, in his judgment, takes the view that Marumakkattayam tarwad will come within the ambit of the word HUF. According to the learned judge, when for the purposes of asssessment under the Act, an HUF is treated as a separate assessable entity, the specific mention of the same in the section cannot restrict the meaning of the expression "individual" therein, and the net wealth of the group of individuals who are members of the Moplah Marumakkattayam tarwad is assessable under s. 3 of the Act. It might be noted that in the appeal to the Supreme Court in the matter in the earlier instance, there was no contention raised in that case that a Hindu Marumakkattayam tarwad will not come within the ambit of the word "Hindu undivided family". In a case under the Expenditure-tax Act, 1957, where the wording is not materially different, Shah J., speaking for the court, in V. Venugopala Ravi Varma Rajah Vs. Union of India and Another, specifically stated (p. 56):

"Parliament has declared for the purpose of the Expenditure-tax Act an undivided family of Hindus as a unit of taxation and imposed tax at the rates prescribed. To fall within the description the unit must be an undivided family of Hindus. Within the expression Hindu undivided family will fall an undivided family of Hindus governed by the Marumakkattayam law. Even though the basic scheme of a Hindu undivided family governed by the Mitakshara law and the Marumakkattayam law is different in two important respects, viz., the descent is through females and children both males and females have equal rights to property-these families are still Hindu undivided families."

There also the question was distinguished as between Mappila families governed by the Marumakkattayam law and Hindu undivided families. The learned judge further said there (p. 56):

"Under the taxing Acts the scheme of treating a Hindu undivided family as a distinct taxable entity hs been adopted for a long time, e.g., the Indian Income Tax Act, 1869 (IX of 1869), the Indian Income Tax Act, 1870 (IX of 1870), the Indian Income Tax Act, 1871 (XII of 1871), Act No. VIII of 1872, Act No. II of 1886, Act No. VII of 1918, Act No. XI of 1922, Act No. 43 of 1961, have treated a Hindu undivided family as a distinct taxable entity. Similarly, under the Wealth-tax Act, 1957 (27 of 1957), and the Gift-tax Act, 1958 (18 of 1958), the Hindu undivided family is made a unit of taxation. Under the Business Profits Tax Act, 1947 (21 of 1947), and the Excess Profits Tax Act, 1940, also the Hindu undivided family was made a unit of taxation. For the purposes of these Acts Mappila tarwads governed by the Marumakkattayam law have been regarded as individuals."

In this view, I cannot accept the contention of the learned counsel for the petitioner that a Hindu Marumakkattayam tarwad will not be an HUF coming within the ambit of s. 3 of the Act.

The next point to be considered is the contention raised by the petitioner that an HUF, assuming that the Marumakkattayam tarwad will be included in that term, is not a person referred to in s. 17 of the Act under which action has been taken. It will be better to quote s. 17 here itself.

"17. Wealth escaping assessment.-(1) If the Wealth-tax Officer-

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully an truly all material facts necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of under-assessment at too low a rate or otherwise;or

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (a), that the net wealth chargeable to tax has ecaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise;

he may, in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 14 , and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under years and in cases that sub-section.

(2) Nothing contained in this section limiting the time within which any proceeding for assessment or reassessment may be commenced, shall apply to an assessment or reassessment to be made on such person in consequence of or to give effect to any finding or direction contained in an order u/s 23 , 24 , 25 , 27 or 29 :

Provided that the provisions of this sub-section shall not apply in any case where any such assessment or reassesssment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject- matter of the appeal, reference or revision, as the case may be, was made by reason of any provision limiting the time within which any action for assessment or reassessment may be taken."

The return of wealth under the Act is provided under s. 14 of the Act which states that every person, if his net wealth or the net wealth of any other person in respect of which is assessable under the Act on the valuation date was of such an amount as to render him liable to wealth-tax under the Act shall, before the June 30, of the corresponding assessment year, furnish to the WTO, a return in the prescribed form and verified in the prescribed manner, setting forth the net wealth as on that

valuation date. If any person has not furnished a return within the time allowed under s. 14 , or having furnished a return under the section, discovers any omission or a wrong statement therein, under s. 15 of the Act, he has to furnish a return or a revised return, as the case may be, at any time before the assessment is made. By whom the return had to be signed and virified is specified in s. 15A of the Act. There, in the case of an HUF, it has to be signed by the karta, and where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family. What Mr. Warrier contends is that the WTOs belief on reasonable grounds is in respect of the omission or failure to make a return by the person concerned who was liable to give the return under s. 15A and it is to such person that the notice has to be issued. Reading ss. 14 , 15 , 15A and 17 together, according to Mr. Warrier, in the case of a Hindu Marumakkattayam family, the omission or failure to make the return should naturally be that of the karta of the family, as the returns have to be filed by the manager or the karta. Therefore, if the karta dies, notice under s. 17 should be given to the succeeding karta. I shall here point out that Mr. Warriers contention-whether under s. 20 of the Act, if before the issuance of the notice under s. 17 , the family has been disrupted, an action under s. 17 can be taken against the family by the issue of a notice to the karta-will be dealt with separately. I am of the view that on reading the relevant provisions together, the word "person" mentioned under s. 17 of the Act, as far as the HUF is concerned, appears to be the family represented by the karta and notice will have to be given to the karta and not to any junior member of the family.

Now, we come to the major contention on this aspect, whether after the disruption of the family when no proceedings earlier had been taken, proceedings could be taken under s. 17 of the Act. The Kerala Joint Hindu Family System (Abolition) Act in its preamble says that it was being enacted as it was expedient to abolish the joint family system among the Hindus in the State of Kerala. Joint Hindu family is defined to mean any Hindu family with community of property and includes-

"(1) a tarwad or thavazhi governed by the Madras marumakkattayam Act, 1932, the Travancore Nayar Act, II of 1100, the Travancore Ezhava Act, III of 1100, the Nanjinad Vellala Act of 1101, the Travancore Kshatriya Act of 1108, the Travancore Krishnavaka Marumakkattayam Act, VII of 1115, the Cochin Nayar Act, XXIX of 1113, or the Cochin Marumakkattayam Act, XXXIII of 1113;

(2) a kutumba or kavaru governed by the Madras Aliyasanthana Act, 1949;

(3) an illom governed by the Kerala Nambudiri Act, 1958; and

(4) an undivided Hindu family governed by the Mitakshara Law."

Under s. 3 of the above Act, on and after the commencement of that Act, no right to claim any interest in any property of an ancestor during his or her lifetime which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court. Under s. 4 of the Act, all the members of an

undivided Hindu family governed by the Mitakshara law holding any coparcenary property on the day the Act came into force shall, with effect from that day, be deemed to hold it as tenants-in-common as if a partition had taken place among all the members of that undivided Hindu family as respects such property and as if each one of them was holding his or her share separately as full owner thereof. Under s. 6 of that Act, where a debt binding on a joint Hindu family has been contracted before the commencement of the Act, by the karnavan, yejaman, manager or karta, as the case may be, of the family, nothing contained in s. 6 shall affect the liability of any member of the family to discharge any such debt and any such liability may be enforced against all or any of the members liable therefore in the same manner and to the same extent as it would have been enforceable if the Act had no been passed.

Section 20 of the reads as follows:

"20. Assessment after partition of a Hindu undivided family.-(1) Where, at the time of making an assessment, it is brought to the notice of the Wealth-tax Officer that a partition has taken place among the members of a Hindu undivided family, and the Wealth-tax Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite protions, he shall record an order to that effect and shall make assessments on the net wealth of the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, if the partition has taken place on the last day of the previous year and each member or group of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the Wealth-tax Officer is not so satisfied, he may, by order declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family liable to be assessed as such."

It will be useful to compare this provision with s. 171 of the I.T. Act. Section 171 is as follows:

"171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the pruposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment u/s 143 or section 144 , it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Income Tax Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Income Tax officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the Income Tax Officer under this section, and the partition took place during the previous year,-

(a) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and

(b) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (2) of section 10 , be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the Income Tax Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken polace; and the provisions of clause (b) of sub-section (4) shall, so far as may be, apply to the case.

(6) Notwithstanding anything contained in this section, if the Income Tax Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the Income Tax Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period."

It should be noted that a legal fiction similar to what is provided in s. 171(1) of the I.T. Act, that is, a Hindu family hitherto assessed as undivided shall be deemed as an HUF is not there under s. 20 of the Act. Therefore, there is much force in the contention raised by the petitioner that after the disruption of the family, when there has been no earlier notice issued under s. 17 before the disruption, the wealth-tax authorities could not initiate action afresh under s. 17. In Goswami Brijratanlalji Maharaj Vs. Commissioner of Wealth Tax, Gujarati II, , the Gujarat High Court said that under s. 20 of the Act, the WTO must make an enquiry, if at the time of making the assessment, it is brought to his notice that a partition has taken place amongst the members of the HUF. If after such inquiry, as is referred to in s. 20(1) , the WTO is satisfied that the joint family property has been partitioned as a whole

amongst the various members or groups of members in definite portions, he has to record an order to that effect and then he has to proceed to make an assessment on the net wealth of the HUF as provided in that sub-section. Where the WTO is not so satisfied, he has to declare by an order under sub-s. (2) of s. 20 that the said family shall be deemed for the purpose of the Act to have continued as an HUF liable to be assessed as such. According to the Gujarat High Court, what sub-s. (2) really provides is that in spite of the partition in the sense of a severance of the joint status having taken place amongst the members of the HUF, if the WTO is not satisfied that there has been a partition by metes and bounds, even though there has been a severance of the status, the family shall be deemed for the purposes of the W.T. Act to continue to be an HUF. In that case, it might be noted that the partition had taken place after the initiation of the proceedings. In our case, it was after a statutory disruption that proceedings are first initiated under s. 17. In this connection, it will be useful to refer to the following passages in Sampath Iyengars Commentaries on Wealth-tax at p. 551-Vol. I:

"Where a family was disrupted and was not previously assessed to wealth-tax and no return had been filed in respect of the net wealth supposed to be its, u/s 14 , the question can arise: Whether the Wealth-tax Officer can assume jurisdiction to act u/s 17(1)(a) for the allegedly escaped net wealth of the HUF ?

This question arose for the assessment year 1957-58 (the very first year under the Act) in Goswami Brijratanlalji Maharaj Vs. Commissioner of Wealth Tax, Gujarati II, which was answered by the court in the affirmative. The contention on behalf of the asssessee was that the notice issued by the Wealth-tax Officer u/s 17(1)(a) being invalid, there was no valid assessment proceeding before him for recording a decision u/s 20. But it was rejected by their Lordships for the following reason:-

... because the very basis of a notice u/s 17 is that the Wealth-tax Officer must have reason to believe that by reason of failure on the part of the HUF to make a return u/s 20 of the net wealth of the HUF, the net wealth chargeable to tax has escaped assessment for that year. It cannot therefore be said that the Wealth-tax Officer can have no reason to believe that the partition is merely a partition by severance of status as distinguished from partition by metes and bounds. If the wealth-tax Officer is satisfied as indicated in section 20(1) , then it necessarily follows that the karta of the family was rightly called upon to file the return on behalf of the HUF.

Even if it be assumed that the Income Tax records of the case, showing that the familys claim u/s 25A(1) of the Income Tax Act, 1922 had been rejected, and that such information could entitle the Wealth-tax Officer to have reason for the requisite belief (though, actually it could be suspicion only), the stage of making the assessment within the meaning of section 20(1) could have come only after the issuance of the impugned notice. Hence the satisfaction in question could have been arrived at only after the start of the assessment proceedings by the notice itself. Secondly, unlike the Income Tax Act, section 25A(3), section 20(2) of the

Weath-tax Act brings the fiction about the deemed continuance of the HUF into action by means of the Wealth-tax Officers order of declaration, which could be passed only after making enquiry u/s 20(1) itself irrespective of what was done or not done u/s 25A of the Income Tax Act. It was legally incompetent for the Wealth-tax Officer to proceed u/s 20 first and then to act u/s 17(1)(a)-that was like putting the cart before the horse. These important aspects of the question were not debated before their Lordships, and the decision, with respect, does not lay down good law."

The learned author further states in his Commentaries under s. 20 of the Act that the expression "hitherto assessed as undivided" does not appear in the present section (unlike in s. 171 of the I.T. Act); but, even then, its language contemplates a family against which assessment proceedings are before the WTO either on suo motu return under s. 14(1) or in compliance with the WTOs notice under s. 14(2). How else, can come the "time of making assessment", when alone he can get jurisdiction to make an "enquiry" and reach the "satisfaction" under s. 20(1) or pass the order of declaration under sub-s. (2) of this s. 7 (when) in view of the Kerala Joint Hindu Family System (Abolition) Act, 1975, the Kanakathidam family had been disrupted and the property had come into the individual ownership of the members. To such non- existent and non-owning families, the provisions of the Act cannot reasonably be made applicable. I might in this connection refer to the decision of the Calcutta High Court in Shri Srilal Bagri Vs. Commissioner of Wealth Tax, , wherein it was said after referring to many decisions on the question (p. 909):

"From the aforesaid judicial decisions it is manifest, therefore, that section 20 of the Wealth-tax Act, if it is in pari materia with section 25A of the Indian Income Tax Act, 1922, then it is only a machinery section and not a charging section. In that case, section 20 of the Wealth-tax Act will only have application in respect of any year in which at the time of the accrual of liability, that is to say, at the time of the relevant valuation date, the family was joint but has disrupted at the time when the assessment was being made."

Further it was said (p. 910):

"In view of the position of Hindu law discussed above, it is apparent that after the unequivocal expression of intention to separate the individual member of the erstwhile Hindu undivided family will have no interest in the coparcenary property of the Hindu undivided family of which he is a member. The family is disrupted after the expression of intention to separate and the coparcenary comes to an end. Therefore, sub-clause (ii) of section 5(1) of the Wealth-tax Act would be no bar for assessment in respect of the properties in the hands of the erstwhile members of the Hindu undivided family even though the properties have not yet been divided amongst the members in definite portions."

Then the court said about s. 20(2) of the Act (p. 910)

"It has to be noted, however, that power or authority has been given to the Wealth-tax Officer to make the assessment on the Hindu undivided family as such including the year relevant to the previous year in which the partition has taken place, provided only, if the partition takes place on the last date of the previous year. This appears to be a significant factor. Under the scheme of the Wealth-tax, liability arises on the net wealth of an assessee on the relevant valuation date. The relevant valuation date is the last date of the previous year. So if, on that last date a partition takes place, then what is to happen. The Act provides that, in that case, if the conditions of section 20 are satisfied, the Wealth-tax Officer would make an assessment on the Hindu undivided family in respect of the property as belonging to the Hindu undivided family. That provision in the section, in our opinion, is no indication of the proposition that by these provisions authority was given to the Wealth-tax Officer to tax a Hindu undivided family as such if before the accrual of liability the family had ceased to remain joint under the provisions of Hindu law."

The Calcutta High Court again said (p. 911):

"We are therefore, of the opinion that section 20 of the Wealth-tax Act is in pari materia with section 25A of the Indian Income Tax Act, 1922. The difference in language in section 20 of the Wealth-tax Act has been necessiateddue to the scheme of the Wealth-tax Act as well as the fact that this section was introduced in the main Act itself and was not introduced by the Amending Act as was done in the case of section 25A of the Indian Income Tax Act, 1922. In that view of the matter, we must hold that section 20 of the Wealth-tax Act is a machinery section directed towards assessment, where at the time the liability to pay wealth-tax arose, the family was joint, but has disrupted at the time of the assessment. The section does not empower assessment of a Hindu undivided family which has ceased to be a Hindu undivided family prior to the relevant valuation date according to Hindu law."

If there has been no prior assessment of the family concerned I do not think any proceedings could be initiated against the family under s. 17 of the Act, after the family had become disrupted. Where is the karta of the family on whom notice could be served ? It is his default which empowers the WTO to act. Therefore, in the absence of a similar provision like s. 171(1) of the I.T. Act (s. 20 does not contain such a provision), I do not think the WTO could make the assessment in respect of the disrupted family.

In this connection, it will be interesting to refer to the following passages appearing in the Law Relating to Income Tax (Kanga and Palkhivalas, Vol. I, VII Edn. p. 980) under the heading "Disrupted Hindu Family deemed to be undivided"-Has the legislaturte missed fire in case of partial partition ?

"This section deals with two distinct and different situations-

(a) the case where a Hindu undivided family undergoes total partition and ceases to exist as an undivided family, and

(b) the case where a Hindu undivided family continues to exist as an undivided family, but only some property is divided by way of partial partition among the members or some member separates from the undivided family.

Section 25A of the 1922 Act applied to the first case only and provided for a fiction of law by which a Hindu family after total partition was deemed to continue to exist as an undivided family unless an order was passed under that section. Sub-s. (1) of this section reproduces that fiction and deems the family to continue to be a Hindu undivided family in the absence of a finding under this section to the contrary. But it contains no words to deal with the second case where the family continues to exist as a Hindu undivided family in reality and there is only a partial partition as regards some member or some family property or both. In such a case no purpose would be served by invoking the fiction in sub-s. (1) that the family is deemed... to continue to be a Hindu undivided family, for, in fact, it would so continue. To deal with such a case what is needed are words to indicate that the partial partition should be deemed not to have taken place - i.e. the property or source of income should be deemed to continue to belong to the Hindu undivided family or the member should be deemed not to have separated-in the absence of a finding of partial partition under this section. If the intention of the legislature was that income which no longer belongs to a continuing Hindu undivided family should be deemed to belong to it and be assesable in its hands in the absence of a finding under this section of partial partition, the legislature seems to have missed fire. To seek to effectuate any such supposed intention of the legislature by construing the words sub-s. (1) to mean that the family is deemed to continue to be a Hindu undivided family in relation to a particular property or source of income except where and in so far as a finding of partial partition is given under this section, would be to put an undue strain on the words which are in the sub-section and to introduce other words which are not there.

As regards cases of complete partition, the position is clear; once a Hindu undivided family is assessed as such, it would continue to be so assessed even after it has disrupted and has ceased to exist unless a finding is given under this section recording the total partition. But, no finding of partition can be given unless there has been a physical division of the property or, where the property does not admit of a physical division, such division as the property admits of and not a mere severance of status (Explanation). Therefore, where a joint family has come to an end in law, if a physical division of the family property, though possible, has not been effected and, consequently, no finding is given under this section, the family would be deemed, for the purposes of this Act, to continue to be a joint family and would continue to be charged as a unit of assessment. Even where there has been a total partition and a physical division of the family properties, if no claim of partition is made by any of the members at the time of making the assessment or, though a claim is made, no finding is given recording the partition, the family should be deemed, for the purpose of this Act, to continue to be a Hindu undivided family."

Then we come to the major contention, whether assuming that the petitioners family could be made liable under s. 17(1) in the light of the fact that at the relevant assessment period or periods when the family was continuing as joint family in respect of the forest lands, there were serious disputes regarding its title and possession, a controversy with regard to which has been given a final quietus by the decision of the land acquisition court rendered in 1977, what will be the market value in respect of that during the assessment years concerned. Under s. 7 of the Act, the value of any asset, other than cash, for the purposes of the Act, shall be estimated to be the price which, in the opinion of the WTO, it would fetch if sold in the open market on the valuation date. It is very strongly contended by the petitioner that the rights of himself and the other members of the family in the forest lands were crystallised by the decision of the land acquisition court. Before that there could have been no market value of the land concerned. No willing purchaser would have come forward to purchase the forest lands concerned even for a small price. It has been held in land acquisition cases, which should be applicable here, that the fair market price will be what a willing buyer will give to a willing seller. In considering the question as to what price the property would fetch, one would have to take not of the serious controversy in respect of the property concerned, in respect of which no decision of the civil court had been rendered, the joint family was really exercising no act of ownership or right over the same apparently. In this connection, it will be interesting to refer to a decision of the Supreme Court under the Estate Duty Act. I am referring to Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, The question that arose there was regarding the value of the estate of the deceased in respect of which estate duty was chargeable. Lands which were compulsorily acquired by the Government during the lifetime of the deceased cannot form part of his estate but the right to receive compensation therefore at market value on the date of the notification for acquisition which would accure to the deceased would be property that would pass on his death. The question considered in the case was in respect of the right to recieve compensation in the property and what should be its estimated value. Whether the estimated value should be the one that was given in the Collectors award or the same plus the enhancement finally granted by the land acquisition court in the reference under the Land Acquisition Act. In reversing a judgment of the High Court of Andhra Pradesh, which court had observed that the enhancement of land acquisition officer was so large that no reasonable person could say that the value adopted by the Asst. Controller of Estate Duty for those lands on the basis of the awards made by the land acquisition officer represented their true and correct market value and no attempt had been made by the accountable person to show that the value adopted by the Asst. Controller of Estate Duty did not represent their true and correct market value, the Supreme Court, disagreeing with the observations of the High Court, said that the proposed as well as the actual principal value of the estate passing on the death of the deceased would be manifestly wrong for more than one reason. In the

first place, the said property, namely, the enhanced compensation, was not in existence at the date of death of the deceased. Secondly, such extra compensation awarded by the City Civil Court was liable to variation in the appeals that were pending in the High Court. Thirdly, such extra compensation together with the compensation awarded by the Special Deputy Collector could not be regarded as the proper valuation of the right to compensation as on the relevant date, the date of the deceaseds death. According to the court, the value of his right to compensation can never be equal to the claim awarded by the civil court inasmuch as the risk or hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of the property as on the date of the deceaseds death. The assessing authority will have to estimate the value having regard to the peculiar nature of the property, its marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date. While the right to compensation of land acquired before the deceaseds death was what was involved in that case, in this case, the question is in relation to the market value of the land in respect of which serious controversies existed between the different claimants. I think the principles laid down in the Supreme Court decision compel me to take the view that it could never be contended that the amount finallyfixed by the land acquisition court due to the members of the petitioners family could be taken to be the market value of the property as on the relevant date in respect of the assessment year. The crucial date for the determination of the market value will be the difference of the last date of the previous year and of the relevant assessment year. The value to be ascertained is a value to the seller of the property in its actual condition at the time of assessment.

Under s. 17 , only if the WTO has reason to believe that by reason of the omission or failure on the part of any person to make a return under s. 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under the Act for any assessment year or to disclose fully and truly all material facts necessary for a reassessment of his net wealth or the net wealth of such other person for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise, or has in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in cl. (a), the net wealth chargeable to tax has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise, that he could issue a notice to the person and may proceed to reassess such net wealth. If this condition precedent is not satisfied, the notice issued would be without jurisdiction. The formation of the required belief by the ITO before proceedings can be validly initiated under s. 34(1)(a) of the Indian I.T. Act, 1922, is a condition precedent; the fulfilment of this condition is not a mere formality; it is mandatory and a failure to fulfil that condition would vitiate the entire proceedings and the formation of the belief should be on reasonable grounds. As had been pointed out with regard to the similar provision in the Indian I.T. Act 1922, the notice

for the purpose of initiating reasssessment proceedings is not a mere procedural requirement. [See Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others,]. Moreover, on the basis of the civil courts decision, in the land acquisition proceedings for the reasons, I have stated earlier, no reasonable conclusion could be drawn about the market value of the properties in the forest lands in respect of the relevant assessment year concerned. Moreover, it might be noticed here that the petitioner has stoutly denied that he is the karta or manager of the family which was not in existence. In the counter-affidavit filed, the respondent has not stated that the petitioner is the karta of the family. He has only stated that because he was the second party in the land acquisition proceedings notice had been sent to him. In the light of the above discussions, I hold that Ex. P-1 notice and the proceedings for an attachment consequent on the same are illegal and without jurisdiction. I quash the same. In the circumstances of the case, I make no order as to costs.

Carbon copy of the judgment would be given to the parties on payment