

**A COLLECTOR OF SULTANPUR AND ANOTHER**

v.

**RAJA JAGDISH PRASAD SAHI**

November 5, 1964

**B [K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]**

*U. P. Zamindari Abolition and Land Reforms Act, 1952 (U.P. Act No. 1 of 1952), s. 6(d)—U.P. Zamindari Abolition & Land Reforms Rules, r. 8A—Agricultural income-tax dues—Adjustment against compensation amount due—If obligatory.*

**C** Pursuant to a certificate issued by the Deputy Commissioner proceedings were started against the respondent to recover instalment of tax, assessed under U.P. Agricultural Income-tax Act, 1949. The respondent moved the High Court under Art. 226 of the Constitution for directing the appellants to refrain from recovering or taking any steps for the recovery by coercive process, and in the alternative, if any amount was held recoverable, for directing the Revenue authorities to adjust it against compensation bonds given to the respondent under the U.P. Zamindari Abolition & Land Reforms Act with respect to his zamindari which vested with State under the Act. The High Court held that the Collector was bound to accept in satisfaction of the instalments of tax due the compensation bonds payable to the respondent under the Zamindari Abolition Act. In appeal

**D** HELD : (i) The Collector had no option in the matter of adjustment of the liability to pay agricultural income-tax against compensation amount due to the respondent, which was "still due". [34 A-B]

**E** Rule 8-A of the Zamindari Abolition and Land Reforms Rules is in terms mandatory and obliges the Collector to realise the tax in the manner provided. The expression "without prejudice to the right of the State Government to recover dues" with which the Rule opens does not transform that duty into an option. The clause merely provides that the obligation imposed upon the Collector of adjusting the dues against compensation will not prejudice the right of the State Government to recover the dues by other means. [33 F-H]

**F** (ii) The case clearly fell within the terms of s. 6(d) and the benefit of Rule 8-A was admissible to the respondent. The tax assessed was for the period ending June 30, 1952.

The assessment was made after the close of the previous year and after the date of vesting but the income which was liable to tax was the income of the previous year that is before the date of vesting. [34 F-G]

**G** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1014 of 1963.

Appeal by special leave from the judgment and decree dated April 7, 1960, of the Allahabad High Court in Civil Miscellaneous Writ No. 1562 of 1956.

**H** C. B. Agarwala, N. D. Karkhanis and O. P. Rana, for the appellants.

T. N. Sethi and Din Dayal Sharma, for the respondent.

The Judgment of the Court was delivered by

**Shah, J.** Agricultural income of the respondent—Raja Jagdish Prasad Sahi—was assessed by the Collector of Sultanpur to tax under the U.P. Agricultural Income-tax Act 3 of 1949 for the Fasli year 1359, corresponding to the period July 1, 1951 to June 30, 1952, and he was directed to pay the amount due in four equal instalments of Rs. 13,274-5-0 each. The respondent failed to pay the first and the second instalments which fell due respectively on December 9, 1952 and February 9, 1953. The Revenue authorities imposed upon the respondent liability to pay Rs. 4,400 in the aggregate as penalty for default in payment of the two instalments.

Pursuant to a certificate issued by the Deputy Commissioner of Sultanpur, proceedings were started against the respondent to recover Rs. 17,674-5-0 being the amount of the second instalment and penalty. The respondent then presented a petition under Art. 226 of the Constitution before the High Court of Judicature at Allahabad for a writ directing the Collectors of Sultanpur and Allahabad to refrain from recovering or taking any steps for recovery of the amount claimed under the certificate by coercive process, and in the alternative, if the amount or any portion thereof was held recoverable, for a writ directing the Revenue authorities to adjust the amount found so payable against compensation bonds given to the respondent under the U.P. Zamindari Abolition and Land Reforms Act No. 1 of 1951—hereinafter called “the Abolition Act”. The High Court held that the recovery of penalty not being based on orders properly passed under s. 31 of the U.P. Agricultural Income-tax Act, 3 of 1949, the threatened proceedings for sale were void, and that the Collector was bound to accept in satisfaction of the instalments of tax due the compensation bonds payable to the respondent under the Abolition Act. The Court accordingly quashed the proceedings for recovery of the amounts of penalty and directed that the Revenue authorities do grant in respect of the instalment of tax due relief to the respondent under Rule 8-A of the Zamindari Abolition and Land Reforms Rules in the manner indicated in the judgment. Against that order, the Collectors of Sultanpur and Allahabad have appealed to this Court, with special leave.

The claim to recover penalty has not been pressed before us and nothing need be said in that behalf. The Revenue authorities, however, claim that an order adjusting liability for the amount due as tax payable under the U.P. Agricultural Income-tax Act against compensation bonds cannot be made by the High Court.

- A This plea is sought to be supported on three grounds : (i) that compensation due to the respondent has already been paid to him by the issue of compensation bonds under s. 68 of Act 1 of 1951, and there is no machinery for making adjustment of tax liability against compensation bonds already delivered to the intermediary; (ii) that under Rule 8-A of the Zamindari Abolition and Land Reforms Rules the Collector has the option to adjust liability for tax due against the compensation payable, but he is not obliged at the instance of the intermediary to grant that relief; and (iii) that under s. 6 of Act 1 of 1951 the amount of tax payable for the period after July 1, 1952 is not liable to be set off against compensation payable to the intermediary.

C The first contention was not raised before the High Court. Nor are there sufficient materials on which a conclusion that all certificates due in respect of the compensation had been delivered to the respondent before he made a claim for adjustment under Rule 8-A may be recorded. As early as 1953 the respondent had made a claim that the amount of tax due be set off against the amount of compensation payable to him, and the case which the Revenue authorities seek to make out in this Court is that compensation bonds were issued in the year 1955. Reliance was in that behalf is placed upon certain averments made in the petition by the respondent before the High Court and upon recitals in the application for leave to appeal to this Court against the order passed by the High Court. In paragraph-36 cl. (4) the respondent had claimed before the High Court that if the amount or any portion thereof is held to be recoverable, it may be directed to be adjusted by the Revenue authorities against compensation bonds of the face value of such amount *given* to the petitioner under the Abolition Act. In the grounds mentioned in the application for certificate that the case was fit for appeal to this Court, it was asserted by the appellants that the bonds were given to the respondent under the Abolition Act in payment of compensation and there remained no compensation money payable to the respondent. The admission in the petition relied upon is not so clear and unambiguous that we would be justified in acting upon it for the first time in this Court, even though no reliance was placed upon it in the High Court. Nor can reliance be placed upon the plea raised for the first time in the petition for certificate under Art. 133 of the Constitution.

- H Mr. Agarwala appearing on behalf of the Revenue authorities of the State of U.P. also read out portions of a letter of the Collector, Allahabad, in which that officer has stated that after the order

of the High Court, the respondent was called upon to surrender the amounts withdrawn by him under the compensation bonds, but the respondent failed to do so, and the public debt office was in the circumstances unable, in pursuance of Rule 8-A of the Rules framed under the Abolition Act, to allow adjustment of tax due against compensation bonds. We would not be justified in considering any such additional evidence at this stage. If there was any substance in the first ground, the matter should have been brought to the notice of the High Court and evidence in support thereof should have been tendered in that Court.

The second and the third grounds may be considered together. By the U.P. Agricultural Income Tax Act 3 of 1949, agricultural income-tax and super-tax at the rates mentioned in the Schedule to the Act are made chargeable for each year, subject to the provisions of the Act and the Rules framed, on the total agricultural income of the previous year of every person. The expression "previous year" is defined by s. 2(13) as meaning twelve months ending on the 30th day of June preceding the year for which the assessment is to be made. By s. 6 of the Abolition Act on the issue of an appropriate notification by the State Government, all estates vest in the State free from all encumbrances. When such a notification is published in the State Gazette, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in the Act, the consequences set out in s. 6, from the beginning of the date of vesting ensue in the area to which the notification relates. By cl. (d) of s. 6, one of the consequences is that :

"all arrears of revenue, cesses or other dues in respect of any estate so acquired and due from the intermediary or an arrear on account of tax on agricultural income assessed under the U.P. Agricultural Income Tax Act, 1948 for any period prior to the date of vesting shall continue to be recoverable from such intermediary and may, without prejudice to any other mode of recovery be realized by deducting the amount from the compensation money payable to such intermediary under Chapter III :"

Section 26 authorises the State Government to make rules for the purpose of carrying into effect the provisions of Ch. II of the Act in which s. 6 occurs. Chapter III of the Act deals with the assessment of compensation. Section 68, which occurs in Ch. IV, provides that compensation payable under the Act shall be given in cash or in bonds, or partly in cash and partly in bonds as may

A be prescribed. Under s. 26 read with s. 6(d), Rule 8-A was framed by the State Government. That Rule, which came into force from August 17, 1954, provides :

B “Without prejudice to the right of the State Government to recover the dues mentioned below by such other means, as may be open to it under law :

C (1) all arrear of land revenue in respect of the estates which have vested in the State Government as a result of the notification under Section 4 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Act I of 1951), and of tax on agricultural income assessed under the U.P. Agricultural Income Tax Act, 1948 (U.P. Act III of 1949), due from an intermediary for any period prior to the date of vesting shall be realized :

D (a) in the case of an intermediary who was assessed to a land revenue of Rs. 10,000 or more from the amount of interim compensation due to him, and

E (b) in the case of an intermediary who was assessed to a land revenue of less than Rs. 10,000 per annum by deduction from the amount of compensation payable to him;

(2) . . . . .”

F The argument raised by the State Government that Rule 8-A invests the Collector merely with an option to recover amounts due as land revenue or as agricultural income-tax by adjustment against compensation and does not oblige him to give a set off, cannot in our judgment be accepted. In terms Rule 8-A states that the amount due from an intermediary for any period prior to the date of vesting *shall* be realized in the manner indicated in cls. (a) & (b). The Rule is in terms mandatory and obliges the Collector to realize the tax in the manner provided. The expression “Without prejudice to the right of the State Government to recover dues” with which the Rule opens does not transform that duty into an option. The clause merely provides that the obligation imposed upon the Collector of adjusting the dues against compensation will not prejudice the right of the State Government to recover the dues by other means. If, for any reason, the adjustment cannot be made effective and the amount due to the State as tax or as land revenue cannot be recovered by adjustment, the right of the State Government to recover the dues in any other

manner permitted by law is not to be prejudiced. The High Court was, therefore, right in holding that the Collector had no option in the matter of adjustment of the liability to pay agricultural income-tax against compensation amount due to the respondent, which in the view of the High Court was "still due".

It was urged, however, that Rule 8-A is framed in exercise of the power reserved under s. 26 of the Abolition Act to effectuate the provisions of cl. (d) of s. 6, and adjustment under the Rule can only be made in respect of agricultural income-tax payable for any period prior to the date of vesting. The scheme of the Act, it was said, is that notwithstanding the vesting of the estate in the State by s. 6, arrears of land revenue or other dues and agricultural income-tax continue to remain recoverable and the amount so continuing to remain recoverable is liable under the Rules to be adjusted against compensation payable for compulsory termination of the rights of the intermediary. Relying upon the clause "an arrear on account of tax on agricultural income assessed under the U.P. Agricultural Income Tax Act, 1948 for any period prior to the date of vesting" in s. 6(d) it was urged that even if under s. 3 of the U.P. Agricultural Income Tax Act, 1948, tax is recoverable on the total agricultural income of the previous year, it is still tax due for the year of assessment and therefore tax assessed on the respondent for the period July 1, 1952 to June 30, 1953, does not fall within the terms of s. 6(d) of the Act and resort cannot be had to Rule 8-A for claiming adjustment of liability to pay tax against the amount of compensation. We are unable to accept this plea. Section 3 of the U.P. Agricultural Income-tax Act emphatically charges the total agricultural income of the previous year to tax. It is true that assessment under the Act is made after the close of the previous year, but the income which is liable to tax is the income of the previous year. The Legislature has unambiguously expressed its intention to impose liability to charge agricultural income of the previous year. The tax assessed is therefore for the period of the previous year *i.e.*, for the period which ended on June 30, 1952. The case clearly fell within the terms of s. 6(d) and the benefit of Rule 8-A was admissible to the respondent.

Rule 8-A requires the Collector to adjust the liability to pay agricultural income-tax due by the intermediary against compensation payable to him. This order, the High Court has directed the Collector to make in favour of the respondent, but in making the order the High Court has proceeded on the assumption that compensation bonds remain to be delivered to the respondent.

- A** For reasons already set out, there are no materials on which the truth of the assumption may be ascertained. We, therefore, set aside the order passed by the High Court and remand the case to the High Court for deciding whether there are any compensation bonds remaining to be delivered, and if not, whether by any appropriate order or direction, adjustment of tax liability against compensation due to the respondent, which has been directed by the High Court, under Rule 8-A can be made effective. The High Court will dispose of the petition on the evidence already on record, or such other evidence as may be brought on the record by the parties.
- B**
- C** There will be no order as to costs of this appeal.

*Case remanded.*