(2002) 04 AHC CK 0068

In the Allahabad High Court

Case No : C.M.W.P. No. 37785 of 2001

Ram Kishan APPELLANT

Vs

Collector, Agra and Others RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Uttar Pradesh Trade Tax Act, 1948 — Section 8(8)

Citation : (2002) 2 AWC 1673

Hon'ble Judges : Onkareshwar Bhatt, J;G.P. Mathur, J

Bench : Division Bench

Advocate : B.P. Singh and Vivek Kumar Singh, for the Appellant; H.R. Mishra and N. Tripathi, S.C., for the Respondent

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed praying that the auction notice dated 29.10.2001 be quashed and a writ of mandamus be issued commanding the respondents not to sell house Nos. 4/279 and 4/279A. Gudai Mansoor Khan, Kachehari Ghat, Agra.

2. The case set-up in the writ petition is that one Mitthan Lal was owner of houses No. 4/279 and 4/279A. He executed a sale deed of the houses in dispute in favour of the petitioner and his brother Late Tara Chand on 4.12.1971. There was a family settlement between the petitioner and his brother Tara Chand in which both the houses came in the share of the former and he also got possession over the same. A notice was pasted on the petitioner''s house on 27.8.2001 that the houses would be auctioned for recovery of dues of sales tax standing against the firm M/s. Mltthan Lal Oil Stores. Chatta Bazar, Kachehari Ghat, Agra. A notice was subsequently issued on 29.10.2001 notifying that the houses would be sold through auction on 3.12.2001. The petitioner contends that he Is the exclusive owner of the houses in dispute and the same cannot be sold for recovery of dues of sales tax of firm M/s. Mitthan Lal Oil Stores. The State has filed a counter-affidavit, which has been sworn by Sri D. P. Sahu. Trade Tax

Officer, Sector 3. Agra. It is averred in the counter-affidavit that there are arrears of sales tax amounting to Rs. 10,20.640 pertaining to the Assessment Years 1971-72. 1972-73 and 1973-74 against M/s. Mitthan Lal Oil Mills, Chatta Bazar which are recoverable as arrears of land revenue. During the course of recovery proceeding, it was revealed that the nouses in dispute stand in the name of Mitthan Lal, who is the proprietor of the firm M/s. Mitthan Lal Oil Stores. Inquiry was also made from Nagar NIgam and Jal Sansthan. Agra and the authorities of the aforesaid bodies informed that the houses are recorded in the name of Mftthan Lal. It is, thus, contended on behalf of the State that as the houses stand In the name of Mitthan Lal, the same can be auctioned In proceedings for recovery of arrears of sales tax from the firm M/s. Mitthan Lal Oil Stores.

3. We have heard Sri B. P. Singh for the petitioner and Sri H. R. Misra on behalf of the State and have perused the record.

4. Sri B. P. Singh has contended that the petitioner had purchased the houses in dispute by means of a registered sale deed on 4.12.1971 after taking due care and inquiries which showed that the houses Were free from all encumbrances. There was a tenant in a portion of the house In dispute and it was the petitioner who got the same released on the ground of personal need and the release order was passed by the Rent Control and Eviction Officer, Agra on 31.12.1981. Thereafter, the petitioner had invested huge amount of money In getting the house repaired and renovated. It has been urged that the petitioner Is the absolute owner of the houses In dispute and, therefore, the same cannot be sold In proceedings for recovery of sales tax dues which are standing against the firm M/s. Mitthan Lal Oil Stores. Sri H. R. Misra, learned standing counsel has, on the other hand, submitted that In view of Section 34 of the Trade Tax Act, the transfer made in favour of the petitioner is void. Section 34 provides that where during the pendency of any proceeding under the Act, any person liable to pay any tax or other dues creates a charge on or transfers any immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings. On the strength of the aforesaid provision. Sri Misra has submitted that in proceedings for recovery of arrears of sales tax, the sale deed of the houses in dispute executed by Mitthan Lal in favour of the petitioner would be deemed to be void.

5. We have given our careful consideration to the submission made by the learned counsel for the parties. Section 34 of the Trade Tax Act would come into play only If the person liable to pay any tax or other dues creates a charge on or transfers any immovable property during the pendency of any proceeding under the Act. Section 34 would not come into play if the charge Is created or transfer is made prior to the commencement of the proceedings under the Act. The question as to on what date proceedings under the Trade Tax Act or Sales Tax Act had commenced requires Investigation into questions of fact which In view of the

fact that the transfer was made more than thirty years back may not be possible in present proceedings under Article 226 of the Constitution as It may require appraisal and scrutiny of evidence. Section 8 (8) of Trade Tax Act provides that any tax or other dues payable to the State Government under the Act may be recovered as arrears of land revenue or in the prescribed manner by the Assessing Authority or any other officer authorised by the State Government. This provision also provides that the Assessing Authority or any other officer authorised by the State Government in that behalf shall for the purposes of such recovery have all the powers which a civil court has under the CPC for the purpose of recovery of an amount due under a decree. Learned standing counsel has placed before us a copy of notification dated 15.6.1998 by which the Assistant Commissioner (Assessment) and Trade Tax Officer (Assessment) posted in Agra have been appointed as Assistant Collector, 1st Class u/s 8 (8) of the Act for the area over which they exercise jurisdiction. By another notification dated 26.6.1998 all the Assistant Collectors, 1st Class have been empowered to act as Collector for the purpose of recovery of the trade tax and other dues u/s 8 (8) of Trade Tax Act. In view of the specific provisions contained in Section 8 (8) of Trade Tax Act whereunder the Assessing Authority or any other officer authorised by the State Government in that behalf has all the powers which a civil court has under the CPC for the purpose of recovery of an amount due under a decree, the provisions of Order XXI, Rule 58. C.P.C., also become applicable. The petitioner can, therefore, file an objection under Order XXI, Rule 58, C.P.C., before the Officer seeking to recover the arrears of tax of the firm M/s. Mitthan Lal Oil Stores by attachment and sale of the houses of which the petitioner claims to be the owner.

6. Sri B. P. Singh has submitted that the petitioner had objected to the pasting of notice of auction sale over his houses and in that connection, some F.I.R. has been lodged against him by a Trade Tax Officer and, therefore, the authorities may not act fairly and pass an adverse order against him. Taking into consideration the said fact, we direct that the objection which may be filed by the petitioner under Order XXI, Rule 58, C.P.C. shall be heard and decided by some officer other than the one who was instrumental in getting the F.I.R. lodged against the petitioner.

7. The writ petition is accordingly disposed of with a direction that if the petitioner prefers an objection within one month under Order XXI, Rule 58, C.P.C. before the authority seeking to recover the sales tax dues of the firm M/s. Mitthan Lal Oil Stores, the officer concerned shall decide the same expeditiously and in accordance with law, It will be open to the officer to entertain an application for grant of interim relief and to pass appropriate order thereon. The auction sale of the houses in dispute shall remain stayed for a period of one month.

