

(1970) 08 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 4395 and 4359 of 1968

Aditya Vir Singh

APPELLANT

Vs

The Collector, Bijnor and Another

RESPONDENT

Date of Decision : 27-08-1970

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 31(1)
Uttar Pradesh Large Land Holdings Tax Act, 1957 — Section 21(1)

Citation : (1970) 40 AWR 757

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : V.K. Khanna, for the Appellant; S.C. for Opposite Parties, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The Petitioner is aggrieved by recovery proceedings in respect of tax and penalty assessed against him for the assessment year 1362 Fasli under the UP Agricultural Income tax Act and for the assessment years 1365 Fasli to 1368 Fasli under the UP Large Land Holdings Tax Act.

2. It appears that the penalty has been imposed upon the Petitioner for the several years because of his omission to pay the tax within time.

3. The validity of the recovery proceedings is challenged by Shri V.K. Khanna, for the Petitioner, on a number of grounds. It is alleged that no penalty orders were in fact passed by the assessing authority. Alternatively, it is said that even if penalty orders were made, they were made without prior notice to the Petitioner. It is also contended that the entire recovery proceedings are barred by limitation.

4. We find from the record now placed before us by Shri R.M. Sahai, learned Standing Counsel for the Respondents, that penalty orders were made for the years 1362 and 1363 u/s 31(1) of the UP Agricultural Income tax Act and for 1365 under the UP Large Land Holdings Tax Act. No record has been produced

before us showing that penalty orders were made for the years 1366, 1367 and 1368.

5. As regards the penalty orders for the years 1362, 1363 and 1365, there is nothing on the record to show that the assessing authority provided an opportunity to the Petitioner to show cause against the imposition of a penalty. Section 31(1) of the UP Agricultural Income tax Act, provides:

Penalty for default: When an Assessee is in default in making a payment of Agricultural Income tax, the Assessing Authority may, in its discretion, direct that in addition to the amount of arrears, a sum not exceeding one quarter of that amount shall be recovered from the Assessee by way of penalty.

This provision was considered by a Bench of this Court in *State of UP v. Raghuvansh Narain Singh* 1966 RD 87 and it was held that an order made under it imposing a penalty without prior notice to the Assessee affording him an opportunity to show cause against the imposition of a penalty is bad in law. Following that decision we have no hesitation in holding that the penalty orders made for the years 1362 and 1363 under the UP Agricultural Income tax Act cannot be sustained and must be treated as void.

6. The penalty order for the year 1365 was passed u/s 21(1) of the UP Large Land Holdings Tax Act, which reads:

Penalty for default in payment of tax: (1) When an Assessee is in default in making payment of any instalment of the holding tax, the Assessing Authority may, in its discretion, direct that, in addition to the amount of the arrears, a sum not exceeding one eighth of that amount shall be recovered from the Assessee by way of penalty.

It will be seen at once that the provision is in pari materia with Section 31(1) of the UP Agricultural Income tax Act. Upon the reasoning which appealed to this Court in *State of UP v. Raghuvansh Narain Singh* (supra), we hold that no penalty can be imposed u/s 21(1) of the UP Large Land Holdings Tax Act without providing an opportunity to the Assessee to show cause against the imposition of such penalty. On that ground the penalty imposed upon the Petitioner for the year 1365 must also be treated as void. The penalty orders for the aforesaid years being a nullity, the recovery proceedings in respect of them cannot be allowed to proceed.

7. We are of opinion that the Collector has no jurisdiction to recover any amount on account of penalty against the Petitioner.

8. As regards the recovery proceeding in respect of tax assessed under the UP Agricultural Income tax Act and the UP Large Land Holdings Tax Act for the aforesaid years, there is considerable dispute before us as to whether the proceedings were taken within time. Sri R.M. Sahai has referred us to a number of documents and has attempted to show that the recovery proceedings were taken well within the period of limitation. Sri V.K. Khanna challenges the

genuineness of those documents and contended that they are completely unworthy of reliance. That is a matter which it is not possible for this Court to investigate conveniently in the exercise of its jurisdiction Under Article 226 of the Constitution. Accordingly, we decline to grant relief to the Petitioner so far as the recovery proceeding in respect of tax are concerned.

9. The petitions are allowed in part. The recovery proceeding in respect of penalty is quashed. Relief against the recovery proceeding in respect of tax is refused. In the circumstances, there is no order as to costs.