

(1972) 12 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No's. 443, 557 and 558 of 1971

M.R. Prakasam and Others

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 12-12-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 63
Income Tax (Certificate Proceedings) Rules, 1962 — Rule 62, 63
Income Tax Act, 1961 — Section 222

Citation : (1974) 97 ITR 235

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : M.V. Krishnan, for the Appellant; V. Balasubrahmanyam, for the Respondent

Judgement

Ramaprasada Rao, J.—The petitioner in each of these writ petitions is aggrieved by the summary disposal given by the respondent as the Tax Recovery Officer functioning under the provisions of the Income Tax Act. The relevant facts are as follows : In connection with the arrears of Income Tax due from Thiru K. Shanmugham Chettiar and his brother, a Hindu undivided family, certain properties, which, according to the revenue, belonged to the joint family were attached. The petitioner in each of these writ petitions is aggrieved by such attachment, as, according to him, the property belongs to him, he having purchased bona fide the attached property for consideration from one of the sharers, after a partition was effected in the family and after allotment was made in such a partition to the sharers in the family. The revenue of course takes up the position that there was no partition at all and that the subsequent theory of alienation by one of the sharers of the family is all a myth. But we are not, however, concerned with the merits in the case of the petitioners. When the attachment was effected by the respondent as Tax Recovery Officer functioning under the Income Tax Act, the petitioner, in each of these cases, filed a claim petition stating that the property was not liable to attachment or to be proceeded

against as if it was the property of the defaulter, as is legally understood under the Income Tax Act, and that as he is the full owner of the same, the attachment should be raised and his title thereto recognised. That such claim petitions were filed before the respondent is not in dispute. The petitioners no doubt raised various contentions and set forth their title to the properties and obviously expected that the subject-matter would be enquired into and a proper decision rendered. But the respondent passed the following order, which is similar in the other writ petitions as well:

"The claim petition read above was perused and the claimant was heard in person. The reasons put forth by the claimant are held untenable and the petition is rejected."

It is to remove this order by the issue of a rule under Article 226 that " these writ petitions have been filed" .

2. The relevant provisions which are necessary for the purposes of this case may be immediately noticed to appreciate the contentions of the parties. u/s 222 of the Income Tax Act, 1961, hereinafter referred to as the Act, the Income Tax Officer concerned, in case he is satisfied that there is an assessee in default or an assessee who is deemed to be in default in making a payment of tax, can forward to the Tax Recovery Officer a certificate under his signature specifying amongst other things the arrears due from the assessee and thereafter it is for the Tax Recovery Officer to act as the statutory functionary under the Act and proceed to recover such arrears. The Tax Recovery Officer can choose one or the other of the modes of recovery specified in Section 222 itself. One of of such accredited modes prescribed u/s 222 itself is attachment and sale of the assessee's immovable property. It is in pursuance of such jurisdiction that the attachment of the immovable properties said to belong to the defaulting assessee has been made in the instant cases. After effecting such an attachment u/s 222(1)(b) the Income Tax Officer is to be guided by the various guidelines set out in the Second Schedule to the Act. Inter alia, Rules 11, 82, 83, 86 and 87 do have a bearing on the functions of the Tax Recovery Officer. Soon after he effects an attachment u/s 222 of the Act, if the attachment is followed by any claim by a third party, who sets up an independent title in himself to the exclusion of the defaulting assessee, then, unless the objection is designedly or unnecessarily delayed, the officer is bound to consider such objections and claims made by third parties, which obviously would be based on the title to the property in the claimant to the exclusion of the defaulting assessee. In fact, under Rule 11(1) after such claim is entertained by the Tax Recovery Officer, he should apply his mind and he is mandatorily required to adjourn any sale of such attached property, if by then a claim or objection has been preferred by a third party in accordance with law. After postponing such sale, the Tax Recovery Officer is bound to act judicially as is seen from Rule 82 of Schedule II to the Act. This rule says that every Tax Recovery Officer acting under this Schedule shall in the discharge of his functions under this Schedule be deemed to be acting

judicially within the meaning of the Judicial Officers' Protection Act. Under Rule 83, the said officer has all the powers of a civil court for purposes of receiving evidence, administering oaths, enforcing attendance of witnesses and compelling production of documents. Rules 86 and 87 provide for a right of appeal and a right of review against the order passed by the Tax Recovery Officer to the appropriate authority named therein. It is also useful to refer to the Income Tax (Certificate Proceedings) Rules, 1962, framed by the Central Board of Revenue in exercise of the powers conferred on it u/s 295 of the Income Tax Act, 1961, and Rules 91 and 92 of the Second Schedule to that Act. Rules 62 and 63 of the said rules enable the Tax Recovery Officer not only to hear a claimant or the witnesses who are subpoenaed on his behalf but also the Income Tax Officer concerned. All the elements which are essential for a judicial Tribunal to adjudicate on a subject-matter which is brought before it are present in a proceeding before the Tax Recovery Officer. He has all the trappings of a court. He has to act judicially. He has to follow certain guidelines set out for processing the procedure under Schedule II to the Act and act in accordance with the principles of natural justice as well and ultimately give a ruling.

3. In the light of this, Rule 11(1) has to be understood and interpreted. Rule 11(1) says that if any claim is preferred by any one or any objection is made to the attachment or sale of any property in execution of the certificate issued by the Income Tax Officer on one or the other of the grounds mentioned in the Second Schedule to the Act, then it is mandatory for the Tax Recovery Officer to investigate the claim or objection. The word "investigation" read in conjunction with the nature of the powers conferred upon the Tax Recovery Officer, which, as already stated by me, reflect the powers of an ordinary civil court, obviously implies that there must be a full, fair and an adequate enquiry. Investigation is not an empty formality but a quasi-judicial process involving a reasoned decision by the statutory functionary after hearing the affected party and the revenue (in the instant case), adequately and fully. It has to apply its mind on the subject-matter, which application should be reflected in the order which it may pass ultimately. The reason for the decision should be apparent on the face of the record. In the instant cases, the tax Recovery Officer has made a non-speaking order, and without advertent to the main contentions and the basis of the contentions of the petitioners who came before him with claim petitions. The investigation contemplated in Rule 11 is an investigation which is in pari materia with an enquiry usually held by civil courts under Order 21, Rule 58, Code of Civil Procedure. As a matter of fact, Rule 11(6) of the Second Schedule contemplates that an aggrieved party, in the sense, a person who is not satisfied with the order passed by the Tax Recovery Officer, may institute a suit in a civil court to establish the right which he claims to the property in the suit. This again is a provision very similar to Order 21, Rule 63, Code of Civil Procedure. Having regard to the intention of the legislature and particularly the wide scope of the investigation and the nature of investigation contemplated under the Act read with Schedule II and the Income Tax (Certificate Proceedings) Rules framed by

the Board of Revenue in the purported exercise of its statutory authority under the Act, I am not satisfied that the order challenged in each of these writ petitions is one that ought to have been passed by the Tax Recovery Officer. It does not set out the reasons for the conclusion. It is non-speaking in the eye of law. He ought to have given an opportunity both to the revenue as well as the claimants to substantiate their contentions. Though he gave such an opportunity, he did not apply his mind fully and adopt the procedure prescribed and pass a realistic order ultimately after hearing the parties. It is said that though evidence was taken, the order is hopelessly non-speaking, I agree. In a case like this, where rights of parties are to be adjudicated by a quasi-judicial tribunal, a cursory or perfunctory order of the nature scrutinised by me ought not to have been passed. In this view, I am of the opinion that there has not been a full adjudication as required under law by the respondent and, therefore, there is an error apparent in the orders passed by the respondent. The writ petitions are allowed. The respondent is at liberty to restore the claim petitions on his file and pass an order in accordance with law after hearing the parties in full after investigating the matter purposefully. There will be no order as to costs.