(1965) 08 KL CK 0003

In the High Court Of Kerala

Case No : O. P. No. 1799 of 1966

MOHAMMED	APPELLANT
Vs	
COLLECTOR OF CALICUT AND OTHERS.	RESPONDENT

Date of Decision : 17-08-1965

Acts Referred:
Kerala Agricultural Income Tax Act, 1991 — Section 41(4)

Citation : (1967) 66 ITR 113 : (1965) KLJ 1170

Judgement

The petitioner Prays :

"(a) to call up and quash by a writ of certiorari or any other writ or direction or order the certificate issued u/s 41(3) of the Kerala Agricultural Income Tax Act by the 2nd respondent for the recovery of arrears of tax from the petitioner and to quash the said certificate, and

(b) to issue any other writ or direction or order, which the court deems fit and proper."

According to the petitioner the certificate was issued to recover the tax, surcharge and penalty due from him for the assessment years 1960-61, 1961-62 and 1962-63. The assessment for the year 1960-61 was made on June 12, 1964, and notices were issued to the petitioner (exhibits P-1(a) and P-1(b)), demanding a sum of Rs. 395 as tax and Rs. 19.75 as surcharge to be paid on or before June 30, 1961. The demand not having been complied with, there were successive imposition of penalties evidence by exhibits P-2 to P-4. The assessment for the year 1961-62 was made on October 11, 1961, and for the year 1962-63 (I am informed), on September 28, 1963. For the entire amount of tax due for the years 1960-61, 1961-62 and 1962-63, together with surcharge and penalty, the Income Tax Officer issued a certificate to the Collector of proceedings under the Revenue Recovery Act. I have been informed by the learned Government Pleader, by reference to the files, that the first of such certificates was issued on March 21, 1962, in respect of the amounts due for the years 1960-61 and 1961-62. After the assessment for 1962-63 was completed, a fresh certificate was issued. In pursuance of the same, the petitioner states that the third respondent collected certain amounts under threat of distress warrant No. PR 1/308/64 and has further threatened to attach and sell the properties of the petitioner. In the additional affidavit filed by the petitioner, it is stated that the third respondent received the revenue recovery order on July 22, 1964, and attached the petitioners property on August 3, 1964.

The petitioners case is that by reason of section 41(4) of the Kerala Agricultural Income Tax Act no proceedings for recovery could be commenced after the expiration of three years from the date fixed for payment in exhibit P-1, namely, June 30, 1961. Inasmuch as the revenue recovery proceedings are for a consolidated amount including what was covered by exhibit P1, it is claimed that the entire certificate is liable to be quashed.

Section 41, clauses 3 and 4, of the Kerala Agricultural Income Tax Act, 1950, read as follows :

"(3) The Agricultural 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 arrears 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 Travancore or Cochin Code of Civil Procedure, a civil court has for the purpose of the recovery of an amount due under a decree.

(4) No proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of three years from the latest day fixed for payment in the notice of demand served u/s 30 or where the assessee has been treated as not being in default under the proviso to section 40 pending his appeal, after the expiration of three years from the date on which the appeal is decided."

The petitioners counsel argued that the commencement of the proceedings referred to in sub-clause (4) are the proceedings for recovery by the Collector on receipt of the certificate from the agricultural Income Tax Officer referred to in clause (3) and that such proceedings commence only when the Collector on the receipt of the certificate issues a notice to the petitioner for recovery in any of the modes contemplated by the Revenue Recovery Act. It is said that in the present case the certificate itself, as alleged in the petitioners additional affidavit, was received by the third respondent only on July 22, 1964, and any notice issued by him thereafter could only beyond three years, from June 30, 1961, the date fixed for payment in exhibit P-1.

It seems to me that, on the pleadings, the argument noticed above is not open to the petitioner. The prayer is to quash the certificate issued u/s 41(3) of the Act, and if, as the petitioners counsel now contends, the issuance of the certificate would not amount to commencement of the proceedings contemplated by section 41(4) of the Act, and is not within the purview of its ban, I fail to see why a quashing of the certificate is prayed for. On his own case, the petitioner ought to have prayed for quashing the proceedings for attachment and sale and there is no prayer for the same. That apart, I am content to deal with the petitioners arguments on the merits. The argument that the commencement of the proceedings referred to in clause (4) of section 41 of the Act must be related to proceedings of the Collector for revenue recovery on receipt of the certificate from the Agricultural Income Tax Officer referred to in clause (3), and cannot cover the issuance of the certificate itself, though attractive in the first blush, seems, on analysis, difficult to accept.

Section 46, clause (7), of the Indian Income Tax Act, 1922, which embodied an analogous provision, in so far as it is material, ran as follows :

"(7) Save in accordance with the provisions of sub-section (1) of section 42, or of the proviso to section 45, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.....

Explanation. - A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section if some action is taken to recover the whole or any part of the sum within the period herewith before referred to and for the removal of doubts, it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income Tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode."

The Explanation was inserted by the Income Tax Amending Act, 1953.

In Governor-General in Council v. Shiromani Sugar Mills Ltd. Chief Justice Spens, delivering the judgment of the court, observed :

"That still leaves open the question whether action u/s 46, Income Tax Act, is covered by the phrase other legal proceedings. Clearly it is not a proceeding in an ordinary court of law. But we see no reason why in British India no legal proceeding can be taken otherwise than in an ordinary court of law, or why a proceeding taken elsewhere than in an ordinary court of law, provided it be taken in a manner prescribed by law and in pursuance of law or legal enactment, cannot properly be described as a legal proceeding. If it be considered that the effect of the Income Tax authorities putting the machinery of section 46, Income Tax Act, in motion for the collection of arrears of Income Tax is to bring into operation all the appropriate legal enactments relating to the collection of land revenue in the province concerned, it is, in our judgment, very difficult to say that they are not taking a legal proceeding. In fact, in this very case, had the company not been in liquidation, the appellant would have had the choice at his option of (a) proceeding by suit in the ordinary courts in respect of the arrears, or (b) by forwarding (under section 46(2), Income Tax Act) to the Collector the requisite certificate, initiating and putting into force collection of the arrears of land revenue under and in accordance with the appropriate provisions of the U. P. Land Revenue Act (III of 1901). Surely, such last mentioned action on the part of the Income Tax authorities would be the adoption of another legal proceeding for the collection of the arrears as opposed to the institution of a suit. The proviso to section 46(2) empowers the Collector, if he so chooses, to exercise all the powers which a civil court may exercise in respect of the attachment and sale of debts due to a judgment-debtor. If the Income Tax Officer will be taking a legal proceeding when he moves the Collector - as we think he must be held to do - to realise the tax by attachment and sale of debts due to the assessee, it can make no difference in principle that the Collector is asked to exercise his summary powers under the land revenue law".

As I read the above observations, the court endorsed the position that the Income Tax Officer will be taking a legal proceeding when he moves the Collector to realise the tax by attachment and sale of debts due to the assessee.

In Arunadevi Jajodia v. Collector of Madras Subba Rao J. of the Madras High Court (as he then was) had to construe section 46(7) of the Indian Income Tax Act, 1922, as it stood prior to the addition of the Explanation by the amendment of 1953. The learned judge observed :

"Learned counsel contends that the words no proceedings for the recovery in section 46(7) refer only to the proceedings taken by the Collector for the recovery of arrears under the Revenue Recovery Act, and therefore the proceedings having been commenced by him one year after the prescribed time are barred under that sub-section, whereas learned counsel for the Income Tax Officer argues that the proceedings for the recovery of the sum commence from an earlier point of time when the Income Tax Officer forwards a certificate u/s 46(2), and he has forwarded certificates in the present case on March 25, 1947, March 23, 1948 and March 24, 1948, which dates are within the prescribed time. The question therefore is what do proceedings for the recovery mean in section 46(7). The process of assessment involves three stages : (1) The factum of assessment, (2) demand of the amount if default is made by the assessee. The Income Tax Officer starts the proceedings to recover the arrears in the prescribed manner after the default is made.

The procedure prescribed for the recovery of the arrears is embodied in section 46 of the Act. The proceedings for the recovery therefore start when the Income Tax Officer forwards the certificate to the Collector. But the learned counsel for the petitioners argued with some force that the words used in section 46(2) brought about a distinction between the issuing of a certificate by the Income Tax Officer and the starting of proceedings to recover from the assessee. He relied upon the words in section 46(2) on receipt of such certificate, shall proceed to recover from such assessee the amount, and compared those words with the words in section 46(7) proceedings for the recovery of any sum payable under this Act, and contended that the said proceedings for recovery related to the stage when the collector proceeded to recover the amount from the assessee. The word proceeding relates to the modes in which judicial transactions are conducted. In its general acceptance it connotes a prescribed mode of action for carrying into effect a legal right (See P. Ramanatha Aiyars Law Lexicon).

The meaning of the word is wide enough to include the entire procedure prescribed by the Act for realising the amount. The fact that the Collector proceeds to recover the amount from the assessee is not inconsistent with the circumstance that the proceedings for recovery start earlier. I therefore hold that the issue by the Income Tax Officer of a certificate is the first step of the proceedings for the recovery of the arrears. So construed, it follows that the proceedings started within the time prescribed by section 46(7) of the Act".

I am in respectful agreement with the above reasoning. The principle of the above decision was followed in C. M. George v. Income Tax Officer, Madras. In Kashiram Agarwalla v. Collector of 24-Parganas, Chief Justice Das Gupta of the Calcutta High Court (as he then was) had no difficulty in holding, in the light of the Explanation to section 47(7) added by the amending Act of 1953, that :

".... Forwarding of the certificate by the Income Tax Officer is some action to recover the dues within the meaning of the Explanation and consequently the proceedings for recovery commenced as the certificate was forwarded."

The learned Chief Justice further observed :

"It is important to remember that the limitation is provided against the person seeking to recover. The person seeking to recover is the Income Tax department. It would be odd to think that the action taken to commence the proceedings would be action taken by somebody other than the person who seeks to recover. The Collector or any other authority that may under the law take action to recover after the Income Tax Officer has taken the initial action by forwarding the certificate may act quickly or otherwise. It cannot be believed that the legislature intended that delayed action on their part would have the effect of barring the remedy of the Income Tax department. For these reasons, I am of opinion, that the action by the Income Tax Officer in forwarding the certificate to the Collector u/s 46(2) is action on the taking of which a proceeding shall be deemed to have commenced."

The above observation seem to me to furnish an additional reason, unaided by the Explanation added in 1953, to hold that the issuance of a certificate to the collector would constitute the commencement of the proceedings.

I was informed by the learned Government Pleader that in O. P. No. 1346 of 1964 my learned brother, Govindan Nair J., has taken the view that the issuance of a certificate by the Income Tax Officer would amount to the commencement of the proceedings. As the judgment is not available, I was unable to peruse the same.

Following the principle of the above rulings, as the certificate in this case was admittedly issued within three years of June 30, 1961, the date fixed for payment in exhibit P-1, I hold that the recovery proceedings are not barred by reason of the provisions in section 41(4) of the Kerala Agricultural Income Tax Act.

Petitioners counsel urged that his client had no notice of the attachment as required by section 24 of the Travancore-Cochin Revenue Recovery Act and as stated in paragraph I of additional affidavit of the petitioner dated 17th August, 1964. The O. P. being only one to quash the certificate issued by the Agricultural Income Tax Officer, an investigation of the validity of the proceedings for attachment and sale is beyond its scope, and I decline to investigate this question. After the admission of the O. P. by order dated August 20, 1964, this court stayed all revenue recovery proceedings. It would be open to the petitioner, if so advised and so entitled, to agitate this question in separate appropriate proceedings.

The O. P. fails and is dismissed with costs.

