

(1975) 08 CAL CK 0015

In the Calcutta High Court

Case No : Civil Revision Case No. 3684 (W) of 1973

Jagadish Ch. Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 359

Citation : AIR 1976 Cal 17

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : A.P. Roy Chowdhury and Sudhindra Kumar Kar, for the Appellant; G. Mitter, General, Ajit Kumar Sen Gupta and Sailendra Nath Dutta, for the Respondent

Judgement

Sabyasachi Mukharji, J.—It appears that on the 14th of June, 1973 a notice u/s 269(1) of the Income Tax Act. 1961 was issued in respect of a property purchased by the petitioner. Being aggrieved by the said notice the petitioner moved this Court under Article 226 of the Constitution on the 20th of September, 1973 and obtained a Rule nisi. The petitioner in his grounds challenging the notice, contends that Sections 269-C to 269-I and Section 269-R are ultra vires Article 19(1)(f). Article 14 and Article 31 of the Constitution. A Rule nisi was issued by this Court. This Court also granted an injunction restraining the respondents, the Income Tax Authorities, from taking any proceeding pursuant to the notice dated the 14th of June, 1973. The respondents have shown cause by counter-affidavits and counsel on behalf of the revenue submitted that the order of injunction should be vacated and the application dismissed. The order of injunction is continuing when this application came up for hearing before me last week, my attention was drawn to the proclamation issued by the President and published in the Gazette on the 27th of June, 1975. The said proclamation reads as follows :

"In exercise of the powers conferred by Clause (1) of Article 359 of the

Constitution, the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution and all proceedings pending in any Court for the enforcement of the above mentioned rights shall remain suspended, for the period during which the proclamation of emergency made under Clause (1) of Article 352 of the Constitution on the 3rd December, 1971 and on the 25th June, 1975 are both in force.

This order shall extend to the whole of the territory of India except the State of Jammu and Kashmir.

This order shall be in addition to and not in derogation of any order made before the date of this order under Clause (1) of Article 359 of the Constitution."

In view of the aforesaid proclamation it was contended that inasmuch as in this case the enforcement of the rights conferred under Article 14 of the Constitution was involved, the proceeding should remain suspended and in the premises the interim order must necessarily continue. The position seems to be rather unfortunate because in this case there was an interim order and the effect would be that the interim order would continue so long as the emergency continues or until the proclamation is revoked, though the examination of the question which was possible because the matter is ready for hearing, might have revealed that the proceedings under the notice were valid. In numerous cases (sic) under Article 14 are involved and while new applications or cases where Article 14 is resorted to are no longer possible during the continuance of the emergency, the persons who have obtained Rules or orders of injunction prior to the 27th of June, 1975 would continue to enjoy those injunctions without the Courts having the opportunity to examine the validity or the propriety of the said orders simply because the questions under Article 14 are involved in those applications. My attention was drawn to the observations of the Supreme Court in the case of *Makhan Singh Vs. State of Punjab* (and connected appeals), . In this view of the matter I direct that the application will remain adjourned sine die with liberty to the parties to mention for hearing after the aforesaid proclamation is revoked.

2. In order to facilitate the disposal of these orders of injunctions obtained against the fiscal authorities, the authorities should consider whether it is desirable that Article 359(1) of the Constitution should be amended. The result of the proclamation made under Article 359 of the Constitution and the order issued by the President seem to be that the orders of injunction would continue until the emergency is revoked. That might not be what was desired.

3. Let a plain copy of these observations be handed over to the learned advocate for the respondents.