
(1987) 03 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 2587 of 1986

S. Parduman Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Citation : (1987) 03 DEL CK 0006

Hon'ble Judges : R.N. Aggarwal, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : K.R. Manjani and D.K. Jain, for the Appellant;

Judgement

Aggarwal, J.

(1) The challenge by Sardar Parduman Singh in this petition under Article 226 of the Constitution of India is to the legality and validity of the order dated 24th December, 1985 passed u/s 132(3) of the Income Tax Act, 1961, (hereinafter for the sake of brevity called "the Act") by the Deputy .Director of Inspection (Investigations), New Delhi, restraining the petitioner and one Harish Chander from removing, parting with or otherwise dealing with the property shop No. 235, Lajpat Rai Market, Delhi, without his previous permission. On the same day, vide seizure memo (Annexure U), Shri P. L. Uppal, A.D.I. (Investigation) sealed shop No. 235, Lajpat Rai Market. The search and seizure proceedings were conducted by Shri P. L. Uppal in the presence of Shri Parduman Singh and Shri Harish Chander. The seizure memo further in column 7 records as follows :

"SHRI Parduman Singh having rights in shop No. 235, L. R. Market, Delhi. Shri Harish Chander keeping the key of shop No. 235. do-."

(2) On 23rd April 1986, the petitioner through his advocate wrote to the Deputy Director of Inspection (Investigation) stating therein that the shop No. 235, Lajpat Rai Market, belonged to the petitioner Parduman Singh and it should be released to him. The petitioner received no reply and he sent registered notice on 19th May, 1986 for the release of the shop to him. To the same effect, the

petitioner wrote another letter on 25th July 1986. On 22nd/23rd July 1986 the Deputy Director of Inspection wrote to the petitioner that the shop under reference could be opened subject to his furnishing a bank guarantee equal to the market value of the shop or on his establishing the ownership of the shop. The petitioner through his advocate replied to the above letter and Along with the letter sent Income Tax, sales-tax orders and some other documents to establish his title to the shop. On 13th August 1986 the petitioner through his advocate challenged the legality of the order requiring the petitioner to furnish bank guarantee or to establish his ownership before he could be permitted to open the shop.

(3) The case of the petitioner is that sometime in 1965-66 he had entered into partnership with Shri Kishan Chand and started the business in radios and transistors under the name and style of M/s. Lucky Electronics and that the said partnership was dissolved and the petitioner took over the business Along with the shop and that he had been doing his business in the said shop business 1965-66. The petitioner placed on record Income Tax and sales-tax assessment orders since 1971 to show that he has been doing business in the said shop since 1965-66. He also produced on record a number of other documents to prove his possession of the shop. The contention of the petitioner is that the necessary conditions under which action could be taken u/s 132 of the Act do not exist in this case and the action of the respondent in sealing the shop and further passing the order dated 24th December 1985(annexure "A") are wholly without legal authority and are liable to be struck down.

(4) The respondents in their reply affidavit had stated that they "bad reliable information that one Surjit Singh resident of A-228 Derawal Nagar, near Model Town, Delhi and his father-in-law Shri Uttam Singh, resident of M-247, Greater Kailash-I had amassed huge wealth in the form of Cash, deposits, jewellery and immovable properties in their names and in the names of their family members out of their concealed income, and that the information further was that premises No. 235, Lajpat Rai market had been acquired by the aforesaid persons out of unexplained sources. It is further stated that the information is that The afore mentioned persons had acquired shop No. 235 by paying a "Pagri" of Rs. 14 lakhs. The respondents have further stated in the affidavit that the search party had gone to the shop in question on 24th December 1985 and it was found to be locked and that at about 3.30 p.m. one Harish Chander had come and produced the keys of the shop and thereafter the shop was opened and searched in the presence of Harish Chander and Parduman Singh. It is further stated that on the search of the residential premises of Surjit Singh two visiting and were recovered in which the business particulars of Surjit Singh and his brother Harpal Singh were given as shop No. 235, Lajpat Rai Market. It is further stated that Surjit Singh on being questioned had denied the acquisition of shop No. 235, Lajpat Rai Market by paying any "pagri". The respondent further stated that since it was not practicable to seize the property in question a restraint order u/s 132(3) of the Income Tax Act was served on the petitioner and the shop was

sealed pending the completion of the enquiry. It is further stated, that the shop in question is the property of Rehabilitation Department. Government of India, and since the petitioner is neither the allottee of the shop in question by the Rehabilitation Department nor was he found in possession of the shop at the time of search, the possession of the shop could not be handed over to him and the possession of the shop in question has been given to the Managing Officer, Ministry of Home Affairs, Department of Internal Security, Rehabilitation Division. New Delhi on 8th January, 1987.

(5) We have carefully gone through the petition, the center affidavit the rejoinder affidavit and the other papers placed on the record and we have no hesitation in coming to the conclusion. that the order dated 24th December 1985 as well as action of the respondents in scaling the shop are wholly illegal and without jurisdiction. Here we would discuss section 132 of the Act under which the impugned actions have been taken. The relevant part of section 132 reads as follows :

"132.(1) Where the Director of Inspection or the Commissioner or any such Deputy Director of Inspection or Inspecting Assistant Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that- (a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922 (11 of 1922) or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account, or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act, or (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represent either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property). then,- (A) the Director of Inspection or the Commissioner, as the case may be, may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income Tax Officer, or (B) such Deputy Director of Inspection or Inspecting Assistant Commissioner, as the case may be, may authorise any Assistant Director of Inspection or Income Tax Officer the officer so authorised in all cases being hereinafter referred to as the authorised officer to (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept :

xxx xxx xxx (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search : Xxx xxx Xxx (3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof. that he shall not remove, part with or otherwise deal with it. except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section. xix xxx xxx (5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (I A), the . Income Tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall within one hundred and twenty days of the seizure, make an order, with the previous approval of the Inspecting Assistant Commissioner.

(6) From reading of the various provisions of section 132 it is clear that an officer duly empowered u/s 132 can enter, search and seize books of account, other documents, money, bullion, jewellery or other valuable article or thing only if the conditions mentioned in section 132(1)(a) (b) and (c) exist. The conditions, inter alia, are (i) that where any of the officers mentioned in sub-section (1) of section 132 has issued summons to any person under any of the sections mentioned in section 132(1)(a) requiring him to produce or cause to be produced any books of account, and that person has omitted or failed to produce the books of account or other documents which were required to be produced; (ii) where such an officer has reason to believe that any person to whom summons or notice as mentioned in sub-clause (a) has been or might be issued will not or would not produce or caused to be produced any books of account, etc. which will be useful for, or relevant to, any proceeding . under the Act; (iii) that any of the officers mentioned in sub-section 132(1) has reason to believe that any person is in possession of money, bullion, jewellery, or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property, which has not been, or would not be, disclosed for the purposes of the Act.

(7) Above are the essential pre-conditions before any action can be taken to enter, search and seize any of the articles or things mentioned in section 132. Sub-section (3) empowers an officer to take action under sub-section (3) in case he finds that it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing.

(8) SUB-SECTION (5) requires the Income Tax Officer to estimate the undisclosed income within a period of 120 days of the date of the seizure after giving reasonable opportunity to the person concerned of being heard.

(9) We find from the counter filed by the respondents that beyond an information that one Surjit Singh and his father-in-law had purchased the shop in question

after paying a "pagri" of Rs. 14 lakhs there was no material with the respondents that the petitioner was in possession of any money, bullion, jewellery or other valuable article or thing in the said shop. Further, no satisfaction was recorded that such money, bullion, etc. represented either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Income Tax Act.

(10) On search of the shop no documents, money, bullion etc. was found in the shop. On these facts, the crucial question arises is-was the Assistant Director of Inspection competent to seal the shop and pass an order u/s 132(3) of the Income Tax Act in respect of the shop. A plain reading of section 132 of the Act shows that its scope is limited to articles and things mentioned in section 132(1) (a), (b) and (c) and it does not include within its ambit "immovable property" because of the reason that the location of an immovable property is known; and no search has to be made for it, and if no search is called for the question of seizure does not arise. u/s 132 the search and seizure go together.

(11) In *Motilal and Others Vs. Preventive Intelligence Officer and Others*, , a Division Bench comprising of. Mr. Justice R. S. Pathak, as his Lordship then was, and Mr. Justice R. L. Gulati, held :

"THE power conferred u/s 132(1) of the Income Tax Act is contemplated in relation to those cases where the precise location of the article or thing is not known to the Income Tax department and, Therefore, a search must be made for it, and where it will not be ordinarily yielded over by the person having possession of it. The view that section 132(3) will include a case where the location of the article or thing is known .and where ordinarily the person holding custody of it will readily deliver it up to the Income Tax department is not correct. Consequently, goods in the custody of the Assistant Collector of Customs and Central Excise are not things which could be the subset of an order u/s 132(3)."

(12) A similar view was taken in *Ramesh Chander and Others Vs. Commissioner of Income Tax and Others*, . His Lordship held:

"THE articles or things referred to in sub-section (3) of section 132 are those which the authorised officer was empowered to search for and seize and no other. They must be articles or things which it may be necessary to search for before they can be seized. The power conferred, u/s 132(1) is contemplated in relation to those cases where the precise location of the article or thing is not known to the Income Tax department and, Therefore, a search has to be made for it, and where it will not ordinarily Be yielded over by the person having possession of it and, Therefore, it is necessary to seize it. It is such article or thing alone which can be the subject of an order u/s 132(3). Therefore, it would not include a case where it is already known that the article or thing is kept in a certain building or place and will ordinarily be yielded up by the person holding custody of such article or thing. u/s 132, the power to search and seize go

together. If no search is called for, no seizure can be made. Therefore, a search must be carried out u/s 132(1) before an order under sub-section (3) can be passed."

(13) The view taken in the aforesaid authorities was approved by the Supreme Court in Commissioner of Income Tax, Haryana, Himachal Pradesh and Delhi and Others Vs. Tarsem Kumar and Another, and their Lordships held :

"THAT where the exact location of the property was known and certain, there was nothing to search or look for. There was no need to seize the money: the Income Tax Department could direct handing over of the money to the Income Tax authorities or take steps for such direction through appropriate authorities, That, In the context in which the expressions "seizure" and "search" were used, where the location of the property was known to the Government, it could riot be said that one Government department could search any other (government department and seize documents, money, etc."

(14) Mr, Jain, the learned counsel for the respondents, referred to us to I, I. Devarajan and Others Vs. Tamil Nadu Farmers Service Co-operative Federation and Others, . It was held in the said authority that a "chose-in- action" would also be a tiling and hence money kept in a bank will be a "valuable thing" so as to recovered by the provisions of section 132. It was further observed that even in relation to an intangible asset like a "debt" an order of attachment u/s 132(3) can be made.

(15) We have carefully gone through the cited authority and in our view it is distinguishable and it has no application to the case in hand. The learned counsel for the respondents has not been able to cite a single authority where an action u/s 132(1) has been taken in regard to an immovable property.

(16) For the reasons stated, we hold that the action of the respondents in sealing the shop and passing an order u/s 132(3) was totally illegal and without jurisdiction. Further, the unfortunate part of this case is that in spite of the petitioner repeatedly asking the respondents to remove the seal and hand over the possession of the shop to him the respondent"s persisted with their illegal action and further aggravated it by asking the petitioner to furnish bank guarantee equivalent to the market value of the shop or to prove his ownership of the shop in case he wanted to open the shop. This order was not warranted by any law.

(17) We may notice here that sub-section (5) of section 132 requires that after any article or thing mentioned in section 132(1) has been seized the Income Tax Officer within a period of 120 days after affording a reasonable opportunity to the person concerned of being heard and making enquiry as may be prescribed shall estimate the undisclosed income and proceed further as mentioned in the sub-clauses of sub-section (5). In the case in hand after effecting the seizure on 24th December 1985 no action was taken under sub-section (5). The failure to proceed under sub-section (5) also renders the seizure invalid. Mr. Jain.

contended that the petitioner was only restrained by an order u/s 132(3) from parting with possession or otherwise dealing with the property without the previous permission of the concerned officer and, Therefore, sub-section (5) was not attracted. The counsel in support of his contention relied upon *Kanwal Shamsher Singh Vs. Union of India and Others*, . We find that this authority is distinguishable and does not apply to the case in hand. Here by sealing the property the petitioner was dispossessed of his possession of the property. This is also the case of the respondents in their counter. The respondents have stated that since the property belonged to the Rehabilitation authorities they have on 8th January 1987 given the possession of the shop to the Rehabilitation authorities. This circumstance puts it beyond doubt that the petitioner had been dispossessed of the property, otherwise how the respondents could deliver the possession to the Rehabilitation authorities. We find that even assuming the seizure to be valid the non-compliance of the provisions of sub-section (5) renders the seizure invalid. We would here like to add that the action of the respondents in breaking the seals in the absence of the petitioner and handing over possession of the property to the Rehabilitation authorities is wholly illegal and this action smacks of mala-fides and in all probability done after coming to know of the filing of the present petition.

(18) In *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, , Mr. Justice Shah, speaking for the court, observed as follows:

"SINCE by the exercise of the power u/s 132 of the Income Tax Act, 1961, a serious invasion is made upon the rights, privacy and freedom of the tax -payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for the exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers, any error of judgment on the part of the officer will not vitiate the exercise of the power."

(19) On a consideration of the entire matter, we have no hesitation in finding that the entire action of the respondents in sealing the shop and passing an order u/s 132(3) and finally passing its possession to the Rehabilitation authorities is without jurisdiction and it must be struck down. We allow the petition and quash the order dated 24th December 1985. We further order the respondents to hand over possession of the shop to the petitioner within 14 days from today. In case possession has been passed on to the Rehabilitation authorities then they should take back the possession of the shop and give it to the petitioner. We further are of the view that it is eminently a fit case where the

petitioner should be awarded damages for the illegal action of the respondents. We direct the respondents to pay Rs. 10,000 as damages. We further direct , in case the respondents do not hand back the possession of the shop within 10 days. they shall be liable to pay damages to the petitioner at the rate of Rs. 500 per day. The petitioner also shall have costs which are assessed at Rs. 1000.