(1973) 09 CAL CK 0018
Calcutta High Court
Case No: Matter No. 417 of 1972

Ashok Singh — APPELLANT

Vs

Assistant Controller, Estate Duty, A Ward — RESPONDENT

Date of Decision: Sept. 24, 1973

Acts Referred:

- Constitution of India, 1950 - Article 12, 226, 32
- Estate Duty Act, 1953 - Section 52, 53(3), 56(2), 58(2), 73A
- Income Tax Act, 1922 - Section 22(1), 22(2), 22(2A), 22(3), 34(3)

Citation: (1974) 2 ILR (Cal) 314

Hon'ble Judges: Amiya Kumar Mookerji, J

Bench: Single Bench

Advocate: R.C. Deb, Pranab Pal and M. Seal, for the Appellant;Suhas Sen, for the Respondent

Judgement

Amiya Kumar Mookerji, J.

The Petitioner is the karta of a joint Mitakshara Hindu family consisting of himself and his brother. On February 6, 1957, the father of the Petitioner Ganga Singh died intestate. At the time of death of his father, both the Petitioner and his brother were minors. One Prannath Shegal, a maternal uncle of the Petitioner and his brother moved an application in the City Civil Court at Calcutta sometime in March 1967 for appointment of guardian of the minors and the said maternal uncle was appointed as guardian in August 1968. Jamuna Singh, a paternal uncle of the minors, preferred an appeal in this Court being Appeal from Original Order No. 642 of 1968. A Division Bench of this Court by its order dated September 7, 1970, disposed of the said appeal holding, inter alia, that in the interest of the minors concerned the appointment of Prannath Shegal would continue until December 7, 1970, when the elder of the said two minors, namely, the Petitioner, would attain majority. It appears that the said guardian Prannath Shegal never filed an account of the properties of the deceased Ganga Singh in terms of Section 53 or Section 56 of the Estate Duty Act, 1953, with the Estate Duty Authorities. After attaining majority on December 7, 1970, the Petitioner also did not file any such account of properties with the Estate Duty Authorities relating to the properties left by the said deceased Ganga Singh, as he was unaware, that such an account was required to be filed under the Act within six months from the date of his father''s death. Thereafter, the Petitioner filed an application for grant of a succession certificate in the City Civil Court at Calcutta. On July 25, 1972, the learned Chief Judge by his order directed the Petitioner to produce a certificate as required u/s 56(2) of the Estate Duty Act and without which no grant of the said succession certificate could be made. Accordingly, the Petitioner was advised to file an account with the Estate Duty Authorities regarding the estate of the said deceased Ganga Singh, and on August 1972 the Petitioner filed an account of the properties left by the said deceased with the Assistant Controller, Estate Duty, showing therein the value of the estate approximately of Rs. 52,000. Thereupon, the Petitioner received a notice issued u/s 58(2) of the Estate Duty Act, 1953, dated September 4, 1972, along with the questionnaire by the Respondent No. 1, the Assistant Controller of Estate Duty, A Ward, whereby the said Respondent No. 1 fixed the date of hearing of the matter on September 19, 1972. On September 19, 1972, the Petitioner appeared before the Respondent No. 1 and contended that no proceeding could be initiated in view of Section 73A of the Act, inasmuch as five years had already expired from the date of death of the deceased and, as such, the Respondent No. 1 had no power, authority and jurisdiction to initiate any proceeding under the Estate Duty Act, 1953, or to issue notice u/s 58(2) of the said Act or to put any questionnaire thereunder, and by doing the same the Respondent No. 1 was proceeding entirely without jurisdiction. In spite of the said objection, the Respondent No. 1 fixed the next date of hearing on December 15, 1972. The Petitioner being aggrieved by the said notice dated September 4, 1972, issued u/s 58(2) of the Act and the proceeding taken thereunder, moved this Court in an application under Article 226 of the Constitution and obtained the present rule and also an ad interim injunction restraining the Respondent No. 1 from proceeding for levy of any estate duty under the Estate Duty Act, 1953, until disposal of the rule.

2. It is contended by Mr. Deb, appearing on behalf of the Petitioner, that in so far as the estate of late Ganga Singh is concerned, admittedly no proceeding for estate duty has been commenced within the period of five years from the date of his death and no order for assessment has been made u/s 58 of the Estate Duty Act. In view of the provisions in Section 73A(a) of the said Act, no proceeding can be initiated in respect of the properties and estate of Ganga Singh, since deceased, under the said Act. The Assistant Controller of Estate Duty, the Respondent No. 1, is proceeding entirely without jurisdiction and in excess of jurisdiction and illegally assumed jurisdiction under the said Act by issuing the said notice u/s 52 of the Act and a questionnaire thereunder and threatening to pass order u/s 58 of the said Act on

the account submitted by the Petitioner. Mr. Deb, further, contended that the only order which the Respondent No. 1 could have passed was that, in view of the provisions of Section 73A(a) of the Estate Duty Act, 1953, no proceeding under the said Act could be commenced in respect of the estate of late Ganga Singh and, as such, no estate duty was payable from the Petitioner. According to Mr. Deb, the said notice issued u/s 52 of the Act was illegal, invalid and without jurisdiction and should be quashed.

3. Mr. Sen, appearing on behalf of the Revenue, raised two points. In the first place he contended that in the present case no proceeding for the levy of the estate duty was commenced by the Assistant Controller, but the Petitioner for the purpose of obtaining a certificate u/s 56(2) of the Act voluntarily submitted a statement of account. Although the said account, submitted by Mr. Sen, was not filed within the time specified in Sub-section (3) of Section 53 of the Act, but nonetheless it should be regarded as a valid statement and the Assistant Controller has got jurisdiction to issue a notice u/s 58 of the Act. How could the existence of a statement, Mr. Sen remarked, once it had been filed, be ignored, it was not a mere scrap of paper. In support of his contentions Mr. Sen relied upon two decisions of the Supreme Court in The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay, and in Commissioner of income tax, Punjab v. Kulu Valley Transport Co. Pvt. Ltd. (1970) 77 ITR 519.

4. In The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay, a return showing income below the taxable limits was submitted voluntarily in answer to the general notice u/s 22(1) of the income tax Act, 1922. It was held to be a valid return upon the view that a return in answer to the general notice u/s 22(1) of the income tax Act and u/s 22(3) could be filed at any time before assessment and for that there was no limit of time.

5. In Kulu Valley Transport''s case (1970) 77 ITR 519, the Assessee filed voluntary returns disclosing loss for the relevant assessment years. But the said returns were not filed within the time specified in the general notice u/s 22(1) of the Act and the time had not been extended by the income tax Officer and no notice had been served on the Assessee u/s 22(2) of the income tax Act. The question arose whether the Assessee could claim the benefits u/s 22(2A) of the Act as he did not comply with the provisions of that section. The Supreme Court held that Section 22(3) is merely a proviso to Section 22(1). Thus, a return submitted at any time before the assessment is made is a valid return.

6. In my opinion, none of the above decisions referred to by Mr. Sen would be of any assistance to solve the present point involved in the instant case. If the above principles are applied to the present case, let me examine what would be the result.

7. Under the Estate Duty Act, there is no provision for issuing a general notice as provided under the income tax Act. The estate duty is payable on the value of the

property which passes or is deemed to pass on the death of a person dying after October 15, 1953. Persons accountable have been enumerated in Section 53 of the Act. So, the estate duty is payable on the incidence of a death. Assessments of income tax under the provisions of the income tax Act are quite different. Assuming that the voluntary return filed by the Petitioner is not a mere scrap of paper; it is an appropriate account of the property in respect of which estate duty is payable upon the death of the deceased but where statute puts a total bar under Sub-section (a) of Section 73A of the Act which reads as follows: that no proceeding for the levy of any estate duty under this Act shall be commenced, in case of first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable; then, under what provisions of law that ''voluntary account'' filed by the Petitioner could be determined by the Controller of Estate Duty when the very initiation of the proceeding is barred under the statute? It is well-settled that there cannot be any estoppel against the statute. If the Assistant Controller has got no inherent jurisdiction to initiate a proceeding for the levy of any estate duty after the expiration of five years from the date of death of the deceased, simply because a statement of account has been filed by a person accountable to pay estate duty under the Act, for the purpose of a certificate u/s 56(2), does not confer any jurisdiction upon the Assistant Controller to start or initiate a proceeding under the Act by issuing a notice u/s 58, when the statute imposes a complete bar on the very initiation of any proceeding. In a fiscal statute, as observed by Lord Russel of Killowen:

The subject is not taxable by inference or analogy, but only by the plain words or a statute applicable to the facts and circumstances of his case.

8. In Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, the Supreme Court made a note of caution against construing expressions used in one Act with reference to their use in another Act. The Supreme Court observed that it was not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act must take their colour from the context in which they appear. In income tax Act, there are provisions of limitations for assessment and reassessment but there is no such provision similar to that of Section 73A(a) of the Estate Duty Act, which takes away the operation and application of the entire provision of the said Act in case of assessment of estate duty after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable.

9. The words ''assessment'' and ''procedure for assessment'' in the income tax Act had been interpreted by the Supreme Court having regard to the context in which the expressions were used and that the interpretation given by the Supreme Court does not hold good for interpreting the same or similar words occurring in different statutes. The same words or phrases used in different Acts need not, therefore,

necessarily carry on the same meaning. The meaning that has to be given depends upon the context in which it is referred to.

10. So, in my opinion, the decisions of the two cases referred to by Mr. Sen have got no bearing upon the point that is required to be decided u/s 73A(a) of the Estate Duty Act.

11. Mr. Sen next contended that the notice issued u/s 58 of the Act by which the Petitioner was only asked to appear before the Assistant Controller, the Respondent No. 1, and no duty has yet been imposed upon the Petitioner. The Assistant Controller could come to the decision as to the applicability of the bar u/s 73A of the Act. If the Assistant Controller held against the Petitioner, then he would be entitled to come to this Court and ask for relief either restraining the Respondent No. 1 from proceeding or to make any further order under the Estate Duty Act. In other words, Mr. Sen contended, that the question of limitation ought to have been raised by the Petitioner before the Assistant Controller of Estate Duty and that point could not be agitated in a writ proceeding.

12. In Lalji Haridas Vs. Income Tax Officer and Another, the validity of a notice u/s 34(3) of the income tax Act, 1922, was challenged on the ground that the assessment proceeding was barred by limitation. The Supreme Court observed that the question of limitation could and ought to be raised before the income tax Officer; that was not a point which could be legitimately agitated in writ proceedings. The above view was again re-affirmed by the Supreme Court in Lalji Haridas Vs. R.H. Bhatt and Another, wherein the Supreme Court observed that the jurisdiction conferred on the High Court under Article 226 of the Constitution is not intended to supersede the jurisdiction and authority of the income tax Officer to deal with the merits of all the contentions that the assesses may raise before them, and so it would be entirely inappropriate to permit an assesses to move the High Court under Article 226 and contended that a notice issued against him was barred by time. That was a matter which the income tax Authorities must consider on the merits and in the light of the relevant evidence. The said decision of the Supreme Court has been followed by the Kerala High Court in Income Tax Officer, Kottayam Vs. R.M. Subramania Iyer, and of this Court in PILANI INVESTMENT CORPORATION LTD. Vs. Income Tax OFFICER, "A" WARD, COMPANIES DIST. II, AND ANOTHER., .

13. In Pilani Investment Corporation''s case B.C. Mitra J. observed:

the two decisions of the Supreme Court have set at rest any controversy on the question whether any income tax Officer has jurisdiction to deal with the question of limitation raised by the Assessee. The statute had created a bar of limitation regarding assessment order in certain cases. The statute had also given the income tax Authority the power to make such assessment order in cases where the bar of limitation did not apply. It was for the income tax Authority, therefore, to decide whether the assessment order could be made having regard to the contentions raised on behalf of the Assessee. It is not a case of inherent lack of jurisdiction.

The learned Judge has considered the above two decisions of the Supreme Court and his conclusion is that those principles will apply in cases where there is no inherent lack of jurisdiction. But, in the present case, in view of Section 73A(a) of the Act no proceeding for the levy of any estate duty, under the said Act, could be commenced. Therefore, in a case where Section 73A (a) is attracted there is lack of inherent jurisdiction of the Assistant Controller to commence or initiate any proceeding whatsoever under the Estate Duty Act. It is true that, if there is any controversy or there is a denial about the date of death of Ganga Singh, in that case the provisions of Sub-section (a) of Section 73A would not be applicable and, certainly, the Assistant Controller shall have the jurisdiction to issue a notice u/s 58 of the Act, but in the instant case, there is no such denial. Therefore, there is no scope of further enquiry or taking further evidence about the date of death of Ganga Singh. It must necessarily follow that the instant case comes within the purview of Sub-section (a) of Section 73A of the Act and, as such, the Assistant Controller of Estate Duty has got no jurisdiction to issue the impugned notice dated September 4, 1972, u/s 58(2) of the Act. Therefore, I hold that the said notice must be cancelled by a writ of mandamus.

14. Mr. Deb further contended that the Petitioner should get a declaration that he was not liable to pay any duty. In a proceeding under Article 226 of the Constitution, which is similar to a proceeding under Article 32, this Court is competent to grant such declaration. In support of his contentions Mr. Deb relied upon the observations of the Supreme Court in the case of Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, .

15. In Kochuni''s case the Supreme Court observed that the powers of the Supreme Court under Article 32 are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party if the impugned Act has taken away the Petitioner''s fundamental right.

16. In that particular case the Supreme Court made a declaratory order to grant relief to a party in exceptional circumstances. The Supreme Court did not hold that the Court could made a mere declaration, for, such view would be opposed to the plain terms of Article 32 which confers upon the Supreme Court the power ''to issue directions, orders or writs'' and a mere declaration cannot be said to constitute the issue of a direction, order or writ. The Supreme Court in that case considered a declaration and an injunction to be the proper relief to which the Petitioner would be entitled to, in a suit against the Respondents Nos. 2 to 17 who are private parties and not the State. The objection was that the fundamental rights could not be asserted against private persons and that objection was not by saying that the dispute was between the Petitioner on the one hand and the State which under Article 12 includes the Legislature and the Respondents Nos. 2 to 17, who claimed rights under the law enacted by the Legislature (State). So, it cannot be said that the

dispute was between private parties only. The impugned Act was declared void by the Supreme Court and a writ of mandamus was issued restraining the State of Kerala from enforcing its provisions against the Petitioners. Therefore, the declaration was ancillary in giving the main relief, namely, a mandamus. It would appear from the language of Article 32 of the Constitution that the sole object of the Article is enforcement of fundamental rights guaranteed by the Constitution. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , Mukherjea J. (as he then was) observed:

a proceeding under Article 32 cannot really have any affinity to what is known as a declaratory suit.

17. If a particular person''s fundamental right is infringed he can also move an application under Article 226 of the Constitution before the High Court. If it is found that such person''s fundamental right has been infringed by a particular provision of an Act which is void, in that case direction is to be made declaring that the impugned law will not be applicable to that aggrieved person. In the instant case, there is no infringement of fundamental right and no part of an Act is sought to be declared as void. Article 226 is not to be construed so as to replace the remedy available in a declaratory suit. It is not intended to provide to the litigants an easy method of getting redress avoiding the normal procedure in an action brought in the usual course under the general law of the land. Considering the facts and circumstances of the present case, in my view, the Petitioner is not entitled to any such declaration as asked for. I find that there is no substance in this point.

18. In the result, this rule is made absolute, the impugned notice u/s 58(2) of the Estate Duty Act, 1953, dated September 4, 1972, which is annex. D to the petition, is cancelled by a writ of mandamus. Let a writ in the nature of mandamus be issued.

19. There will be no order as to costs.