

(1992) 11 DEL CK 0055

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 128 of 1992

Chand Ram

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 23-11-1992

Acts Referred:

Income Tax Act, 1961 — Section 194A

Citation : (1993) 49 DLT 20 : (1993) 25 DRJ 127 : (1993) RLR 134 : (1993) 68 TAXMAN 28

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : M.S. Maini, B.S. Mann, S.K. Mahajan, Sanjiv Sharma, Rajendra and Siraj Seth, for the Appellant;

Judgement

C.L. Chaudhry, J.

(1) This petition under Article 22 of the Constitution of India is directed against the order dated 7.2.1992 passed by Additional District Judge, Delhi by which certain directions were given to the Land Acquisition Collector. The brief facts leading to the present petition are that the petitioner was the owner of agricultural land in the revenue estate of Bharthal, New Delhi. The land was acquired by the Government by an Award made by the Land Acquisition Collector. The petitioner being dis-satisfied with the compensation awarded by the Land Acquisition Collector, preferred a petition u/s 18 of the Land Acquisition Act before the Addl. District Judge for enhancement of the compensation was enhanced by the District Judge but the matter did not rest there. petitioner was still not satisfied with the compensation awarded by the District Judge and thereafter he approached Delhi High Court u/s 54 of the Land Acquisition Act by means of a Regular First Appeal for further enhancement of the compensation. By the judgment and decree dated 25.9.1990, High Court enhanced the compensation to Rs. 21,000.00 per bigha. The petitioner received the compensation from the Land Acquisition Collector awarded by him and as by the

District Judge but the compensation enhanced by the High court was not paid to the petitioner. The petitioner filed execution application before the Addl. District Judge for realisation of the compensation in terms of the decree passed by the High Court. The matter came up before the Addl. District Judge on 7.2.92 and he passed the following order:

"7.2.1992The counsel for the decree holder/applicant. Note is present on behalf of L.A.C. except one Mr. J.C.Grover, N.T. The case is proceeded as ex parte against the L.A.C. since Lac has not sent/paid the amount to the decree holder despite statement made by Sh. R.C. Kaul, Assistant Manager (Law), I.O.C. and further M/s. Indian Oil Corporation has sent the amount to the LAC. Let attachment order issued attaching the property of Lac for Rs. 4,97,399.4 with instruction that the Lac may deduct the Income- tax in compliance of Section 194A of the Income Tax Act. The Applicant/Decree holder may appear and file the declaration before the Lac as required u/s 194A of the Income Tax Act."

(2) Aggrieved by the order passed by the Addl. District Judge, the petitioner has approached this Court invoking Article 227 Constitution OF INDIA of the Constitution of India for modification of the order dated 7.2.1992 so as to delete the portion of the order by which the Court directed the Land Acquisition Collector to deduct the Income .Tax in compliance of Section 194A of the Income Tax Act and further directed to the .petitioner to file required declaration before the Land Acquisition Collector. The "grounds on which the modification of the order is sought are mentioned in the petition. Notice of this petition was given to the respondents as well as to the Income Tax department.

(3) I have heard the learned counsel for the parties. Mr. Mann appearing for the petitioner contended that the petitioner is a decree holder and the Land Acquisition Collector is the judgment debtor and the executing court had no power and jurisdiction to direct the L.A.C. to deduct any amount on account of Income Tax from the decretal amount. It was urged that by virtues of Section 53 of the Land Acquisition Act, CPC has been made applicable to all proceedings before the court under the Land Acquisition Act, the award given by the District" Judge is deemed to be a decree and in view of Section 54 of the Land Acquisition Act, the decision of the High Court in the appeal is a decree and such decree has to be executed like a decree passed by the Civil Court. The Addl. District Judge had no jurisdiction to give any direction to the judgment debtor to deduct the amount on account of income tax as contemplated u/s 194A of the Income Tax Act. The direction is without jurisdiction. Moreover, the Addl. District Judge could not direct the claimant/decreed holder to approach the Collector for filing appropriate affidavit and receive the compensation from him. It was the function of the court to give direction to the Land Acquisition Collector to deposit the amount in court and on such deposit the court should have paid the amount to the decree holder.

(4) I have given my thoughtful consideration to the entire matter. In my opinion the contention of Mr. Mann is well founded. u/s 26 of the Land Acquisition Act,

the award made by the District Judge will be deemed to be a decree. Section 54 of the Land Acquisition Act lays down that the High Court can pass a decree in an appeal against the award of the District Judge. CPC has been made applicable to the provisions of the Land Acquisition Act. Since it is a decree passed by the High Court in the appeal filed by the petitioner, it has to be executed as a decree passed by the Civil Court. The procedure for execution of the decree as contemplated under CPC has to be followed for execution of decree passed by the High Court. Section 194A of the Income Tax Act provides.,

"194-A. Interest other than "Interest on securities"(1) Any person, not being an individual or a Hindu undivided family who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct Income Tax thereon at the rates in force: Provided that no such deduction shall be made in a case where the person (not being a company or a registered firm) entitled to receive such income furnishes to the person responsible for making the payment- (a) an affidavit, or (b) a statement in writing, declaring that his estimated total income assessable for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to income tax. Explanation -For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "suspense account" or by any other name, in the books of account of the person, liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

Section 204 of the Income Tax Act defines the Meaning of "person responsible for paying"-

(I) in the case of payments of income chargeable under the head "Salaries" other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof: (ii) in the case of payments of income chargeable under the head "Interest on Securities", other than payments made by or on behalf of the Central Government or the Government of a State, the local authority, corporation or company, including the principal officer thereof; (iia) in the case of any sum payable to a non-resident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973) and any rules made there under: : (iii) (in the case of credit, or, as the case may be) payment of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a

company, the company itself including the principal officer thereof."

(5) Section 31 of the Land Acquisition Act provides that on making an award u/s 31, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the other provisions of the Act.

(6) Section 34 of the Land Acquisition Act lays down that when the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of (nine per centum) per annum from the time of so taking possession until it shall have been so paid or deposited.

(7) Reading together the provisions of Section 31 and 34 of the Land Acquisition Act and Section 194A and Section 204 of the Income Tax Act, it is clear that the Land Acquisition Collector is payer and he is the person responsible for paying within the meaning of Section 194A and Section 204 of the Income Tax Act. The court is not the payer. In my opinion the procedure adopted by the Addl. District Judge is not warranted by law. The claimant filed an application for execution of the decree. The court should have directed to the Land Acquisition Collector to deposit the amount in court and on the deposit of such amount it should have been paid to the decree holder and the satisfaction of the decree recorded. In case of failure on the part of the Land Acquisition Collector to deposit the amount, the Court should have proceeded for execution of the decree as contemplated under CPC i.e. by attachment and sale of the property. The Land Acquisition Collector is the payer. It is for him to decide whether any amount on account of Income tax is to be deducted or not. The Court could not give such a direction to the Land Acquisition Collector. No issue was raised before the Court as to whether the Land Acquisition Collector could deduct the amount on account of Income Tax. The Court without any lis before it, prejudge the issue that the Income Tax had to be deducted by the Land Acquisition Collector. In view of the direction given by the Court to the Land Acquisition Collector, the claimant could not be allowed to allege before the Land Acquisition Collector that the income tax was not deductible. The case of the claimant was seriously prejudiced by such direction. In case the notice is sent to the Land Acquisition Collector to deposit the amount in Court and the Land Acquisition Collector exercises discretion u/s 194-A of the Income Tax Act and deposit the amount by deducting the income tax, and the decree holder objects to such deduction, then it is for the Court to decide whether the amount deducted by the Land Acquisition Collector was justified under the provisions of the Income Tax Act, The Court was not payer or person responsible for making the payment to the decree holder and as such could not make any direction for deduction of the amount under the provisions of the Income Tax Act. In view of this, I have no hesitation in holding that the directions given by the Court to the Land Acquisition Collector to deduct the tax in compliance of Section 194-A of the Income Tax are without jurisdiction and

cannot be sustained in law. Moreover, Court also could not direct the claimant to approach the Land Acquisition Collector for receiving the compensation. This procedure also seems to be un-wananted. The Court should have directed the Land Acquisition Collector to deposit the amount should have been paid to the claimant by the Court Accordingly, I allow this petition and modify the order dated 7.2.1992 to the extent that directions issued by the Court to the Land Acquisition Collector to deduct the amount on account of income tax are deleted. In the circumstances of the case, I direct that the parties shall bear their respective costs.