

IN THE COURT OF REVIEW

Civil Jurisdiction

Review No.2 of 1971

Between:

RAM SEWAK s/o Gulam

- and -

THE COMMISSIONER OF INLAND REVENUE

Dated of Hearing: 27th July, 1971

Delivery of Judgment:

K.C. Ramrakha and H. Patel for the Appellant.
Hinton and Raghbir for the Defendant.

JUDGMENT

A Statement of Agreed Facts was submitted and in addition the Appellant gave evidence on oath. As was to be expected, he could give little detailed information concerning his accounts and his tax return, having relied on other persons to prepare them. This is not unusual in this country, notwithstanding that he used to be a moneylender himself.

The history of his land transactions is as follows:-

1. On 27.6.63, he and three others bought a freehold Ct.7762 comprising 248 acres 3 roods.
2. On 1.10.63, four months later, and thereafter, he and his partners sold this land in various parcels.
3. On 14.10.63, immediately after the commencement of these sales, he bought another freehold Ct.8930 in his own name.

4. In May and June 1964, seven months later, CT.8930 was divided into smaller parcels and leased to various persons.
5. On 2.6.64, the Appellant himself bought a 20 acre parcel of CT.7762.
6. In June 1965, cane contracts were granted to the lessees in respect of certain of the leases of parcels of CT.8930.
7. On 23.3.66, the Appellant sold his freehold interest in a part of CT.8930 which had been leased. His price was \$14,000 for his encumbered freehold but the lessees transferred their valuable leasehold interest with the cane contract on it for only 10 cents.
8. On 31.8.67, the Appellant sold a further freehold interest in a part of C.T.8930 which had been leased. His price was \$15,220 for his encumbered freehold but the lessee transferred his valuable leasehold interest with the cane contract on it for only 10 cents.

The Commissioner assessed the Appellant in respect of the years 1966 and 1968 to include the instalments of the purchase prices and the tax was paid. The appellant objected to a similar assessment for the year 1969, and when his objection was disallowed, he appealed to this Court.

It is relevant to note also that in the transaction number 7 of the 23.3.66, the lessees were the Appellant's son Surendra Prasad and one Chandra Prakash. Chandra Prakash's part in the transaction was carried out by the Appellant as the Attorney for Chandra Prakash under a Power of Attorney. Likewise, the lessee in the transaction number 8 of 31.8.67, Shiri Ram, was represented throughout by the Appellant as his Attorney under a Power of Attorney. Payment in each of these transactions was by instalments deductible from the net cane proceeds of the purchase, with interest not payable on the first eight years of instalments.

The net result of these transactions is that the Appellant bought freehold land in each case, subdivided it, and then sold the subdivided parcels, he having entire control of both the freehold and leasehold interests in the case of CT.8930 and he and his three partners having entire control in the case of CT.7762.

Mr. Ramrakha, for the Appellant, submitted that there was a great feeling of insecurity about land in this country, and so a farmer could want to buy as much freehold as possible. I agree entirely. This, of course, creates the ideal market for the Appellant if he buys large tracts of freehold land, and subdivides it.

Mr. Ramrakha submitted further that the vagaries of the sugar laws were such that a sugar cane contract could only be obtained after showing title to land, and fresh contracts were unobtainable otherwise.

Again I agree entirely, but surely this again creates a shortage of cane contracts and enhances the value of land with a contract, particularly if, as in these cases, the purchaser was able to buy the freehold, and the leasehold with contract, and thus merge the two and end up with freehold land with a cane contract.

The Appellant's explanation of these transactions was that he had run out of money for his former moneylending business, he had got further into debt through the expense of clearing, planting and subdividing the land, so he had to sell to save himself from bankruptcy. He claimed he had no idea at the time he purchased the land, that he would resell. He was forced to do so for economic reasons.

Mr. Ramrakha submitted further that because the Commissioner had given his reason for taxing the profit on sales in his letter of 20.3.69 Exh. "I", he was precluded from arguing any other reason and the Court was precluded from considering any other reason. I do not agree with this submission. The Commissioner is not obliged by law to give any reason for his disallowance of an objection. He only has to "consider" it. The taxpayer may then appeal to this Court and he is restricted to the ground stated in his original objection unless otherwise granted leave by this Court.

Reverting to the facts of this case, I am in no doubt whatsoever that the Appellant embarked upon the business of dealing in property when he purchased both these freeholds. He realised from the state of the Sugar industry and the insecurity of tenure of leasehold land, that there was profit to be made in acquiring freehold land, dividing it up, obtaining a cane contract

on the parcels, planting cane and then selling the leasehold and freehold interests. He had to create the leasehold interests in order to show title to smaller parcels and obtain a cane contract for each. He did this by giving Agreements to lease to his son and persons for whom he held or would hold a Power of Attorney. No rent was paid. As soon as a contract was obtained and cane had been planted, he sold the two interests, freehold and leasehold to the one purchaser. The cane contract went with the leasehold interest for 10 cents, and the money went to the Appellant for his freehold reversion. The purchaser merged the two and landed up with a cane contract over freehold land. I would go further and say that on the facts and the timing of these transactions, it is apparent that the Appellant purchased the land with the idea of dealing both in it and also in cane contracts. It could be a far more profitable business than monelending.

I confirm the assessment Exh. "N" by the Commissioner and award costs assessed at \$50.00 to the Commissioner.

(M.J.C. SAUNDERS)

COURT OF REVIEW

August, 1971.