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(1960) 10 AHC CK 0019

In the Allahabad High Court

Case No : Sp. A. No. 295 of 1957

Ramakant Kunwari — APPELLANT

Vs

State of Uttar Pradesh and others — RESPONDENT

Date of Decision : 31-10-1960

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 32(2)
Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 32(2)
Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 32(2)

Citation : (1961) 31 AWR 147

Hon'ble Judges : Mootham, C.J;Srivastava, J

Bench : Division Bench

Advocate : S.B. Johari, for the Appellant; Standing Counsel for respondents, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—This is an appeal from an order of a learned Judge dated 6-12-1957.

2. The Appellant was at one time the zamindar of certain landed property in the district of Mirzapur, but as, a consequence of the UP ZA and LR Act. 1950, this property vested in the State and the Appellant became entitled to certain compensation therefore. In respect of the year 1359, she was assessed to agricultural income tax in the sum of Rs. 3,759-120 and a notice of demand u/s 20 of the UP Agricultural Income tax Act was served on her on the 23-11-1952. That notice required the Appellant u/s 30 of the Act to pay the tax in four equal instalments, the first of which was to be paid within one month of the date of the service of notice and each subsequent instalment within two months of the previous instalment. The first instalment was therefore required to be paid on 23-12-1952 and the last instalment on 23-6-1953.

3. On 15-12-1952, the Appellant made an application to the Collector of Mirzapur that only one fourth of the amount of each instalment be allowed to be paid in

cash and the remaining three-fourths of each instalment be deducted from the amount of compensation payable to her under the UP ZA and LR Act. This application was allowed, and thereafter the Appellant paid the sum of Rs. 234-15-0, being one fourth of the amount due, on each of the four dates on which the instalments were required to be paid. The amount which it was necessary for the Government to deduct from the Compensation payable to the Appellant was Rs. 2,819-13 0. It appears however that the compensation authorities entirely over looked the fact that this deduction had to be made, and they issued compensation bonds to the Appellant for the amount of Rs. 2,819-13-0 leaving a sum of Rs. 382-0-3 to be paid in cash. This sum was subsequently credited towards the tax payable by the Appellant.

4. On 4-2-1956 the Tahsildar issued a notice to the Appellant requiring her to deposit the sum of Rs. 2437 12-9, that is to say the sum of Rs. 2,819.130 less Rs. 382.03 by 10- 2-1956. The Appellant objected to making this payment and she did not do so and thereafter the Compensation Officer, Mirzapur, on 7-4-1956, moved the Collector u/s 32(1) of the UP Agricultural Income tax Act to recover the sum of Rs. 2,437-12-9 from the Appellant as an arrear of land revenue. The Appellant filed an objection before the Collector, but that objection was rejected and directions were sent to the Tahsildar to attach and sell the property of the Appellant for the realisation of the amount claimed. The Appellant then filed a petition in this Court under Article 226 of the Constitution in which she challenged the validity of the recovery proceedings and prayed that they be quashed by a writ of certiorari. That petition was dismissed by the learned Judge, and the Appellant now appeals.

5. The submission made to the learned Judge, and reiterated in this Court, is that proceedings for the recovery of arrears of agricultural income tax must, u/s 32(2) of the UP Agricultural Income tax Act, be commenced not later than the expiration of one year from the date upon which the last instalment falls due, and that as the last instalment fell due on 23-6-1955, the notice of the Tahsildar dated 4-2-1956 and all further proceedings consequent thereon were invalid.

6. Now Section 32, so far as it is relevant, reads thus:

(i) The Collector may on the motion of the assessing authority, recovered the amount assessed as agricultural income tax as if it were an arrear of land revenue.

(ii) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date on which the last instalment fixed u/s 30 falls due.

7. It appears that on 2-5-1953, an intimation was sent by the Officer in charge, Agricultural Income tax to the Compensation Officer asking him to deduct the sum of Rs. 2,819-1 -0 from the compensation money payable to the Appellant. The compensation Officer reported that only the sum of Rs. 3820-3 could be adjusted. The learned Judge held that the fact that the assessing authority had

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asked the Compensation Officer to deduct the amount claimed constituted the commencement of proceedings for the recovery of the sum payable within the meaning of Section 32(2) of the UP Agricultural Income tax Act, and, as the assessing officer had taken this step within the permissible period, the subsequent proceedings were valid.

8. The learned Judge was of the view that the communication sent by the assessing authority to the Compensation Officer was in substance a process of attachment of the Appellant''s moveable property within Cl. (c) of Section 279 of the UP ZA and LR Act which provides that-

An arrear of land revenue may be recovered by any one or more of the following processes:

(a) ...

(b) ...

(c) by attachment and sale of his moveable property including produce." It appears however to be clear that, in fact, there was no attachment of any moveable property of the Appellant other than of the sum of Rs. 382/ 3 as a consequence of the Collector''s request, and that "process", if such it be thereafter exhausted itself and came to an end. This is made clear by an order (Annexure ''C'' to the Appellant''s affidavit) of the Collector dated 25-5-1956, in which he says:

The proposal for postponing the realisation of balance amounting to Rs. 2,819/13/ - remained pending consideration that the arrears be deducted from the compensation money. The Compensation Officer was accordingly asked to deduct the same from compensation amount. It was however reported by him that the sum which could be adjusted was only to the tune of Rs. 382/ and the remaining amount still remained to be realised from the Assessee. The balance outstanding now is, therefore, to be recovered, as an arrear of Land Revenue u/s 31 of the Act

9. It is we think clear therefore that the proceedings of which the Appellant now complains were entirely new proceedings commenced only in the year 1956. They were therefore beyond time.

10. We are accordingly of opinion that this appeal must be allowed. The order of the learned Judge is set aside and the demand upon the Appellant on 4-2-1956, and all proceedings subsequent thereto are quashed. We however make no order as to costs.

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