(1966) 08 MAD CK 0024

In the Madras High Court

Case No : Writ Appeal No. 130 of 1966

Collector of North Arcot, Vellore — APPELLANT

Vs

V.K. Kannan and Another — RESPONDENT

Date of Decision : 11-08-1966

Acts Referred:

Citation : AIR 1967 Mad 249 : (1967) 65 ITR 301

Hon'ble Judges : M. Anantanarayanan, C.J;Alagirisami, J

Bench : Division Bench

Judgement

M. Anantanarayanan, C.J.

(1) In S. Santosha Nadar Vs. First Additional Income Tax Officer, Tuticorin, and Another, the Bench of Rajagopalan, Officiating Chief Justice and Srinivasan J. laid down that where a certificate is issued u/s 46(2) for a sum which is substantially in excess of the sum that was actually due, that error would go to the root of the jurisdiction of the Collector to recover the arrears, u/s 27 and 36 of the Revenue Recovery Act. The learned Judges of the Bench have given their reasons for this view in the following language:

"It should be needless to point out that under the Revenue Recovery Act, the Collector had no jurisdiction either to attach or to bring to sale properties to recover a sum higher than what was legally due on the date of the notice of attachment............ That vitiated the subsequent sale".

The facts here are in pari materia with that case, and here also there has been a sale, following action by the Collector in respect of a certificate which showed a sum as of a certificate which showed a sum as arrears due, substantially, in excess of the sum actually due Kailasam J. in dealing with the writ petition(No. 368 of 1964) referred to the Bench decision, and issued the writ of certiorari quashing the proceedings.

(2) Learned counsel for the State (Collector of North Arcot) urges upon us that

this view of the Bench might require reconsideration, because, according to him, the view would apply even where there is merely a clerical error in the certificate. We do not think that this argument does justice to the reasoning on which the decision is based, which we have earlier referred to. We need not now commit ourselves to any opinion on the question, whether a mere clerical error would affect the jurisdiction of the Collector, on the authority of the Bench decision, or otherwise. But, where there is a substantial difference between the sum legally due and the sum for which the certificate has been issued, clearly the Collector is proceeding beyond ambit of his jurisdiction under the law, and the subsequent proceedings are liable to be vitiated. We see no reason, therefore, for disturbing the state of law as laid down in the Bench decision earlier referred to. There is nothing to prevent the authorities now from issuing a proper certificate, and proceeding with their powers of sale under the Revenue Recovery Act for the actual arrears due. With these observations, the writ appeal is dismissed.

(3) Appeal dismissed.