
(1976) 02 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 1748 of 1973

B.A. Basith

APPELLANT

Vs

Income Tax Officer, Central Circle-I, Bangalore

RESPONDENT

Date of Decision : 18-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 281

Citation : (1981) 128 ITR 434

Hon'ble Judges : M.K. Srinivas Iyengar, J

Bench : Single Bench

Judgement

M.K. Srinivasa Iyengar, J.—In this petition filed under arts. 226 and 227 of the Constitution of India, an order purporting to have been made under s. 281 of the I.T. Act, 1961, dated April 7, 1963 (Ex. I), and the sale proclamation issued for the sale of properties - Survey Numbers 69/2 and 70/1 of Kempapura Agrahara Village, Bangalore North Taluk (Ex. II dated May 19, 1973), by the second respondent, Tax Recovery Officer, are challenged and it is prayed that the same may be quashed.

2. The petitioner was the owner of these properties and according to him, he transferred these properties to his sons on January 24, 1966, by way of gift. The gift was an oral one and in accordance with the Mohammadan law. The ITO, on February 26, 1973, issued a notice to the petitioner and a notice dated February 28, 1973, to his sons and others asking them to show cause why the transfers of the said properties on January 24, 1966, should not be held as void and were intended to defraud the revenue. On the ground that the petitioner and others did not show any cause, the ITO made an order dated April 7, 1973. In that order he stated that proceedings for assessment years 1964-65 to 1967-68 were pending and huge tax liabilities were anticipated and accordingly he held that the transfer of the immovable properties to the sons was with the intention to defraud the revenue and the provisions of s. 281 are clearly attracted. The sale proclamation dated May 19, 1973, was issued to recover the amount of tax due

for the assessment years 1964-65 and 1965-66, pursuant to the certificate issued in that behalf on March 29, 1971.

3. It is common ground that so far as the assessments made for 1964-65 and 1965-66 are concerned, they have been set aside and as yet there is no demand outstanding or those years. It is, therefore, clear that the properties could not be sold or any recovery proceedings taken for the recovery of any tax for the said two assessment years. Consequently, the sale proclamation dated May 19, 1973, has become infructuous and is liable to be quashed.

4. The order made by the ITO dated April 7, 1973, is challenged various grounds. It is contended, (i) that s. 281 does not contemplate making of any order at all and the purported order has no sanction of law (ii) that only proceedings for assessment for 1964-65 and 1965-66 were pending at the date of transfer and those proceedings were yet to be completed and there is no demand against which the transaction could be declared as void, and (iii) there were no other proceeding for assessment pending as at the date of transfer and a general order as has been made is untenable.

5. Section 281 of the I.T. Act, 1961, is as follows :

"Where, during the pendency of any proceedings under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceedings....."

6. The section by itself does not contemplate making of any order by any authority. It is declaratory in nature. It declares that transfers effect by way assessee with intent to defraud the revenue during the pendency of any proceedings under the Act shall be void against any claim a respect of any tax or other sum payable by the assessee "as a result of the completion of the said proceedings." Therefore, three requirements under the section are, (i) that there must be a transfer of property, (ii) that it should be during the pendency of a proceeding under the Act, and (iii) that the transfer must be with intent to defraud the revenue, and if these conditions are satisfied then the transfer shall be void in respect of any tax or sum payable by the assessee as a result of the completion of the proceedings during the pendency of which the transfer was effected. The effect of the section is that if such transfer with intent to defraud the revenue has been made and any claim for tax arises after the completion of the proceedings during the pendency of which the transfer took place, such tax or other sum can be recovered by proceeding against the property notwithstanding the said transfer. There is no question of adjudication of validity of the transfer prior to the stage of actual recovery of any amount that may become due consequent on the pending proceedings being completed. After the

proceedings are completed and if payment is not made and proceedings are taken for recovery by proceedings against certain properties and such recovery is objected to by the assessee or the transferees and it is contended that the transfer was with intent to defraud the revenue, then such dispute will have to be adjudicated. Rules, under Schedule II to the I.T. Act provide for adjudication of such claims. It is, therefore, clear that the declaration or order made by the ITO at this stage is without the authority of law.

7. It is contended by Sri Sarangan, the learned advocate for the petitioner, that proceedings for the assessment years 1966-67 and 1967-68 were not pending as at the date of transfer as the notice to file the return for the assessment year 1966-67 was dated May 19, 1966, and was served on the assessee only on June 4, 1966, and in regard to the year 1967-68 the return had been filed voluntarily on August 14, 1967. He contended that in view of these dates the transfer as had been notified by the ITO being on January 24, 1966, would not be during the pendency of any proceedings in relation to these two assessment years. But it was submitted by Sri Rajasekhara Murthy, learned counsel for the revenue, that the khata had been transferred in the revenue records on July 4, 1967, and that would be the relevant date of transfer. It is unnecessary to decide this question in these proceedings at this stage. Even on the basis that the relevant date is July 4, 1967, proceedings for 1967-68 could not be said to be pending on the date of transfer.

8. As has been stated earlier, transfers which have been effected with intent to defraud the revenue would be void only in so far as claims arising out of the proceedings pending as on the date of the transfer and only in so far as the claims arising under those proceedings which have been completed. Transfers cannot be attacked or recoveries made in respect of other demands in regard to which proceedings were not pending at the time of the transfer.

9. It is also urged by Sri Sarangan, learned counsel for the petitioner that there was no material before the ITO to hold that the transfers were with intent to defraud the revenue. He urged that returns in respect of assessments for all the earlier years had been accepted and there was no outstanding demand and, therefore, there was no reason to think that the assessee was anticipating huge demands being made as at the date of the transfer. He submitted that merely because huge demands were made years after the transfer, the ITO could not have inferred that the transfers themselves were with intent to defraud the revenue. In the view have taken that the order made is itself without the sanction of law and the question of the validity of the transfer would arise only when specific demands are made against the properties and proceedings are taken to recover the same by proceedings against the properties, it is unnecessary to consider the question on merits as to whether the ITO was justified coming to the conclusion that the transfers were with intent to defraud the revenue at this stage. The question would arise only when specific demands are raised and sought to be recovered from the properties and persons interested put forth their

claims against such recovery.

10. For the reasons stated above, the order, Ex. I, is quashed. Shri Rajasekhara Murthy, learned counsel for the revenue, submitted that the certificate itself has been withdrawn and proceedings by way of sale have been dropped. In these circumstances, there is no need to quash the sale proclamation, Ex. 2 as it is not being pursued. Parties to bear their own costs.