(1962) 09 MAD CK 0026

In the Madras High Court

Case No : S.C. Petition No''s. 117 to 133 of 1962

First Additional Income Tax Officer APPELLANT

Vs

R. Shanmugha Rajeswara Sethupathi RESPONDENT

Date of Decision : 18-09-1962

Acts Referred:

Constitution of India, 1950 — Article 133, 226

Citation : AIR 1963 Mad 190 : (1963) ILR (Mad) 620 : (1963) 48 ITR 647 : (1963) 76 LW 18 : (1963) 2 MLJ 395

Hon'ble Judges : Srinivasan, J;Jagadisan, J

Bench : Division Bench

Advocate : S. Ranganathan, for the Appellant; V. Vedantachariar and U. Somasundaram, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—These are applications by the First Additional Income Tax Officer, Karaikudi, for grant of certificate under Article 133 of the

Constitution. The judgment of this Court from which appeals are sought to be filed in the Supreme Court was rendered in a series of applications

under Article 226 of the Constitution. Broadly stated, two persons who were landholders were under the provisions of the Estates Abolition Act

dispossessed of their estates and compensation was paid to them in lieu of such dispossession. In terms of the Act, certain further payments

referred to as interim, payments were also made to them. The department took proceedings u/s 34 of the Indian Income Tax Act and sought to

bring these interim payments to assessment.

One of the writ applications related to a case where such an assessment had in fact been made. In the others, the matter stood at the stage of notices u/s 34 of the Indian Income Tax Act to those persons. It was in these circumstances that applications were filed under Article 226 of the

Constitution seeking to have the order of assessment in the one case and the proceedings u/s 34 in the remaining cases quashed. The Judgment of

this Court was that these interim payments were not income, representing as they did capital receipts for the loss of the assets which was the

income-producing asset belonging to the petitioners. It is this decision of this Court that is sought to be taken up in appeal before the Supreme

Court.

2. The petitioner, the Income Tax Officer, prays for the issue of a certificate claiming that the requirements of Article 133 are satisfied.

3. On behalf of the respondents, objection has been taken that the applications do not come within the scope of Article 133. It is claimed that the

writ petitions were filed either to quash the assessments made by the department or for the writs of prohibition against the levy of assessments

which they were about to levy, on the ground that such assessments were illegal and that therefore the writ proceedings arose out of revenue

proceedings and do not relate to any ""civil proceedings"" within the meaning of Article 133 of the Constitution.

4. The question we have to consider is whether this objection, raised by the respondents is sustainable and whether this Court can issue the

certificate prayed for.

5. On behalf of the respondents, the difference in the language employed in the relevant articles of the Constitution has been pointed out. While

Article 132 provides for an appeal to the Supreme Court from any judgment, decree or final order of a High Court whether in a civil or criminal or

other proceeding, Article 133 is confined to judgment, decree or final order in a civil proceeding, and Article 134 in a like manner is restricted to a

judgment, final order or sentence in a criminal proceeding. Turning to Article 136 which provides for special leave to appeal to the Supreme Court

it refers to any judgment, decree, determination, sentence or order in any cause or matter. The Constitution has accordingly employed, besides the

well-known expression ""civil proceeding"" and ""criminal proceeding"", three other terms ""other proceeding"" in Article 132 and ""any cause or matter

in Article 136. It is certainly patent from these provisions of the Constitution that there can be proceedings other than civil or criminal and that it is

impossible to say that any proceeding other than a criminal proceeding must necessarily be a civil proceeding. The question then arises whether a

judgment rendered by the High Court in the exercise of its jurisdiction under Article 226 must in all cases be termed a judgment in a civil

proceeding.

6. In a Full Bench decision of the Nagpur High Court in Sriram Gulab Das v. Board of Revenue, 1953 STC 340: AIR 1954 Nag 1 , the question

arose whether the decision of the High Court rendered in a reference by the Board of Revenue u/s 23(2) of the Central Provinces and Berar

Sales-tax Act does not arise out of a civil proceeding within the meaning of Article 133. It was held that the proceedings u/s 23 dealt with matters

pertaining to liability and assessment to tax and can properly be regarded as revenue proceedings, and that they are not civil proceedings. Two of

the learned Judges observed that the words ""other proceedings"" in Article 132 are words of wide amplitude and include all proceedings other than

civil and criminal proceedings. It is unnecessary to refer to any other aspect of that decision except to refer to the reasoning that where proceedings

relate to liability and assessment to tax, they cannot be regarded as civil proceedings.

7. That a decision rendered by a High Court in the exercise of its advisory jurisdiction u/s 66 of the Indian Income Tax Act, would not come within

the scope of Article 133(1) of the Constitution, as the decision would not be a judgment, decree, or final order, was decided by the Bombay High

Court in Jamnadas Prabhudas Vs. Commissioner of Income Tax, Bombay City, . The High Court however did not decide the question whether

proceedings in the High Court on a reference u/s 66 are civil proceedings within the meaning of Article 133(1). But nevertheless the learned judges

took the view that the question whether leave should be granted or not in a matter arising out of a reference under the Indian Income Tax Act

should be considered only u/s 66-A of the Indian Income Tax Act and not under Article 133.

8. A Full Bench of the Patna High Court in Tobacco Manufacturers v. State, ILR 30 Pat 174 : AIR 1931 Pat 29, again dealt with the question

whether the judgment of the High Court rendered on a reference made to it by the revenue authorities is or is not a judgment. The question there

arose under the Bihar Sales-tax Act and the view was taken that proceedings in Sales-tax cases are not civil proceedings within the meaning of

Article 133. This decision was considered by the Patna High Court in Allen Berry and Co. Ltd. and Others Vs. Income Tax Officer and Another, .

This decision is of considerable importance, for it deals with a position that is almost parellel to the facts flow before us. In that case, the assessees

wers taxed under the Indian Income Tax Act, and against the order of assessment they applied under Arts. 226 and 227 of the Constitution. These

applications were dismissed and they moved the Court tor a certificate under Article 133 of the Constitution. The learned Chief Justice referred to

the Full Bench decision in Tobacco Manufacturers (India) Ltd Vs. The State, and after quoting extracts therefrom observed:

It seems clear to me that every writ application is not necessarily a civil proceeding; it may be a civil proceeding, or a criminal proceeding, or other

proceeding, according to the nature of the application and the questions raised and decided in the proceeding. It is well settled that a suit would not

have been maintainable by the petitioners in respect of the two assessment orders; and if the petitioners had proceeded under the machinery of the

Indian Income Tax Act, the proceeding would not have been anything but a revenue proceeding.

The mere fact that the petitioners filed two applications for writs in the High Court against the assessment orders, does not, in my opinion, change

the nature of the proceeding. I agree with the view expressed by their Lordships of the Rajasthan High Court, which states that the question

whether a proceeding under Article 226 is a civil proceeding or not depends upon the nature of the proceeding.

In the case before us, the nature of the proceeding was that it called into question certain assessment orders made by the Income Tax Authorities.

The proceeding was not a civil proceeding, as there was no right of suit, and I do not think it can be said to be a civil proceeding within the

meaning of Article 133 of the Constitution.

This view of the matter found approval in the decision of this Court in C. Dhanalakshmi Ammal Vs. The Income Tax Officer, II Additional City

and Others, . That was a case where the question arose in relation to a judgment in a writ petition under Article 226. The facts were that the

Collector took proceedings for attachment of certain properties in pursuance of a certificate issued under the Indian Income Tax Act for recovery

of arrears of tax. The properties stood in the name of the wife of the assessee. The wife contended that the properties were hers, while the

department took the stand that the wife was only a benamidar for the asses-see. The wife moved the High Court by way of Article 226. But that

application was dismissed on the ground that the Collector exercised powers of a Civil Court and that it was open to the petitioner to prefer a

claim and resort to a suit under the provisions of the Code of Civil Procedure. Against the dismissal of the writ, leave to appeal to the Supreme

Court was sought.

The question accordingly arose whether Article 133(1) of the Constitution applied. The learned Judges referred with approval to the observations

of Section K. Das, J. in Allen Berry and Co. Ltd. and Others Vs. Income Tax Officer and Another, . They proceeded to observe,

if the application filed by the petitioner before us under Article 226 of the Constitution had been to quash the assessment order, it may well be said

that it is not a civil proceeding on the above reasoning. But such is not the relief sought by the petitioner. There is no quarrel as such with the orders

of assessment passed on her husband. All that she complains of is that her own property is being attached and sold to realise the amount of tax due

by her husband. She is only asserting her right to the property standing in her name and seeking relief against any interference with her right. We do

not think that it is proper to describe her application as a revenue proceeding. She could not have obviously proceeded under the machinery of the

Indian Income Tax Act as the petitioners in the Patna case could have. Further, a suit would have been maintainable by the petitioner to restrain the

Income Tax Authorities from taking proceedings against her property to satisfy the arrears of tax due from her husband, whereas in the Patna case

and other similar cases a suit would not have been maintainable, to challenge the validity of the assessment orders. We, therefore, hold that the writ

petition, filed by the petitioner was not a revenue proceeding.

It is seen from the above observations that it is the nature of the proceeding in which the judgment is rendered that can govern the classification of the proceeding as criminal, civil or other proceeding. It would be incorrect to say that any matter that is brought before the High Court invoking the

exercise of its jurisdiction under Article 226 of the Constitution must be regarded as a civil proceeding.

9. In Income Tax Officer v. Joti Prasad AIR 1960 All 34, a Bench of the Allahabad High Court referred to the earlier cases and their observations

seem to us, if we may say so with respect, very pertinent:

The more liberal view in favour of the applicant is that a proceeding under Article 226 of the Constitution is a civil proceeding if it relates to civil

rights. But it seems to us that, even on this view, the petitioner would not be entitled to the certificate sought, because it cannot be held that this

particular order related to any civil right. The order which was passed by this Court related to proceedings for assessment of tax and some

assessment orders were quashed by this Court. Proceedings for assessment of Income Tax, in our opinion, are not proceedings relating to a civil

right. The liability to Income Tax is not a civil right enforceable as such in Courts of law.

Liability to tax is created by the Income Tax Act and is for the purpose of gathering revenue for carrying on the Government of the country. No

one can claim it as a civil right that he is not liable to pay tax. Nor can the State claim that any person is liable to Income Tax under the common

law relating to civil rights. A proceeding relating to liability to Income Tax partakes of the nature of a proceeding which has been usually described

as a revenue proceeding.

10. The line of cases we have referred to has consistently taken the view that the order of the High Court made in writ application seeking to quash

assessment orders or to prohibit an Income Tax Officer from proceeding under the machinery of the Income Tax Act in any of its aspects cannot

be termed to be judgments in civil proceedings. There is a well-marked distinction between civil and criminal proceedings and when the

Constitution itself refers to other proceedings in juxta position with civil and criminal proceedings, those words must be given a proper meaning.

The principle that the nature of the right adjudicated upon in a proceeding is one that determines the nature of the proceedings is what has been

stressed in the several cases to which we have made reference and if we apply that test, it follows that a judgment in a writ application seeking to

quash an assessment order or to issue a writ of prohibition against the taxing authorities cannot come within the scope of the expression civil

proceedings as used in Article 133 of the Constitution. It follows that the petitioner is not entitled to the grant of the certificate under Article 133.

11. The petitions fail and are dismissed with costs in one --S. C. P. No. 117 of 1962. Counsel''s fee Rs. 150.

