

(1997) 06 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 3726 of 1994-R

P.K. Kunjamma

APPELLANT

Vs

Tax Recovery Officer

RESPONDENT

Date of Decision : 05-06-1997

Acts Referred:

Income Tax Act, 1961 — Section 156, 222
Income Tax Rules, 1962 — Rule 48

Citation : (1997) 227 ITR 852 : (1997) 94 TAXMAN 447

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : N. Venkatarama Iyer, for the Appellant; N.R.K. Nair, for the Respondent

Judgement

P.A. Mohammed, J.—The writ petitioner who is the owner of 42 cents of land comprised in Sy. No. 408/9A of Connannur village attached by the Tax Recovery Officer in realisation of the alleged arrears of Income Tax challenges exhibits P-6 and P-9. Exhibit P-6 is a copy of the letter issued by the village officer on behalf of the Tax Recovery Officer stating that the attached property shall not be transferred or dealt with otherwise. By exhibit P-9 the respondent sent a letter to K.L. Mathew, the husband of the petitioner, stating that he is proposing to sell the above attached property in realisation of arrears of Income Tax due from him for the year 1974-75. It appears, in realisation of the amount due from K.L. Mathew, the petitioner's property has been attached. When attachment proceedings were taken in respect of the above property, exhibit P-7 petition was filed before the respondent stating that the property attached belongs to her exclusively and that it does not belong to her husband and he has no connection whatsoever with the property. By exhibit P-8, the petitioner again wrote to the respondent praying to withdraw the attachment at the earliest point of time. No action was taken by the respondent on exhibits P-7 and P-8. However, the respondent has proceeded with the sale proceedings as observed in exhibit P-9. It was in the above background the petitioner came before this court with the

present writ petition.

2. Heard learned counsel for the petitioner and also standing counsel for the Income Tax Department.

3. Learned counsel for the petitioner points out that the petitioner is not a "defaulter" under the provisions of the Income Tax Act in so far as the amount claimed by the respondent and hence attachment effected in this case is totally unwarranted. While projecting his contentions, counsel invited my attention to Rule 48 of the Rules contained in the Second Schedule to the Income Tax Act prescribing the procedure for recovery of tax. Rule 48 reads as follows :

" 48. Attachment. --Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge. "

4. This rule authorises the Tax Recovery Officer attachment of the immovable property of the "defaulter" and not an "assessee". An assessee becomes a "defaulter" only when his name is mentioned in the "certificate" which in this context means the certificate drawn up by the Tax Recovery Officer u/s 222 in respect of any assets referred to in that section. u/s 222 when an assessee is in default or is deemed to be in default in making the payment of tax, the Tax Recovery Officer may issue a "certificate" authorising to recover the arrears from the assessee. The assessee can be said to be in default if he does not make the payment of tax specified in the demand notice issued u/s 156 within a period of thirty days of service of the notice. It is an admitted case that no demand notice was issued to the petitioner by the Tax Recovery Officer as required u/s 156 of the Act. In the absence of such a demand notice, the petitioner cannot be said to be a "defaulter" within the meaning of Rule 48.

5. As pointed out above, the present attachment has been made in realisation of the tax due from K.L. Mathew who is the husband of the petitioner. The case of the petitioner is that she was an assessee to Income Tax and there was no amount due from her to the Department for any of the years. Further, she is not a defaulter under the provisions of any other enactment for which any officer is authorised to take recovery proceedings. This being the position, the attachment of the property belonging to the petitioner is totally unauthorised.

6. However, it has to be observed that in the counter-affidavit filed on behalf of the respondent it is stated that the petitioner's husband was given ample opportunity for clearing the Income Tax dues even after the attachment of the land. It is further stated therein, "I am not taking any view on the question of ownership and I am prepared to consider any claim on the merits provided there is a proper claim and evidence in support". Without proving the property sought to be attached belongs to K.L. Mathew, it is not known why the attachment was made. The statement that the respondent is not taking any view on the question of ownership itself will be sufficient to show that the respondent has not made up

his mind as to whom the attached property belongs. Admittedly, Income Tax arrears in this case are due from K.L. Mathew and, therefore, it is for the respondent to initiate proceedings against him for recovery of the amount in accordance with law. This judgment will not stand in the way of the Income Tax Department in taking any proceeding against K.L. Mathew in realisation of the Income Tax arrears due from him.

7. In the result, the attachment proceedings initiated by the respondent in respect of the 42 cents of land referred to above in the possession and ownership of the petitioner are quashed. Consequently, exhibit P-6 is also set aside. The writ petition is allowed.