

(1957) 12 KL CK 0010

In the High Court Of Kerala

Case No : Original Petition No. 87 of 1956 (T)

K.M. Kunjuraman

APPELLANT

Vs

Tahsildar, Chirayinkil Taluq and Another

RESPONDENT

Date of Decision : 09-12-1957

Acts Referred:

Income Tax Act, 1922 — Section 46(2)

Citation : AIR 1959 Ker 341 : (1958) 34 ITR 169

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : V. Sankarasubramonia Iyer and P. Sukumaran Nair, for the Appellant; V. Gopalakrishna Rao, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Joseph, J.—This is an application under Article 229 of the Constitution for the issue of writs in the nature of quo warranto, prohibition and certiorari, to quash proceedings taken by the 1st Respondent, the Tahsildar of Chirayinkil, under the Travancore-Cochin Revenue Recovery Act for recovery of Income Tax due from the petitioner. The 2nd Respondent is the Income Tax Officer, Trivandrum, who assessed the petitioner to Income Tax. The Tahsildar had attached the properties of the petitioner and this application was filed when the properties were brought to sale. The petitioner's case is that u/s 46(2) of the Indian Income Tax Act the Collector alone can take proceedings under the Revenue Recovery Act for recovery of "Income Tax and he cannot delegate that function to the Tahsildar. " The application is opposed by the 2nd Respondent.

2. The objection regarding the validity of the proceedings taken by the 1st Respondent is that under the proviso to Section 46(2) The Collector is invested with powers of a civil court and he cannot therefore delegate the collection of tax to the Tahsildar. Section 46(2) provides as follows:

"(2) The Income Tax Officer may forward to the Collector a certificate under his

signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908 (Act V of 1908) a Civil Court has for the purpose of the recovery of an amount due under a decree."

This section came up for construction before the Supreme Court in *Purushottam v. B.M. Desai*, (S) AIR 1950 S.C. 20 and it was held:

"All that the sub-section directs the Collector to do is to proceed to recover the certified amount as if it were an arrear of land revenue, that is to say, he is to adopt the procedure prescribed by the appropriate law of his State for the recovery of land revenue and that in this proceeding he is under the proviso, to have all the powers a Civil Court has under the Code. The sub-section does not prescribe two separate procedures. The statement to the contrary in the judgment of the Bombay High Court in *Ali Ahmed Vs. The Collector of Bombay*, at p. 35. does not appear to us to be correct.

In our opinion the proviso does not indicate a different and alternative mode of recovery of the certified amount of tax but only confers additional powers on the Collector for the better and more effective application of the only mode of recovery authorised by the body of Sub-section (2) of Section 46, Viewed in this light, there is no question of the possibility of any discrimination at all. This part of the argument cannot, therefore, be accepted." What the Collector did on receipt of the certificate, from the 2nd Respondent was to issue an order to the Tahsildar to recover the amount of tax by proceeding under the Revenue Recovery Act. It is seen from the records submitted by the Respondents at the hearing that the Collector did issue such an order to the 1st Respondent. Section 46(2) does not in my opinion mean that every step in the process of realisation of Income Tax should be done by the Collector. The State Revenue Recovery Act provides the machinery for collection of land revenue and under that Act it is the Tahsildar who has to take steps for realisation of such revenue.

The Collector has only to initiate the proceedings and set in motion the machinery provided by the Revenue Recovery Act. As pointed out by the Supreme Court, Section 46 does not provide two alternative methods of recovery of Income Tax. If powers exercisable by a civil court for realization of amounts under decrees have to be resorted to during proceedings for realisation of Income Tax, the Collector is empowered to exercise such powers. In this connection the following observations of Varadaraja Iyengar, J. in *Mathew v. 2nd Additional Income Tax Officer Kottayam* AIR 1950 Trav-Co. 184 may with advantage be extracted:

"Now it may be seen that Section 46 Clause (2) of the Income Tax Act does not prescribe the machinery which the Collector has to employ for purpose of

recovery. There is also no restriction or qualification in the use of the expression "Collector", whether with reference to the agency which employs him or otherwise. The object of the provision would appear to be to realise arrears of tax and to realise them effectively and swiftly. The Section, in my judgment, attracts by virtue of its own force the provisions of different local Acts in different States. The State legislation applies because of the provisions in the Central Act. There existed in different components of the Union Ifteal Jaws and an elaborate machinery to realise arrears of land revenue. For realising arrears of tax the Central Legislature has chosen to utilise the existing law and the existing machinery in these particular areas and that is all. It follows therefore that no question of illegality or want of jurisdiction arises in the matter."

The above passage correctly sums up the position and the construction sought to be put on the section by the petitioner cannot be accepted. The petitioner has no case that the Tahsildar exercised any of the powers of a civil court for realisation of tax from him. Section 62 of the Travancore-Cochin Revenue Recovery Act provides for recovery of arrears of revenue other than land revenue by recourse to the Revenue Recovery Act. Under this section, all sums declared by any other law for the time being in force to be recoverable as arrears of public or land revenue can be recovered under the Revenue Recovery Act. The proceedings, taken, by the Tahsildar were on the authority of the Collector's order and no question of illegality or want of jurisdiction can arise in the circumstances.

3. No other point arises in this original petition, It is therefore dismissed with costs including Advocate's fees of Rs. 100/- to the 2nd Respondent, who alone appeared by counsel at the bearing.