



LAW COMMISSION OF INDIA

FIFTY-SECOND REPORT

**ESTATE DUTY ON PROPERTY
ACQUIRED AFTER DEATH**

DECEMBER, 1972

**GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE**

(COPY)

D.O. No. F.5(2)/72-L.C.

P. B. GAJENDRAGADKAR

CHAIRMAN
LAW COMMISSION
GOVERNMENT OF INDIA
NEW DELHI—110001
December 4th, 1972.

My dear Minister,

I am forwarding herewith the 52nd Report of the Law Commission on Estate Duty on Property Acquired After Death. This Report is made by the Commission *suo motu* by virtue of its terms of reference, particularly those in clauses 2 and 8.

The Commission believes that the recommendations made in its Report are non-controversial and will receive universal acceptance, and hopes that the Union Government will implement the same at an early date by suitable legislation.

Yours sincerely,

(P. B. Gajendragadkar)

Shri H. R. Gokhale,
Minister for Law & Justice,
Government of India,
NEW DELHI.

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Intro-
ductory.

1. This Report deals with a question which has been raised with reference to the valuation of property for the purposes of the Estate Duty Act, 1953. The question appeared important enough to require urgent consideration, and has, therefore, been taken by the Law Commission *suo motu*. The point was raised in a letter received from a Member of the Bar,¹ and a study of the law on the subject disclosed that the present statutory provision could cause serious hardship in certain situations, to be discussed in detail later. Hence this Report.

Before arriving at our final conclusions, we had put our tentative proposals in the form of a draft Report, a copy of which had been circulated to the Ministry concerned.² The Ministry broadly agreed with our proposal, but remarked that it was not aware of any enactment providing for acquisition without compensation.

We may, with reference to the above comment, point out that it is not inconceivable that an enactment providing for acquisition of property without compensation may be passed. In fact, we gather that in Kerala, an Act providing for the acquisition of forest lands without compensation was recently passed. It is understood that the Act was declared to be void by the High Court; but it is also understood that an appeal against the judgment of the High Court is pending before the Supreme Court.

Point for
considera-
tion.

2. The point to be considered relates to the date of valuation under the Estate Duty Act with respect to property compulsorily acquired. It is well known that estate duty is leviable on property passing on death. As regards computing the value for the purposes of this duty, the principal provision³ in the Estate Duty Act provides—

“36. *Principal value how to be estimated—*

(1) The principal value of any property shall be estimated to be the price which, in the opinion

1. File No. F. 5(2)/72-L.C., Serial No. 1.

2. Ministry of Finance, Department of Revenue & Insurance.

3. Section 36(1), Estate Duty Act, 1953.

of the Controller, *it would fetch if sold in the open market at the time of the deceased's death*".¹

(Rest of the section is not material for purposes of this Report).

Now, hardship may result in cases where the property subject to duty is compulsorily acquired without compensation, or for inadequate compensation, after it has passed on death to the person accountable. The person accountable for the duty under the Act has, notwithstanding such acquisition, to pay duty on the full value of the property, though he has virtually obtained nothing or has obtained something less than the full value.

We may note that the Ministry² concerned is broadly in agreement with the idea underlying the suggestion for the amendment of the Estate Duty Act made in the draft Report. It has, however, mentioned that it is not aware of any enactment whereunder any property can be acquired without compensation.

General principle as to the date of valuation.

3. The general principle followed in the Act in this respect may first be examined. The principle seems to be that the law of estate duty treats as irrelevant events in relation to the property subsequent to the passing of the property on death. Thus, even if the value of the property has gone up very high soon after the death, the duty is chargeable only on the basis of the market value of the property on the date of death. Conversely, if, after death of the owner, the property is destroyed by fire or earthquake, the duty has still to be paid on the basis of the property as in existence at the time of death. Any sudden depreciation in value immediately after the death has also to be disregarded. All this, no doubt, is subject to the power of the Central Government to grant reductions or remissions in respect of any class of persons or properties for sufficient reasons.³

1. Emphasis supplied.

2. Government of India, Ministry of Finance, (Department of Revenue & Insurance), File No. 134(18)/72-TPL.

3. Section 33(2), Estate Duty Act, 1953.

Hardship
resulting
from present
rigid provi-
sion.

4. Nevertheless, the hardship experienced in the case of acquisition without compensation deserves special treatment. Acquisition without compensation is an act of the sovereign which, without any fault of the person accountable, creates a situation where a person is virtually made to pay out of his pocket. The passing of an estate to a person should not become a source of loss to him: and, if the abstract principle¹ that the date of death is the date of valuation is adhered to in all its rigidity, hardship does arise.

The situation where some compensation is paid, but the amount is less than the market value, is also somewhat similar.

Theoretical
principle
about estate
duty.

5. One need not, for the present purpose, question the theoretical principle that estate duty represents a duty due from the estate to the State. In England, the Chancellor of the Exchequer, Sir William Harcourt, when introducing the estate duty in 1894, observed in his Budget Speech²—

“The title of the State to a share of the accumulated property of the deceased is *anterior to that of* the interest to be taken by those who are to share in it.”

Theoretically, it may also be suggested that estate duty is ‘back tax’. As Mr. Courtney said in the Parliamentary Debates in England in 1894 on the Finance Bill—

“The income tax in its present form involved the necessity of taking all income at the same rate; The rich man who died was, therefore, in debt to the state. There was an accumulated deficiency in his contributions to direct taxation, and the simple defence of the... estate duty... was... that it was a debt due from the estate of the deceased to the state in consequence of the deficiency of his contri-

1. Para. 3, *supra*.

2. The Times, Parliamentary Reports, April 17, 1894, quoted by Sendford, *Taxing Personal Wealth* (Allen and Unwin) (1970), page 45.

butions during his life.... The duty was a debt which must be paid out of the dead man's effects before they could be distributed."¹

6. But the point that requires to be emphasised is, that this theory leads to unnecessary hardship in a situation of the nature mentioned above,² because the person accountable is, in effect, taxed "not according to his own wealth, but according to his father's wealth."³

As Professor Kaldor⁴ has observed—

"The legal notion that the estate duty is a tax on the deceased is really nonsensical—though it may have had rather more justification in the old days when people saved specially during their lifetime to cover death duty liabilities on their decease. If the incidence of estate duty is really on the legatee and not the testator, the sensible thing is to recognise this and to impose a tax on the recipient."

Position in
England.

7. It may be noted that in England, allowance was, for some time, made for acquisition of property.⁵ Where an interest in land, after bearing estate duty, was acquired under compulsory powers (or by agreement where compulsory powers were available) after 17th November, 1944 and before 1st January, 1954, and the compensation was less than the value on which duty was paid, the duty on that interest was subject to revision⁶.

1. Parliamentary Debates, (Finance Bill in Committee) May 29, 1894. Sandford, *Taxation of Personal Wealth* (1970), page 45.

2. Para. 4, *supra*.

3. This was one of the points made in the general discussion in 1894 in Parliament on the relative merits of estate duty and inheritance tax. See Mr. Balfour's Speech, Hansard, May 10, 1894, cited in Sandford, *Taxing Personal Wealth* (1970), page 47.

4. Nicholas Kaldor, "The Reform of Personal Taxation", *Essays on Economic Policy*, Vol. I, Duckworth (1964), pp. 212-213; cited in Sandford, *Taxing Personal Wealth* (1970), pp. 152-153.

5. Halsbury, 3rd Ed. Vol. 15, page 56, para. 110.

6. Finance (No. 2) Act, 1945 (9 and 10 Geo. 6 c. 13), s. 57. Finance Act, 1949 (12, 13 and 14 Geo. 6 c. 7), s. 32.

Change in
the law
needed.

8. We are, therefore, of the view that relief should be granted in the following situations :—

- (1) Where it is proved to the satisfaction of the Controller that the property has, within six months of the deceased's death, been acquired without compensation under any law. The value of such property should not be taken into account for the purposes of the Act, in such cases.
- (2) Where it is proved to the satisfaction of the Controller that the property has, within six months of the deceased's death, been acquired by or under any law which provides for compensation. The amount of such compensation should be substituted for the value of the property for the purpose of this Act. In such cases, there will be no total exemption, but only substitution of the amount for another, for the purpose of valuation.

As to the period of six months mentioned in our proposal above, a few words are in order. A query could be raised why property acquired after the expiry of six months from the date of death, should not enjoy the proposed relief, merely because a period of six months has elapsed. Such queries can be answered only by stating that any time-limit in this regard is bound to be arbitrary, and that position would remain valid even if the period is to me, say, one year.

But we would like to add that, where acquisition without compensation or acquisition for inadequate compensation, takes place after the expiry of the proposed period of six months, it would be proper if the Government examines the question whether, in the circumstances of the particular case, relief by an order passed under the Act,¹ should not be granted.

Case of
destruction
by fire etc.

9. During our consideration of the subject, we considered the question whether cases of destruction of the property after death by fire, earthquake, war or riot, should be treated on the same footing as the

1. Section 33(2).

case of property acquired after death. It is true that the theory of estate duty is, that the property had come by windfall, and without any effort on the part of the heir, and that the theory breaks down in case it is found that the property is destroyed after death before the person accountable is called up to pay duty. It is also true that if there is no insurance of the property against fire, earthquake etc.,¹ the accountable person gains nothing and yet has to pay the duty. The 'gain' on the date of death and before destruction of the property, is gain only on paper, or, in any case, for a very short time.

But we do not think that we should recommend a statutory provision for such cases; we apprehend that these will be few, and they can be left to be dealt with under the specific provision in the Act,² authorising the granting of relief by the Government. Suitable action can be taken under that provision, if considered appropriate in the circumstances of the particular case.

Recommendation.

10. We accordingly recommend that the following section should be inserted³ in the Estate Duty Act, 1953—

"36-A. (1) Where it is proved to the satisfaction of the Controller that the property has, within six months of the deceased's death, been acquired without compensation under any law, the value of such property shall not be taken into account for the purposes of this Act.

(2) Where it is proved to the satisfaction of the Controller that the property has, within six months of the deceased's death, been acquired by or under any law which provides for compensation, the amount of such compensation shall be substituted for the value of the property for the purpose of this Act."

1. See paragraph 3, *supra*.

2. Section 33(2).

3. This is a very tentative draft. It can be put as section 36-A.

We should, before we part with this Report, place on record our warm appreciation of the assistance we have received from Mr. Bakshi, Secretary of the Commission, in dealing with the problem covered by the Report. As usual, Mr. Bakshi first prepared a draft which was treated as the Working Paper. The draft was considered by the Commission point by point, and, in the light of the decisions taken tentatively by the Commission, Mr. Bakshi prepared a final draft for consideration and approval by the Commission. Throughout the study of this problem, Mr. Bakshi took an active part in our deliberations, and has rendered very valuable assistance to the Commission.

P. B. Gajendragadkar	Chairman
V. R. Krishna Iyer	Member
P. K. Tripathi	Member
S. S. Dhavan	Member
P. M. Bakshi	Secretary

Dated : New Delhi.
the 4th December, 1972.