SUPREME COURT OF INDIA

Ahmed G.H. Ariff

v.

Commissioner of Wealth-tax

J.C. SHAH, AG., CJ. V. RAMASWAMI AND A.N. GROVER, JJ.

CIVIL APPEAL NOS. 2129 TO 2132 OF 1968

AUGUST 20, 1969

A.K. Sen, S.K. Hazare and P.K. Mukherjee for the Appellant.

B. Sen, S.A.L. Narayana Rao and R.N. Sachthey for the Respondent.

JUDGMENT

Grover, J.—These appeals by certificate from a judgment of the Calcutta High Court involve a common but important question, namely, whether the right of an assessee to receive a specified share of the net income from an estate in respect of which wakf-alal-aulad has been created is an asset assessable to wealth-tax.

By a deed dated November 19, 1928, as modified by a deed of rectification dated July 5, 1930, one Golam Hossain Casim Ariff, a Muslim governed by the Hanafi school of the Mohammadan law, created a wakf in respect of his properties in Noormul Lohia Lane and Armenian Street in Calcutta. The settlor appointed himself as the sole mutawalli for the term of his life and provided that after his death his widow, Aisha Bibi, and his sons would act as mutawallis jointly. The settlor died on January 1, 1937. He left behind his widow, Aisha Bibi, and three sons who are the appellants before this court. The wakf created was of the nature of wakf-alal-aulad for the benefit of the settlor's wife, children and their descendants. The extent of the benefit conferred on them would appear from clause 5 of the deed of wakf as modified:

"5. After payment of all necessary outgoings such as establishment charges, collections charges, revenue taxes, costs of repairs, law charges and other expenses for the upkeep and management of the said wakf property, the mutawalli or mutawallis shall apply the net income of the said wakf property as follows, viz.:

(a)in payment to me during the term of my life of one-fifth of the said net income by monthly instalments;

(b)in payment to each of my sons during the respective terms of their lives one-sixth of the said net income by monthly instalments;

(c)in payment to my wife, Aisha Bibi, during the term of her life one-tenth of the said net income by monthly instalments.

The moneys payable as aforesaid to such of my sons as are minors shall until they attain the age of majority be respectively invested (after defraying the expenses of their maintenance and education) in proper securities or in landed property in Calcutta and such securities or property shall be made over to the said sons on their respectively attaining the age of majority".

The ultimate benefit in the case of complete intestacy of the descendants of the settlor was reserved for poor Musalmans of Sunni community deserving help.

The appellants, who are the beneficiaries under the deed of wakf, were paying income-tax on the amount which was being received by them in terms of that deed from the mutawalli. In the year 1957 the Wealth-tax Act, 1957, (27 of 1957), hereinafter called the Act, came into force. During the assessment years 1957-58 and 1958-59 the appellants were not only assessed to income-tax in respect of the income received by them from the wakf estate but were also assessed to wealth-tax by the Wealth-tax Officer on the basis that they had a share in the wakf estate. The total value of the immovable property belonging to the wakf estate was valued at 20 times the annual municipal valuation and 1/6th of the value of the immovable property along with other properties was taken to be the net wealth of each assessee. Appeals were taken to the Appellate Assistant Commissioner of Wealth-tax but these were dismissed. There were further appeals to the Income-tax Appellate Tribunal where no dispute was raised as indeed it could not be raised with regard to the validity of the deed of wakf. It was held that the right of the sons of the wakf to receive a share of the rents and profits of the wakf property was property or an interest in property and it was not limited in enjoyment to a period of six years as it fell within the definition of the term "assets" as defined by section 2(e) of the Act. The contention of the appellants that the right of the beneficiaries under the deed of wakf was a mere right to an annuity as mentioned in section 2(e)(iv) and was, therefore, not an asset assessable to wealth-tax was rejected. The third argument which had been raised before the Tribunal that the allowances under assessment were payable to the beneficiaries by way of maintenance were not transferable under section 6(dd) of the Transfer of Property Act and therefore they had no market value for inclusion in the net wealth was also refuted. It was pointed out that the right to maintenance was not one of the assets mentioned in section 5 which alone entitled an assessee to claim exemption in respect of certain assets. The Tribunal did not find it possible to hold on the facts of the case that the amounts in dispute were receivable by the beneficiaries as maintenance under the terms of the wakf. As regards the quantum of valuation a direction was made that the value of the assessee's life interest may be capitalised on the basis of the valuation table set out in Park's Principles and Practice of Valuations taking the rent security at 6 per cent.

On applications for referring the question of law, the following common question was referred to the High Court under section 27 of the Act:

"Whether, on the facts and circumstances stated, the right of the assessee to receive a specified share of the net income from the wakf estate is an asset the capitalised value of which is assessable to wealth-tax ?"

The High Court negatived the contentions of the appellants that the right to receive a definite share of the net income from wakf property did not fall within the meaning of the word "assets" as defined by section 2(e) of the Act or that it was a mere right to an annuity which under the Mohammedan law could not be commuted into a lump sum. It was held that the right of each assessee was to receive an aliquot share of the net income of the properties which were made the subject-matter of the wakf and there was a clear distinction between an aliquot share of income and an annuity. The High Court was of the view that even if the asset of the nature under consideration was non-transferable and could not be sold in the open market it could not be said that such an asset had no value. For the purpose of the Act the Wealth-tax Officer must proceed to value it as if it was an asset which was saleable in the market and that would depend on actuarial valuation. The question was, consequently, answered in the affirmative and in favour of the revenue.

The definition of the word "assets", as given in section 2(e) of the Act, to the extent it is material, is in the following terms:

"(e) 'assets' includes property of every description, movable or immovable, but does not include—
.....

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump-sum grant;

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years".

"Net wealth" is defined by section 2(m). Section 3 is the charging section according to which there shall be charged for every financial year a tax in respect of the net wealth on the corresponding valuation date of every individual, etc. Section 4 gives the assets which have to be included in computing the net wealth. Section 5 gives those assets which are exempt from and are not to be included in the net wealth of the assessee. Section 7(1) provides that the value of any asset other than cash shall be estimated to be the price which, in the opinion of the Wealth-tax Officer, it would fetch, if sold in the open market, on the valuation date.

It is to be essentially decided whether the right to receive an aliquot share of the net income of the properties which were made the subject-matter of the wakf would be covered by the definition of "assets" within the meaning of section 2(e) of the Act. There can be no difficulty if such a right can be regarded to be property giving that word the widest meaning as is contemplated by the language employed in the aforesaid clause. The principal argument of Mr. A.K. Sen for the appellants is that the right to receive a share of the income under a deed creating wakf-alal-aulad can, by no stretch of reasoning, be regarded to fall within the meaning of the word " property " even in its wide and extended sense. He has referred to the incidents of such a right with particular reference to the Mohammedan law relating to wakf. That law owes its origin to a rule laid down by the Prophet of Islam ; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings". Once it is declared that a particular property is wakf, the right of the wakf is extinguished and the ownership is transferred to the mutawalli (vide Vidya Varuthi Thirtha v. Balusami Ayyar [1921] L.R. 48 I.A. 302, 312 ; AIR 1922 P.C. 123). Wakfs could be divided into two classes : (i) public and (ii) private. A private wakf is one for the benefit of the settlor's family and his descendants. It is called wakf-alal-aulad. Before the enactment of the Mussalman Wakf Validating Act, 1913, a wakf, exclusively for the benefit of the settlor's family, children and descendants in perpetuity, was invalid. It was, however, valid if the property was given in substance to charitable uses. Section 3 of the aforesaid Act declared it lawful for a person professing the Mussalman faith to create a wakf which in all other respects was in accordance with the provisions of the Mussalman law, for the following among other purposes:

"(a)for the maintenance and support wholly or partially of his family, children or descendants, and

(b)where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated:

Provided that the ultimate benefit in such cases expressly or impliedly is reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character".

As mentioned before, the moment a wakf is created, all rights of property pass out of the wakf and vest in the Almighty. Therefore, the mutawalli has no right in the property belonging to the wakf. He is not a trustee in the technical sense, his position being merely that of a superintendent or a manager. A mutawalli has no power, without the permission of the court, to mortgage, sell or exchange wakf property or any part thereof, unless he is expressly empowered by the deed of wakf to do so: (sections 202 and 207, Mulla's Principles of Mahomedan Law, 16th edition).

In Abdul Karim Adenwalla v. Rahimabai [1946] 48 Bom. L.R. 67; AIR 1946 Bom. 342 a distinction was made between a settlor belonging to the Hanafi sect reserving for his own maintenance and support during his lifetime income of the trust property and his reserving for his absolute use income of the whole of the property during his lifetime. It was pointed out that a Hanafi Mussalman was not permitted to follow the latter course and it was only when he reserved the income for his maintenance and support that the provisions of the Mussalman Wakf Validating Act, 1913, would not be offended. There would be a difference in law between these two provisions ; if a settlor reserved to himself income for his own maintenance and support that would not be transferable as property under the Transfer of Property Act, nor would it be attachable under the provisions of the Civil Procedure Code. If he, however, reserved for himself a life interest, section 6 of the Transfer of Property Act and section 60 of the Code with regard to the non-transferability and non-liability to an attachment would not be attracted. The crux of the matter, according to Mr. Sen, is that the aliquot share of income under the deeds executed in the present case was reserved for the maintenance and support of the wakf and other beneficiaries during their lifetime. It is pointed out that if the provisions contained in clause (5) of the deed of wakf were not to be read in that manner, the deed would be rendered void, a result which has to be avoided by the courts. It is thus contended that the right, in question, is a right to future maintenance measured by the aliquot part of the income and it is neither partible nor alienable, and is one which is wholly personal to the beneficiary. It lacks the basic attributes of property.

Now "property" is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold or enjoy. The meaning of the word "property" has come up for examination before this court in a number of cases. Reference may be made to one of them in which the question arose whether mahantship or shebaitship which combines elements of office and property would fall within the abmit of the word "property" as used in article 19(1)(f) of the Constitution. It was observed in Commissioner, Hindu Religious Endowments v. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954] SCR 1005, 1019 that there was no reason why that word should not be given a liberal and wide connotation and should not be extended to those well-recognised types of interests which had the insignia or characteristic of proprietary right. Although mahantship was not heritable like the ordinary property, it was still held that the mahant was entitled to claim protection of article 19(1)(f) of the Constitution. It is stated in Halsbury's Laws of England, volume 32, third edition, page 534, that an annuity (which is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property not consisting exclusively of land) can be an item of property separate and distinct from the beneficial interests therein and from the funds and other property producing it. It is property capable of passing on a death and can be separately valued for the purpose of estate duty.

The only direct case on the point under consideration is a decision of the Bombay High Court in Commissioner of Wealth-tax v. Purshottam N. Amersey [1969] 71 ITR 180. There the deed of settlement provided that the trustees shall apply the net income from the fund for the support, maintenance and advancement in life and otherwise for the benefit of the settlor and his wife, etc. It was held that the definition of "assets" in section 2(e) and that of "net wealth" in section 2(m) were comprehensive provisions and all assets were included in the net wealth by the very definition. Therefore, when section 3 imposed the charge of wealth-tax on the net wealth it necessarily included in it every description of property of the assessee, movable and immovable, barring the exceptions stated in section 2(e) and other provisions of the Act. We are in entire concurrence with that view. There is no reason or justification to give any restricted meaning to the word "asset" as defined by section 2(e) of the Act when the language employed shows that it was intended to include property of every description. On a proper construction of the relevant clauses in the wakf deed we are not satisfied that the aliquot share of the income provided for the beneficiaries was meant merely for their maintenance and support. But

even on the assumption that it was so intended or to preserve the validity of the deeds it should be so construed, the right to the share of the income would certainly be an asset within the meaning of section 2(e) and would be liable to be included in the net wealth of the assessee.

Mr. Sen has laid emphasis on the language of section 7(1) of the Act and has contended that the right to a share in the income is not capable of any valuation and the price which it would fetch, if sold in the open market, could not possibly be ascertained. Such an argument was fully examined in the Bombay case in which the High Court referred to the provisions of the English statutes, which were in pari materia, as also decisions given by the English courts including the one by the House of Lords in Commissioners of Inland Revenue v. Crossman [1937] A.C. 26 ; 2 E.D.C. 537. It has been rightly observed by the High Court that when the statute uses the words "if sold in the open market" it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and, on that basis, the value has to be found out. It is a hypothetical case which is contemplated and the tax officer must assume that there is an open market in which the asset can be sold.

A faint attempt was made to invoke the exception contained in section 2(e) by suggesting that the right to receive a share of the income was a mere right to an annuity where the terms and conditions relating thereto precluded the commutation of any portion into a lump sum grant. The High Court in the judgment under appeal dwelt at length on the true meaning and import of the expression "annuity" and negatived that suggestion. The burden of the argument was and is that the word "annuity" should be given its popular and dictionary meaning and not the signification which it has assumed as a legal term owing to judicial interpretation. Such a contention has only to be stated to be rejected because it is well-settled that where the legislature uses a legal term which has received judicial interpretation, the courts must assume that the term has been used in the sense in which it has been judicially interpreted.

For the reasons given above, the appeals fail and are dismissed with costs. (One hearing fee).