(1978) 01 AHC CK 0035

In the Allahabad High Court

Case No : C.M.W.P. No. 87 of 1975

GANGA SINGH APPELLANT

Vs

SALES TAX OFFICER and Others RESPONDENT

Date of Decision : 13-01-1978

Acts Referred:

Citation : (1978) 7 CTR 221

Hon'ble Judges : Satish Chandra, J

Bench : Division Bench

Judgement

Satish Chandra, J. - In pursuance of recovery proceedings for realisation of arrears of sales-tax as land revenue against the firm M/s. Leeladhar Ganga Singh certain agricultural plots belonging to the petitioner were attached. The petitioners case it that he was born on 25th of October, 1955 and as such he was a minor when the firm is alleged to have come into existence in the year 1966-67. He could not in law be a partner in any partnership firm, hence there was no personal liability on him to pay sales-tax dues recoverable from the firm. They could be recovered from other person who is the managing partner of the firm. In the next place the petitioners grievance is that after attachment of his properties he on 11th of October, 1974 filed an objection before the Collector but the Collector is not deciding the objection but has threatened to sell the attached property. In fact 7th of February 1975 was fixed for the auction.

2. Learned Standing Counsel stressed that in the registration form filed for the year 1966-67 the petitioner was shown as a partner and was further shown as a major of 18 years of age. It has also been stated that the Collector was going to decide the objection when the petitioner filed the present writ petition and obtained stay order.

3. The question whether the petitioner is a minor is not admitted by the respondents. It is a question of fact. An objection to the effect was actually filed before the Collector. In law the position is that an objection to the attachment of immovable property has to be decided before the recovering authority shall

proceed with the attachment or put the property to sale.

4. In the result, the writ petition succeeds and is allowed in part. The opposite party is directed to dispose of the objection filed by the petitioner after affording an opportunity of hearing before proceeding further with the recovery proceedings. The petitioner will be entitled to costs.

