

(1963) 03 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No's. 376 and 377 of 1963

B.A. Sriramiah

APPELLANT

Vs

Income Tax Officer, Kolar, and Another

RESPONDENT

Date of Decision : 31-03-1963

Acts Referred:

Income Tax Act, 1922 — Section 46 (1), 46 (2)

Citation : (1964) 52 ITR 408

Hon'ble Judges : K.S. Hegde, J;Ahmed, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; D.M. Chandrasekhar, for the Respondent

Judgement

Hegde, J.—The sale proceedings impugned in these petitions will have to be held invalid as the amount for the recovery of which the properties are purported to have been sold (under the sale proclamation issued) is much more than the amount due from the assessee. The certificates issued u/s 46(2) of the Indian Income Tax Act, 1922, show that the amount due from the assessee is Rs. 24,933.16. It is now admitted on behalf of the revenue that the amount due from the assessee is only Rs. 20,997.33. According to the assessee, it was only Rs. 19,000 and odd. In any case the amount shown in the certificates is more than what was due from the assessee. It cannot be said that the mistake in question was due to any clerical error. That being so, the proclamation issued should be held to be invalid which means that the sale held in pursuance of that proclamation is also invalid.

2. A similar question came up for consideration before a Bench of the Madras High Court in Santosha Nadar v. First Additional Income Tax Officer, Tuticorin. This is what the Officiating Chief Justice observed in that connection :

"In this case the Collector had jurisdiction to recover the actual amount of arrears due on the certificates issued u/s 46(1) of the Act. But his jurisdiction was limited to the realisation of the actual arrears by enforcing the provisions of

the Revenue Recovery Act. When he specified a higher sum than was actually due as recoverable, the subsequent proceedings under the Revenue Recovery Act were really without jurisdiction and a writ of prohibition could issue. If, for instance, before the sale had taken place the petitioner had asked for a writ of prohibition it would have been issued. The mere fact that in this case the sale had been held really does not affect the position. There is still something which the Collector has to do to confirm the sale held without jurisdiction. That can be prevented by the issue of a writ of prohibition despite the pendency of the application before him u/s 38 of the Revenue Recovery Act. There is one other feature. Though we have referred to Rs. 64,994 as due on the date of the attachment, the position that now emerges is that the assessed tax for 1946-47 cannot be recovered because of the order of assessment itself was one passed without jurisdiction.

On the short ground that a higher sum was sought to be recovered under the Revenue Recovery Act than what was lawfully due, the petitioner would be entitled to a writ of prohibition restraining the revenue authorities from continuing the recovery proceedings under the Revenue Recovery Act."

3. In *K. Ramakrishnappa v. Agricultural Income Tax Officer, Chikmagalur*, we have differed from the view taken by the Madras High Court in *Santosha Nadar's* case, in so far as to the nature of the writ to be issued. We have come to the conclusion that in the circumstances mentioned therein, no writ of prohibition could be issued. But that does not mean that we cannot issue an order in the nature of prohibition restraining the second respondent (Deputy Commissioner, Kolar District, Kolar) from confirming the sale held as, in our opinion, the sale proceedings are vitiated for the reasons mentioned above.

4. In the result we prohibit the second respondent from confirming the impugned sale. No costs.