(1990) 02 CAL CK 0035

In the Calcutta High Court

Case No : F.M.A. No. 2725 of 1989

Nirmal Kumar Chhajer APPELLANT

Vs

Block Development Officer RESPONDENT

Date of Decision : 06-02-1990

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : 94 CWN 590 : (1995) 2 ILR (Cal) 572

Hon'ble Judges : P.D. Desai, C.J;Shymal Kumar Sen, J

Bench : Division Bench

Advocate : Supradip Roy, for the Appellant;Nurul Islam Khan, for the Respondent

Judgement

P.D. Desai, C.J.—The appeal is taken up for hearing by treating it as included in the day''s cause list.

2. The interim order under appeal was passed in a pending writ petition moved by the Appellants. The Respondents in the writ petition, who are also Respondents herein, were thereby restrained from interfering with the Appellants'' running of the V.C.R. in their respective premises subject, however, to the condition that the Appellants pay the requisite taxes and other charges payable therefor under the law. The condition accordingly imposed is manifestly just, legal and proper. Those who want to carry, on the business of exhibiting films on V.C.R. must be ready and willing to pay the requisite taxes and other charges levied under law. Even where the law is under challenge, as in the present case, the litigant cannot claim as of right by way of interim relief that he may not be required to pay the impugned taxes and charges till the challenge is adjudicated. Until the law is declared ultra vires the constitution or levy of taxes or charges is declared ultra vires the law, the liability to pay taxes and charges subsists and it must be discharged. In rare and exceptional cases, the Court may grant interim injunction or stay subject to. appropriate conditions but, ordinarily, the interim protection which should be granted is to direct that in case the challenge succeeds the amount collected by way of taxes and charges will be

refunded within a particular time limit, with or without interest, without driving the litigant to a suit or any other separate proceeding to make the recovery, or. that such amount shall be adjusted against future tax liability, if any. These are the principles which govern the grant of interim relief in tax matters.

3. It is pertinent to refer to the decision in Siliguri Municipality and Others Vs. Amalendu Das and Others, in this connection. By way of interlocutory order the Appellant Municipality was restrained in that case from recovering graduated consolidated rate on annual value of holdings in terms of amended Law. On appeal, the Supreme Court held:

Normally, the High Courts should not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant of stay in such matters, should be an exception and not a rule.

It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only consideration at that juncture is to ensure that no prejudice is occasioned to the rate-payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund, or adjust against future dues, the levy of tax or rate of a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the Court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the Court cannot be unmindful of the need to protect the authority levying the tax for at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed....

The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed.

4. In the light of these well-settled principles, the trial Court was justified in giving the impugned direction. The only rider which we would like to add to the order under appeal is that in case the Appellants succeed in their challenge to the impugned levy, they would be entitled to the adjustment of the excess amount recovered from them against the future liability of taxes and charges.

5. In case the taxes and other charges have not been paid within the time limited by the trial Court, the Appellants may do so within ten days from date and thereupon the interim relief granted by the trial Court will ensure to their benefit.

6. The appeal is disposed of in terms of the foregoing order.

7. No separate order is required to be passed on the application for interim relief which too stands disposed of in view of the foregoing order. Interim orders, if any, stand vacated.

Shyamal Kumar Sen, J.

8. I agree.

