

(2000) 10 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 1000 of 1996 (A.Y. 1976-77 to 1983-84)

S. Padmapriya

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Income Tax Act, 1961 — Section 1, 10, 11, 12, 13

Citation : (2001) 165 CTR 132 : (2001) 119 TAXMAN 79

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : K. Srinivasan and C. V. Rajan, for the Appellant;

Judgement

N.V. Balasubramanian, J.—The writ petition is filed for the issue of a writ of mandamus forbearing the respondents from in anyway

proceeding by way of sale of the properties referred to in the notice dated 5-1-1996, under Ref. No. S. 1-23/Cuddalore issued by the first respondent.

2. The case of the petitioner is that the father of the petitioner was an Income Tax assessee. He had income from a lodge known as "Hotel

Brindavan" and a cinema theatre known as "New Cinema Theatre" both at Cuddalore. He was assessed to Income Tax for the assessment year

1976-77 and thereafter. It is stated that on receipt of the notice impugned, the petitioner made enquiry with the officials, and she came to know

that her father was liable to pay Income Tax arrears of a sum of Rs. 67,575 with interest for the assessment years 1976-77 to 1983-84. The

petitioner is challenging the notice on the ground that her father was assessed to Income Tax ex parte for the assessment year 1976-77 and the

same was continued upto 1983-84, and her father also made certain payments and when her father committed defaults in the payment of instalments, there were demands requiring the father of the petitioner to pay the arrears of Income Tax and her father subsequently paid certain amounts. It is stated that on 11-12-1985, the father of the petitioner died. It is stated that the property of the petitioner was attached on 14-3-1989, by the Tax Recovery Officer, Chennai. It is the specific case of the petitioner that under rule 68B(3) of the Second Schedule to the Income Tax Act, 1961, the sale of the property cannot be effected after a period of three years from the date of attachment. It is, therefore, stated that since the property was attached prior to 1-6-1992, and the orders which gave rise to the demand of tax were made prior to 1-6-1992, and the property was attached prior to 1-6-1992, the proceedings initiated are beyond the period provided in rule 68 of the Rules. It is also stated that the petitioner is the legal representative of the deceased defaulter, but no notice was served on her.

3. The first respondent has filed a counter-affidavit and it is not necessary to notice the averments made therein in detail.

4. Mr. K. Srinivasan, learned counsel appearing for the petitioner, referred to rule 68B of the Second Schedule to the Income Tax Act and

submitted that the demand of tax was made for the assessment year 1976-77 and the property was attached before 1-6-1992, viz., on 14-3-

1989, and the notice for settling the sale proclamation was issued on 5-1-1996, i.e., beyond three years from 1-6-1992, and hence, the entire

proceedings should be quashed. Learned counsel for the petitioner also submitted that the petitioner is the legal representative of the deceased-

assessee, but she was not served with any notice and hence, on that account also the proceedings should be quashed.

5. Mr. C.V. Rajan, learned senior standing counsel appearing for the department, submitted that the sale proceedings were initiated within the time

stipulated in rule 68B(1) of the Second Schedule to the Income Tax Act. He further submitted that the proceedings are being continued against the

petitioner as a legal representative of the deceased-assessee from the stage at which the proceedings were left on the date of the death of the

defaulter.

6. I have carefully considered the submissions of the learned counsel for the petitioner and the learned senior standing counsel appearing for the department, rule 68B(1) of the Second Schedule to the Income Tax Act provides that no sale of immovable property shall be made under the said Act after the expiry of three years from the end of the financial year in which the order which gave rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached has become conclusive under the provisions of section 245-I or as the case may be, final in terms of the provisions of Chapter XX. The said rule was inserted with effect from 1-6-1992.

7. On the facts of the case, the demands for the payment of tax were made from the assessment years 1976-77 to 1983-84. Sub-rule (3) of rule 68B of the Second Schedule to the Income Tax Act provides that where an immovable property has been attached before 1-6-1992, and the order which gave rise to the demand of any tax, interest, fine, penalty or any other sum for the recovery of which the immovable property was attached became final before the said date, that date should be deemed to be the date on which the said order has become conclusive or final. The effect of sub-rule (3) of rule 68B of the Second Schedule to the Income Tax Act is that when the property was attached before 1-6-1992, and the order which gave rise to the demand of tax for the recovery of which the property was attached has become conclusive before 1-6-1992, then, 1-6-1992, is statutorily fixed as the date on which the demand became conclusive. The reading of sub-rule (1) of rule 68B shows that the period of three years provided under the said Act would commence from end of the financial year in which the order which gave rise to the demand of tax has become conclusive. In my view, rule 68B(3) should be read along with rule 68B(1) of the Second Schedule to the Income Tax Act, as rule 68B(3) deals with cases where the attachment of the property was made prior to 1-6-1992, and the respondents are justified in calculating the period of three years from the end of the financial year in which the order which gave rise to the demand of tax became conclusive. Sub-rule (3) of rule 68B, in my view, fixes 1-6-1992, as the date on which the demand of tax has become final in all cases where the demand was made and the property was attached, prior to that date and that date is fixed for a limited purpose to determine the time-limit prescribed under sub-rule (1) of

rule 68B. In other words, in all cases falling under the ambit of rule 68B(3), the date is statutorily fixed as 1-6-1992, as the conclusive date to find out the three years period prescribed under sub-rule (1) of rule 68B and it is not correct to assume that 1-6-1992, should be taken as the starting point for determining the limitation period under sub-rule (1) of rule 68B of the Second Schedule to the Act. Therefore, there is no difficulty in holding that the sale notice issued by the first respondent on 5-1-1996, is within the period stipulated in rule 68B(1) of the Second Schedule to the Income Tax Act.

8. The second submission of the learned counsel for the petitioner is that the petitioner was not served with any prior notice after the death of her father. This contention is also not acceptable. Rule 85 of the Second Schedule to the Income Tax Act empowers the Tax Recovery Officer to continue the recovery proceedings against the legal representatives of the defaulter from the stage at which it was left on the death of the defaulter and in the said proceedings, all the provisions of the Second Schedule would apply as if the legal representative is the defaulter. I have gone through the affidavit filed in support of the petition and the counter-affidavit and I find that the petitioner was also issued notice and it was served on the petitioner demanding payment of arrears of tax with interest. Therefore, I hold that there is no violation of the principles of natural justice.

9. The result is the writ petition is liable to be dismissed and accordingly, it is dismissed. However, considering the fact that the petitioner is the legal representative of the deceased defaulter, I am of the view that the petitioner should be given some time to clear off the arrears of tax.

Accordingly, the petitioner is given six months time from the date of the receipt of the order to clear off the arrears and if the amount is not paid within the time stipulated, it is open to the department to proceed against the property on the basis of the notice issued on 5-1-1996, and also by the issue of a fresh proclamation of sale. In the circumstances of the case, there will be no order as to costs.