(1995) 11 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25653 of 1995

N. Bala Raju and Another — APPELLANT

Vs

Tax Recovery Officer and Another — RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 221 ITR 361

Hon'ble Judges : S. Parvatha Rao, J;Krishna Saran Shrivastav, J

Bench : Division Bench

Advocate : R.V. Subba Rao, R.V. Prasad and R.V. Nagabhushana Rao, for the Appellant; S.R. Ashok, for the Respondent

Judgement

S. Parvatha Rao, J.—The petitioners'' grievance is that when an earlier sale proclamation was issued on March 22, 1995, they immediately represented to the first respondent, i.e., the Tax Recovery Officer, on April 5, 1995, that the property sought to be brought to sale does not belong to the Hindu undivided family-assessee, that it was the separate property of the karta of the Hindu undivided family who gifted the same to the petitioners several years back and, therefore, the said property could not be brought to sale for the recovery of the wealth-tax dues of the Hindu undivided family-assessee, and that without disposing of the said claim, once again the very same properties are being brought to sale. The petitioners thus question the notice for settling the proclamation of sale, dated October 13, 1995, which, inter alia, states that November 5, 1995, has been fixed for drawing up the proclamation of sale and for settling the terms thereof.

2. Even though the said notice is of October 13, 1995, the petitioners have approached this court only on November 13, 1995, by way of the present writ petition. Learned counsel for the petitioners states that the petitioners did not approach the first respondent again bringing to this notice the objections raised by them earlier in their representation, dated April 5, 1995. He also accepts that

even after the proclamation of sale is drawn up, objections can be raised before the first respondent in terms of the earlier objections raised and that even after the ale is held, a claim petition can be filed by the petitioners and that without disposing of the same, the sale cannot be confirmed.

3. In the circumstances, we find that the petitioners ought not to have approached this court invoking article 226 of the Constitution of India, when they have clear remedies available. The writ petition is, therefore, dismissed, only on the ground that the petitioners have alternative remedy available to them to question on the proposed sale of property said to have been gifted to them by the karta of the Hindu undivided family-assessee.