

BALAKRISHNAN

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 344 of 2017)

JANUARY 11, 2017

[A. K. SIKRI AND R. K. AGRAWAL, JJ.]

Income Tax Act, 1961 – ss. 10(37) and 148 – Capital gains tax – Exemption from – Agricultural land of landlord-appellant acquired under Land Acquisition Act – Compensation fixed by the award was not acceptable to the landlord – Hence, he entered into negotiation with the beneficiary of the acquisition to get the compensation commensurate with market rate and arrived at amicable settlement. After entering into agreement with the beneficiary, landlord executed sale-deed in favour of the beneficiary – Revenue initiated proceedings u/s. 148 – Direction was issued to the Assessing Officer to assess the income of assessee by not granting exemption u/s. 10(37) as the transaction of land was not by way of compulsory acquisition – Direction challenged by landlord – Courts below upheld the stand of Revenue – On appeal, held: The land in question was compulsorily acquired – Merely because the compensation amount was agreed upon, would not change the character of acquisition from that of compulsory acquisition to the voluntary sale – Even under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Collector is entitled to pass rehabilitation and resettlement award with the consent of the parties/ landowners – Therefore, the proceedings u/s. 148 are quashed.

Allowing the appeal, the Court

HELD: Insofar as acquisition of the land is concerned, the same was compulsorily acquired as the entire procedure prescribed under the Land Acquisition Act, 1894 was followed. The settlement took place only qua the amount of the compensation which was to be received by the appellant for the land which had been acquired. Had the steps not been taken by the Government under Sections 4 & 6 followed by award under Section 9 of the Land Acquisition Act, the appellant would not

A have agreed to divest the land belonging to him to the beneficiary of the acquisition. He was compelled to do so because of the compulsory acquisition and to avoid litigation entered into negotiations and settled the final compensation. Merely because the compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to
 B the voluntary sale. This is now the procedure which is laid down even under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties/land owners. Nonetheless,
 C the character of acquisition remains compulsory. Therefore, the proceedings under Section 148 of the Income Tax Act are quashed. [Paras 8 and 10] [523-G-H; 524-A-C, G-H]

Info Park Kerala v. Assistant Commissioner of Income Tax (2008) 4 KLT 782 – overruled.

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Case Law Reference

(2008) 4 KLT 782

overruled

Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 344 of 2017.

E From the Judgment and Order dated 19.02.2014 of the High Court of Kerala at Ernakulam in W. A. N. 240 of 2014.

K. Radhakrishnan, Sr. Adv. Ms. Kiran Bhardwaj, Adv. for the Appellant.

F H. R. Rao, Ms. Niranjana Singh, Arijit Prasad, R. M. Bajaj, Mrs. Anil Katiyar, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. Leave granted.

2. Heard the matter finally at this stage with the consent of the parties as it was fixed for final disposal.

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3. The question of law that is raised in this appeal and squarely arises for consideration is the following:

“Whether, on the facts and circumstances of the case, the High Court was justified in denying the claim for exemption under Section 10(37) of the Income Tax Act, 1961 to the appellant?”

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4. This question has arisen under the following circumstances: A

The appellant was the owner of 27.70 Acres of land in Sy. No. 18.60 hectares of paddy field in Block No. 17 of Attippra village in Thiruvananthapuram District comprised in Sy. No. 293/8. This was agricultural land. The appellant was using the same to grow paddy.

5. The Government of Kerala sought to acquire the aforesaid property of the appellant for the public purpose namely, '3rd phase of development of Techno Park'. For this purpose, Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'LA Act') was issued on 01.10.2005. An opportunity was given to the appellant to file his objections, if any, under Section 5A of the LA Act. Record does not reveal as to whether such objections were filed or not. However admittedly, thereafter, declaration under Section 6 of the LA Act was issued on 02.09.2006 wherein the Government had declared that it was decided to acquire the land for the aforesaid purpose. After this acquisition, the Land Acquisition Collector (Special Tahsildar), after following the due procedure, even passed the award on 15.02.2007. As per this award, compensation was fixed at Rs. 14,36,616/-. It appears that the amount of compensation fixed by the Land Acquisition Collector was not acceptable to the appellant. At that stage, some negotiations started between the parties on the amount of compensation and ultimately it was agreed by the Techno Park, for whom the property in question was acquired, to pay a sum of Rs. 38,42,489/-. After this amount was agreed upon between the parties, the appellant agreed to execute a sale deed of the property in question in favour of Techno Park. Such sale deed was executed on 08.05.2008 and duly registered with the Sub-Registrar, Kazhakkootam. While disbursing the aforesaid amount of sale consideration, the Techno Park deducted 10% of the amount of TDS and it was later refunded to the appellant herein by the Income Tax Department taking a view that no capital gain was payable on the aforesaid amount received by the appellant as the same was exempted under Section 10(37) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). We would like to re-produce the provisions of Section 10(37) of the Act, which read as under: B
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"Section 10(37). in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where- (i) such land is situate in any area referred to in item (a) or item H

A (b) of sub-clause (iii) of clause (14) of section 2;
(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

B (iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

C Explanation – For the purposes of this clause, the expression “compensation or consideration” - includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority.”

D 6. As it is clear from the above, on the transfer of agricultural land by way of compulsory acquisition under any law, no capital gain tax is payable. It is clear from the above that the initial view of the Income Tax Department, while refunding the aforesaid TDS amount to the appellant, was that the land in question was compulsorily acquired under the LA Act and, therefore, capital gain tax was not payable. The appellant
E filed income tax return for the Assessment Year 2009-10 and the income was also assessed accordingly. However, thereafter on 30.05.2012, a notice was issued to the appellant under Section 148 of the Act whereby the Income Tax Department decided to re-open the assessment on the ground that income which was assessable to income tax escaped assessment during the year 2009-10. The stand which was taken by the
F Revenue in this notice was that the amount of compensation/ consideration received by the appellant against the aforesaid land was not the result of compulsory acquisition and on the contrary it was the voluntary sale made by the appellant to the Techno Park and, therefore, the provisions of Section 10(37) of Act were not applicable. The appellant
G objected to the re-opening of the said assessment by filing his reply dated 30.11.2012. However, respondent no. 2 namely, the Joint Commissioner, Income Tax Range-I, Kawadiar, Thiruvananthapuram, took the view that the case did not come under compulsory acquisition and directed the Assessing Officer to compute the income accordingly. This direction dated 11.03.2013 of respondent no. 2 was challenged by
H the appellant by filing a Civil Writ Petition in the High Court of Kerala.

The learned Single Judge, however, dismissed the said writ petition vide judgment dated 11.07.2013 relying upon the earlier judgment of the same High Court in case of *Info Park Kerala vs. Assistant Commissioner of Income Tax* (2008) 4 KLT 782. The writ appeal preferred by the appellant met the same fate as it was dismissed affirming the view of the learned Single Judge.

7. It is in the aforesaid factual backdrop, this Court is to determine as to whether it can be treated that the land of the appellant was compulsorily acquired. From the facts mentioned above, it becomes apparent that the acquisition process was initiated by invoking the provisions of LA Act by the State Government. For this purpose, not only Notification under Section 4 was issued, it was followed by declaration under Section 6 and even Award under Section 9 of the LA Act. With the award the acquisition under the LA Act was completed. Only thing that remains thereafter was to pay the compensation as fixed under the award and take possession of the land in question from the appellant. No doubt, in case, the compensation as fixed by the Land Acquisition Collector was not acceptable to the appellant, the LA Act provides for making a reference under Section 18 of the Act to the District Judge for determining the compensation and to decide as to whether the compensation fixed by the Land Acquisition Collector was proper or not. However, the matter thereafter is only for quantum of compensation which has nothing to do with the acquisition. It is clear from the above that insofar as acquisition is concerned, the appellant had succumbed to the action taken by the Government in this behalf. His only objection was to the market value of the land that was fixed as above. To reiterate his grievance, the appellant could have either taken the aforesaid adjudicatory route of seeking reference under Section 18 of the LA Act leaving it to the Court to determine the market value. Instead, the appellant negotiated with Techno Park and arrived at amicable settlement by agreeing to receive the compensation in the sum of Rs. 38,42,489/-. For this purpose, after entering into the agreement, the appellant agreed to execute the sale deed as well which was a necessary consequence and a step which the appellant had to take.

8. In our view, insofar as acquisition of the land is concerned, the same was compulsorily acquired as the entire procedure prescribed under the LA Act was followed. The settlement took place only qua the amount of the compensation which was to be received by the appellant for the

- A land which had been acquired. It goes without saying that had steps not been taken by the Government under Sections 4 & 6 followed by award under Section 9 of the LA Act, the appellant would not have agreed to divest the land belonging to him to Techno Park. He was compelled to do so because of the compulsory acquisition and to avoid litigation entered into negotiations and settled the final compensation. Merely because the
- B compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to the voluntary sale. It may be mentioned that this is now the procedure which is laid down even under the Right to Fair Compensation and Transparency in Land
- C Acquisition, Rehabilitation and Resettlement Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties/land owners. Nonetheless, the character of acquisition remains compulsory.

9. This Court has doubts about the correctness of the judgment in the case of Info Park Kerala vs. Assistant Commissioner of Income
- D Tax (2008) 4 KLT 782. The Court in the said case took the view that since the title in the property was passed by the land owners on the strength of sale deeds executed by them, it was not a compulsory acquisition. We are not in agreement with the aforesaid view. It is clear that but for Notification under Section 4 and Award under Section 9 of the LA Act, the appellant would not have entered into any negotiations
- E for the compensation of the consideration which he was to receive for the said land. As far as the acquisition of the land in question is concerned, there was no consent. The appellant was put in such a condition that he knew that his land had been acquired and he cannot reiterate the same. The appellant, therefore, only wanted to salvage the situation by receiving
- F as much compensation as possible commensurate with the market value thereof and in the process avoid the litigation so that the appellant is able to receive the compensation well in time. If for this purpose the appellant entered into the negotiations, such negotiations would be confined to the quantum of compensation only and cannot change or alter the nature of acquisition which would remain compulsory. We, therefore, overrule the
- G judgment of the Kerala High Court in Info Park Kerala vs. Assistant Commissioner of Income Tax (2008) 4 KLT 782.

10. As a result the appeal of the appellant is allowed and proceedings under Section 148 of the Act are quashed.