

(1956) 11 CAL CK 0017
In the Calcutta High Court
Case No : Matter No. 98 of 1955

M.M. Ispahani Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-11-1956

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 9
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1957 Cal 430

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : H.N. Sanyal and S.K. Dutt, for the Appellant; Arun Mukherji, E. Meyer and Balai Pal, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows:

2. Before the partition of India the petitioner company carried on business in an extensive scale from Calcutta. After partition, for a time work was carried on both in India and in Eastern Pakistan and I am informed that now the business is carried on in Pakistan only For the assessment year 1948-49, while the petitioner carried on business in both the dominions of India and Pakistan it was assessed for the sum of Rs. 7,08,003/13/- as Income Tax. There were a number of adjustments, and sometime in March 1950 certain proceedings under the Public Demands Recovery Act were commenced. It is unnecessary to go into the details of certificate proceedings, which extended from 1950 onwards, but it will be necessary only to state a few important dates. In or about May 1951, the petitioner filed an objection under Rule 9 of the Public Demands Recovery Act denying liability. On the 16th December 1953 one Sri D. K. Ghosh, purporting to act as the Certificate Officer, dismissed the application. Against this order an appeal was filed before the Commissioner, Presidency Division. A point was taken that Mr. D. K. Ghose on the relevant date had not been properly appointed a Certificate Officer and had therefore no jurisdiction to deal with the matter. On or

about 10th January 1955, the appeal was dismissed. Thereupon an appeal was taken before the Board of Revenue and the objection as to jurisdiction was again taken. The appeal was dismissed by the Board of Revenue on or about the 19th March 1955, With regard to the assessment itself that was and is the subject-matter of various proceedings. Various applications were made to avoid double taxation, claiming refund etc. It appears that applications were made to the Commissioner, the Appellate Assistant Commissioner and so on.

3. In this application the petitioner has tried to challenge the assessment order itself as well as the certificate proceedings. Clearly I can do nothing with regard to the assessment order. The Income Tax Act laid down the procedure to be followed in respect of any objection to assessment and the petitioner has been pursuing that procedure. There cannot be a second line of attack under Article 226. We now come to the Certificate proceedings. Here the position is a little different. As I have stated above, one Sri D. K. Ghosh dealt with the objection u/s 9 of the Public Demands Recovery Act, and passed an order dismissing the same, sometime in December 1953. For reasons which have been set out in detail in my judgment in the case of *Laduram Taparia Vs. D.K. Ghosh and Others*, (A), I have held that Sri D. K. Ghosh, during the relevant period, and certainly at the time of dealing with the objection u/s 9, had not been properly appointed as the Certificate Officer. That being so, the position is that a person who has not been properly appointed as a Certificate Officer, dealt with the proceedings and made an order under the Public Demands Recovery Act. Mr. Meyer, appearing on behalf of the respondents has been good enough to check this fact and he has admitted with his usual candour that Mr. D. K. Ghosh was not properly appointed Certificate Officer while he dealt with the objection u/s 9. Clearly therefore, the proceedings so far as he has dealt with it, before he was properly appointed as the Certificate Officer, cannot stand. Mr. Meyer has however drawn my attention to a Judgment of the Appeal Court delivered by Chakravarti, C. J. in the case of *Kanal Lal v. Collector of Land diatoms, Calcutta 60 Cal WN 1042 (B)*. The learned Chief Justice has held that while the existence of an alternate remedy was not an absolute bar to a recourse to Article 226 of the Constitution, if a party has availed himself of the ordinary remedies provided for by a special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under Article 226 of the Constitution. This judgment is certainly binding upon me. Having read it carefully however, I do not think that the learned Chief Justice intended to lay down that if in the proceedings under the special Act there is found to be an initial lack of jurisdiction, even then this Court should not interfere. With regard to the absence of an initial lack of jurisdiction, the position admits of no doubt. The position is summarised in *Halsbury 3rd Edn Vol. 11, para 214*. It has been stated there that where the defect of jurisdiction was apparent on the face of the proceedings and an application for a writ of prohibition was made by a party, the order went as a matter of right and not as a matter of discretion. The order, however, cannot be claimed as of right unless the defect of jurisdiction is clear. In *Farquharson v. Morgan (1894) 1 QB 552 at p.*

556 (C) Lord Hals-bury said as follows:

"It has been long settled that, where an objection to the jurisdiction of an inferior Court appears on the face of the proceedings, it is immaterial by what means and by whom the Court is informed of such objection. The Court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior Court from proceeding in matters as to which it is apparent that it has no jurisdiction. The objection to the jurisdiction does not in such a case" depend on some matter of fact as to which the inferior Court may have been deceived or misled, or which it may have unconsciously neglected to observe, and the Judge of such Court, therefore, must or ought to have known that he was acting beyond his jurisdiction. I find no authority justifying the withholding of a writ of prohibition in such a case".

4. In the case of *Ricketts v. Bodenham* (1836) 111 ER 850 (D) it was decided that even if proceedings were taken under the Ecclesiastical Acts, this will not prevent interference where there was a lack of jurisdiction. A case very much "on all fours is *R v. Comptroller-General of Patents* 1953-1 All ER 862 (E) where Lord Goddard, C. J., held that it did not follow that because there was a right of appeal u/s 44(1) of the Patents Act 1949, from a tribunal before which an objection to jurisdiction was taken, the power of the Divisional Court to issue an order of prohibition was taken away. It is unnecessary to cite the long list of cases where it has been held, both in England and in India, that the decision of a Court without jurisdiction was void, and amounted to nullity. In this particular case, the Position is that admittedly the objection filed by the petitioner u/s 9 of the Public Demands Recovery Act was considered by a person who was not a Certificate Officer, and therefore is to be considered not a judicial body or tribunal but no better than a man in the street. The result is that to this extent" the application must succeed and the rule must be made absolute in part. I make it clear that I am not making any order which affects the assessment order. A writ in the nature of certiorari will issue quashing and/or setting aside the order of Sri D. K. Ghosh dated 16th December, 1953, Appeal of the Commissioner, Presidency Division therefrom, dated 10th January, 1955, and the Appeal filed before the Board of Revenue dated 19th March 1955. If it is intended to continue the certificate proceedings it must be done de novo in accordance with law, in Which the petitioner will have all the remedies open to it under the Public Demands Recovery Act. There will be no order as to costs.