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SRI SUDHANSU SHEKHAR SINGH DEO

v.

THE STATE OF ORISSA AND ANOTHER

September 21.

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Agricultural Income Tax—Ex-Ruler of Indian State—Exemption from taxation—Claim based on agreement of merger—Whether justiciable—Definition of "person"—Whether excludes "Ruler"—Orissa Agricultural Income-tax Act, 1947 (Orissa 24 of 1947), ss. 2(i), 3—Constitution of India, Arts. 291, 362, 363.

On December 15, 1947, the Ruler of the erstwhile State of Sonepur, the appellant, executed a merger agreement whereby the Government of India acquired full sovereign rights over the territory of the State, but ownership and full enjoyment of private properties belonging to the appellant and the personal rights, privileges, dignities etc., enjoyed by him immediately before August 15, 1947, were guaranteed to him under Arts. 4 and 5. On July 27, 1949, the Governor-General of India issued an order providing that the merged Orissa States including the State of Sonepur shall be administered in all respects as if they formed part of the Province of Orissa. The Orissa Agricultural Income-tax Act, 1947, had in the meantime been enacted by the Legislature of the Province of Orissa and by virtue of an Ordinance promulgated by the Governor of Orissa on December 30, 1949, the Act became applicable to the merged Orissa States. Section 2(i) of the Act defined a "person" as inclusive of a Ruler of an Indian State, but by the Adaptation of Laws Order, 1950, reference to Rulers of Indian States was deleted as from January 26, 1950. The appellant contended that he was not liable to be assessed to tax on agricultural income under the provisions of the Act because (1) as a Ruler of the State of Sonepur, he was, before merger of his State, immune from liability to taxation in respect of his private property and that his immunity from taxation was guaranteed by Arts. 4 and 5 of the agreement of merger; and (2) that by virtue of the amendment of s. 2, cl. (i), of the Act, he was not a "person" within the meaning of the Act and therefore he was not liable to pay agricultural income-tax.

Held: (1) that the amendment in the definition of "person" in s. 2, cl. (i), of the Act was made not with the object of excluding the Rulers of former Indian States from liability to pay tax, but only to delete a clause which in view of political changes which had taken place since the Act was enacted had no practical significance. The appellant could not claim exemption from taxation on the ground that he was not a "person", in the absence of an express exemption clause in the Act.

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(2) that the privileges guaranteed by Arts. 4 and 5 of the agreement of merger were only personal privileges of the appellant as an ex-Ruler and that these privileges did not extend to his private property.

Vishweshwar Rao v. *The State of Madhya Pradesh*, [1952] S.C.R. 1020, followed.

(3) that the claim made by the appellant of immunity from taxation relying upon the agreement of merger was not justiciable.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 307 to 309 of 1958.

Appeals from the judgment and order dated August 1, 1956, of the Orissa High Court in O. J. C. Nos. 16, 19, 137 and 61 of 1954.

C. B. Aggarwala and *P. C. Aggarwala*, for the appellant (In C. As. Nos. 307 to 309 of 58).

N. C. Chatterjee, J. H. Umrigar and *T. M. Sen*, for the respondents (In all the appeals).

1960. September 21. The Judgment of the Court was delivered by

Shah J.

SHAH J.—This is a group of three appeals filed with certificate of fitness under Art. 132 of the Constitution issued by the High Court of Judicature, Orissa.

The Legislature of the Province of Orissa enacted the Orissa Agricultural Income-tax Act XXIV of 1947—hereinafter referred to as the Act—providing for the levy of income-tax on agricultural income derived from lands situated in the Province of Orissa. This Act was brought into operation from July 10, 1947. By s. 3, agricultural income-tax at the rate or rates specified in the schedule was made payable for each financial year on the total income of the previous year of every person. By the proviso to that section, agricultural income of the Central Government or of the State Government or of any local authority was exempt from taxation. Section 2, cl. (i), defined a "person" as inclusive of a Ruler of an Indian State. The appellant in these three appeals is the former Ruler of the State of Sonepur. After

the establishment of the Dominion of India on August 15, 1947, the appellant as the Ruler of the State of Sonepur executed an instrument of accession to the Dominion restricted to three subjects—Defence, External Affairs and Communications. On December 15, 1947, he executed a merger agreement whereby the territory of the State of Sonepur became merged with the territory of the Dominion of India. By virtue of the merger agreement, the Government of India acquired full sovereign rights over the territory of the State, but ownership of private properties belonging to the appellant and full enjoyment thereof were under the agreement guaranteed to him under Art. 3. In exercise of the powers conferred by the Extra Provincial Jurisdiction Act 47 of 1947, the Government of India by notification dated March 23, 1948, delegated to the Provincial Government of Orissa full powers to administer the merged States of Orissa including the State of Sonepur. The Government of the Province of Orissa applied to the merged States s. 1 of the Act as from January 19, 1949, and by notification dated April 1, 1949, the remaining provisions of the Act. In the meantime, by amendment, two new sections, s. 290(A) and s. 290(B) were incorporated in the Government of India Act, 1935. The Governor-General of India was thereby given power to direct by order that a merged State shall be administered in all respects as if it formed part of the Governor's Province specified in the order. The Governor General of India exercising authority under ss. 290(A) and 290(B) issued on July 27, 1949, an order providing that the merged Orissa States including the State of Sonepur shall be administered in all respects as if they formed part of the Province of Orissa with effect from August 1, 1949. On December 30, 1949, the Governor of Orissa promulgated Ordinance No. IV of 1949 providing inter alia that the Agricultural Income-tax Act, 1947, be applied to the merged Orissa States. This Ordinance was later replaced by the Orissa Merged States (Laws) Act, XVI of 1950. The appellant was then called upon by the Agricultural

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Income-tax Officer to furnish a return of his agricultural income. The appellant disputed his liability to pay the agricultural income-tax and declined to furnish the return. The Agricultural Income-tax Officer then proceeded to make enquiries about the income received from the lands held by the appellant and assessed him to pay tax for the years 1949-50 to 1953-54. He also imposed a penalty upon the appellant for failure to submit his returns for the years 1949-50 and 1950-51. Against the order assessing him to tax and directing him to pay penalty, the appellant preferred appeals to the Assistant Collector of Agricultural Income-tax, Sambalpur. The appeals were dismissed by that officer. Revision applications to the Collector of Commercial Taxes, Cuttack and to the Board of Revenue were unsuccessful.

The appellant filed four petitions in the High Court of Orissa, being petitions Nos. 17, 16, 19 and 137 of 1954 challenging the assessments made by the taxing authorities for the years 1949-50, 1950-51, 1951-52 and 1952-53 respectively, and two more petitions being petitions Nos. 18 and 138 of 1954 against orders imposing penalty for the years 1949-50 and 1950-51 respectively. These six petitions and certain other petitions were heard by a Division Bench of the Orissa High Court. The High Court held that by the guarantee of full ownership, use and enjoyment of the private properties under the merger agreement the properties of the appellant were not rendered immune from liability to pay tax imposed by the Act and that in the absence of an express provision, his income from lands was liable to pay agricultural income-tax. The High Court also held that even though the appellant was the Ruler of a former Orissa State, he was a "person" within the meaning of the Act and was liable to pay agricultural income-tax. The learned Judges therefore dismissed the petitions challenging the liability of the appellant for the assessment years 1950-51, 1951-52 and 1952-53 to pay agricultural income-tax, and they cancelled the order of assessment in respect of the year 1949-50 and the orders imposing penalty in respect of years 1949-50 and

1950-51. Against the orders dismissing the applications for setting aside the assessments in respect of years 1950-51, 1951-52 and 1952-53, these appeals have been preferred with certificate granted by the High Court under Art. 132 of the Constitution.

The appellant was undoubtedly the Ruler of an Indian State before August 15, 1947, but by reason of the merger agreement executed by him on December 15, 1947, his sovereignty was extinguished. By Art. 1 of the terms of the merger agreement, the appellant ceded to the Dominion of India full and exclusive authority, jurisdiction and power for and in relation to the governance of the State and agreed to transfer the administration of the State on the appointed day and as from the said day, the Dominion Government became competent to exercise the power, authority and jurisdiction in relation to the governance of the State in such matters and through such agency as the Government thought fit. By Art. 3, the appellant remained entitled to full ownership, use and enjoyment of all private properties (but not of the State properties) belonging to him on the date of the merger. By Art. 5, the Dominion Government guaranteed the succession according to law and customs, to the *gadi* of the State and to the personal rights, privileges, dignities and titles of the appellant. It was provided by Art. 4 that "the Raja, the Rani, the Rajmata, the Yuvraja and the Yuvrani shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State, immediately before the 15th day of August, 1947".

The appellant contends that as a Ruler of the State of Sonepur, he was, before merger of his State, immune from liability to taxation in respect of his private property both within his territory and outside. He claims that he was so immune in respect of his property within his State as a Ruler and in respect of his property outside the State by the rules of International Law which, he submits, protect from taxation the properties of a Ruler of a State, situate in a foreign State. The appellant says that by Arts. 4 and 5, the Dominion Government guaranteed to him all

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his personal rights, privileges, dignities and titles enjoyed within or without the territory immediately before the 15th August, 1947, and that any attempt to tax his private property by the State of Orissa or by the Union Government violates that guarantee. The appellant submits that to give effect to this guarantee, all legislation must be interpreted in the light of the merger agreement which he claims is incorporated in Art. 362 of the Constitution and he must be held exempt from liability to pay tax even though no express provision in that behalf has been made by the Legislature. In our view, there is no force in the contentions raised by the appellant. The privileges guaranteed by Arts. 4 and 5 are personal privileges of the appellant as an ex-Ruler and those privileges do not extend to his personal property. In dealing with a similar contention raised on the interpretation of Art. 4 of the merger agreement entered into by the Ruler of Khairagarh (which was in material terms identical with the terms of Art. 4 of the agreement executed by the appellant), S. R. Das, J., (as he then was), observed in *Visweshwar Rao* v. *The State of Madhya Pradesh*(1):

"The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler *qua* a Ruler. It does not extend to personal property which is different from personal rights".

The Act imposes on the agricultural income of "every person" liability to pay agricultural income-tax. By the proviso to s. 3, agricultural income of the Central Government, State Government and of local authorities is exempt from tax, but this exemption is not extended to any other body or person. It is true that in the definition of the expression "person" as originally enacted in s. 2, cl. (i), a Ruler of an Indian State was expressly included and by the Adaptation of Laws Order, 1950, reference to Rulers of Indian States was deleted as from January 26, 1950. But by that amendment, an intention to exclude the Rulers of Indian States from liability to pay

(1) [1952] S.C.R. 1020, 1054.

agricultural income-tax was, in our judgment, not evinced. Between the dates on which the Act was enacted and the Adaptation of Laws Order, 1950, several political events of far reaching effect had taken place, in consequence of which the appellant had ceased to be a Ruler of an Indian State. On January 26, 1950, the date on which the Adaptation of Laws Order, 1950, became operative, there were in existence no Indian States. The sovereign rights of the erstwhile Rulers of the Indian States were extinguished, and their territories were merged in the Indian Union. The amendment in the definition of "person" in s. 2, cl. (i), of the Act was made not with the object of excluding the Rulers of former Indian States from liability to pay tax: it was only made to delete a clause which, in view of political changes, had no practical significance. Liability to pay tax is imposed by the Act and there is in the Act no express exemption in favour of the appellant. The claim of the appellant to exemption on the ground that he is not a "person" cannot therefore be sustained.

Article 362 of the Constitution provides:

"In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in Art. 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State".

Article 291 of the Constitution deals with the privy purse of the Rulers under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of the Constitution payment whereof is free from tax as has been granted or assured by the Government of the Dominion of India. Article 362 recommends to the Parliament and the State Legislatures in making laws after the Constitution "to have due regard to the guarantee or assurance given under any covenant or agreement". Even though Art. 362 is not restricted in its recommendation to agreements relating to the privy purse and

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covers all agreements and covenants entered into by the Rulers of Indian States before the commencement of the Constitution whereby the personal rights, privileges and dignities of the Ruler of an Indian State were guaranteed, it does not import any legal obligation enforceable at the instance of the erstwhile Ruler of a former Indian State. If, despite the recommendation that due regard shall be had to the guarantee or assurance given under the covenant or agreement, the Parliament or the Legislature of a State makes laws inconsistent with the personal rights, privileges and dignities of the Ruler of an Indian State, the exercise of the legislative authority cannot, relying upon the agreement or covenant, be questioned in any court, and that is so expressly provided by Art. 363 of the Constitution.

The plea of the appellant that he was not seeking to enforce the terms of the merger agreement and that he was merely resisting the claim made by the authority appointed by the State of Orissa to levy a tax inconsistently with the terms of the merger agreement, has no substance. In truth, the appellant sought by his petitions under Art. 226 of the Constitution to enforce the terms of Art. 4 of the merger agreement. By his petitions, the appellant contended that in enacting the Agricultural Income-tax Act and in seeking to enforce it against him, the State of Orissa acted contrary to the terms of the merger agreement and he asked the High Court to enforce the terms of the merger agreement. On the grounds therefore that liability to pay agricultural income-tax in respect of his private property is imposed upon the appellant by s. 3 of the Act, and the immunity claimed by the appellant is not one of the personal rights or privileges within the meaning of the merger agreement and that the claim made by the appellant is not justiciable, the objection raised by the appellant to liability to pay agricultural income-tax assessed under the Act cannot be sustained.

Two subsidiary contentions which were sought to be raised before us may be briefly referred to. It was urged that of the forty-two villages of which the

appellant is held by the assessing authority to be the holder, two were in the year 1945 transferred by him to the Yuvrani (the appellant's son's wife) and on that account, the income of those villages was not liable to be taxed in his hands. It appears from the assessment order that this contention was raised before the Agricultural Income-tax Officer and that officer rejected the contention relying upon s. 14, cl. (1), of the Act. It is unnecessary for the purpose of these appeals to decide whether the assessing officer was right in the view which he took. In the petitions filed by the appellant in the High Court, this plea was not raised and no relief was claimed by him in respect of the income of the two villages. The question was never mooted before the High Court and the State of Orissa had no opportunity of meeting the claim now sought to be made by the appellant. On the ground that the question was never raised in the High Court, we reject this contention.

It was also urged that whereas the assessing officer has found that the appellant had lands in forty-two villages, in the inventory of properties submitted by the appellant to the Government, only eighteen villages were set out and this inventory was accepted by the Government of India. Relying upon this premise, the appellant contends that he is liable to pay tax in respect of his income from these eighteen villages and no more. But even this plea was never raised in the High Court and we cannot, in dealing with these appeals, enter upon an enquiry into a question which was never raised on which no evidence was led, and on which no finding was given by the High Court.

On the view taken by us, appeals Nos. 307, 308 and 309 of 1958 fail and are dismissed with costs. There will be one hearing fee.

Appeals dismissed.