(1988) 02 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14694 of 1987

R. Sulochanamma — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 10-02-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Income Tax Act, 1961 — Rule 16, 51, 281

Citation : (1989) 179 ITR 312

Hon'ble Judges : Y.V. Anjaneyulu, J;G. Ramanujulu Naidu, J

Bench : Division Bench

Advocate : G.V. Sitaram Rao, for the Appellant; K. Jagannadha Rao, for the Respondent

Judgement

Anjaneyulu, J.—The petitioner herein seeks a declaration that rules 16 and 51 of the Second Schedule to the Income Tax Act, 1961, are ultra vires article 19(1)(f) of the Constitution. The petitioner also seeks a declaration that the attachment effected by the second respondent on November 17, 1976, should take effect only from the date of the attachment order and not from the date of service of notice under rule 2 of the Second Schedule.

2. One P.R. Damodaram Chetty of Chittoor was owing a considerable amount of income tax. Proceedings for recovery of tax were initiated as the said Damodaram Chetty committed default in the matter of payment of the taxes. A certificate was issued by the Income Tax Officer assessing Damodaram Chetty to the Tax Recovery Officer certifying the amount of tax due from the defaulter. After receipt of the certificate, the Tax Recovery Officer issued a notice dated October 19, 1972, under rule 2 of the Second Schedule and served the same on December 25, 1972, on the defaulter assessee.

3. It appears that the defaulter was the owner of a house property bearing No 7-6-42 situate in Chittoor town. The petitioner herein is the second mortgagee of the said house property. The mortgage deed was executed on May 22, 1974. It is

said that it is a simple mortgage duly registered.

4. Pursuant to the notice served on the defaulting assessee under rule 2, the Tax Recovery Officer attached the house of which the petitioner is the second mortgagee on November 17, 1976. The Petitioner filed a claim petition before the Tax Recovery Officer which was rejected. Thereafter, a suit bearing No. 101 of 1977, was filed in the Subordinate Judge''s Court, Chittoor. The suit was dismissed on April 10, 1980. A further appeal against the judgment and order of the Subordinate Judge is now pending in this court in A.S. No. 1185 of 1980.

5. The short contention canvassed by learned counsel for the petitioner is that rules 16 and 51 of the Second Schedule are ultra vires article 19(1)(f) of the Constitution. It is urged that the petitioner is a bona fide mortgagee without notice of any proceedings against the defaulting assessee. It is submitted that the interests of a bona fide mortgagee, not having notice of proceedings against the defaulting assessee, should be protected and the provision to the contrary contained in rules 16 and 51 of the Second Schedule are arbitrary and unreasonable and violative of article 14 of the Constitution. Learned counsel invited our attention to section 281 of the Income Tax Act as it stood prior to amendments in 1975 and submitted that in letter and spirit, the position as it obtained prior to the amendment in 1975 of section 281 should prevail even for the purpose of recovery under the Second Schedule to the Income Tax Act. Learned counsel for the petitioner invited our attention to the decision of the Madras High Court in R.K. Raghavan (R.K. Selvaraj) Vs. Union of India and Another, .

6. Learned standing counsel for the Revenue submitted that provisions contained in rules 15, 16 and 51 of the Second Scheduled are deliberately designed to protect the interest of the revenue against the fraudulent transfers by the assessees who commit default in payment of taxes. If this object is kept in mind, contends learned standing counsel, there is nothing unreasonable or arbitrary in the provisions contained in rules 16 and 51.

7. Having considered the matter carefully, we are unable to accede to the contention of learned standing counsel for the petitioner. Indeed the judgment of the Madras High Court in R.K. Raghavan (R.K. Selvaraj) Vs. Union of India and Another, referred to by him sets out the position clearly. The fact that the transaction of mortgage was bona fide and was without notices of the pendency of the proceedings against the defaulting assessee does not affect the right of the Income Tax Department to treat the mortgage transaction as void under the rules for recovery contained in Second Schedule. The following observations in the judgment of the Madras High Court occurring at page 927 are relevant and answer directly the question raised by learned counsel for the petitioner :

"It is well settled that provision in a taxing statute designed to prevent evasion of tax or to prevent fraud and to secure payment of tax which had become due, do not amount to unreasonable restrictions within articles 19(1)(f) and (g) : (Vide

Balaji Vs. Income Tax Officer, Special Investigation Circle, . There can be no doubt that rule 51 is intended to prevent an evasion of tax".

8. We are in respectful agreement with the aforesaid observations of the Madras High Court in R.K. Raghavan (R.K. Selvaraj) Vs. Union of India and Another, . We are unable to accept the petitioner''s plea that rules 16 and 51 of the Second Schedule to the Income Tax Act are in any way violative of the provisions contained in articles 14 and 19(1)(f) of the Constitution.

9. The writ petition is accordingly dismissed. No costs.