(1959) 09 AHC CK 0039

In the Allahabad High Court

Case No : Civ. Misc Application No. 145 (O.J.) of 1956

Sardar Narendra Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 22-09-1959

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

Citation : (1960) 30 AWR 299

Hon'ble Judges : Tandon, J;Misra, J

Bench : Division Bench

Advocate : Mohd. Husain, for the Appellant; Ghulam Imam, for the Respondent

Final Decision : Dismissed

Judgement

Tandon, J.—This petition, in which the Petitioner is Sri Sardar Narendra Singh, arises out of proceedings held under the U.P. Agricultural Income Tax Act, 1948. The brief facts, in so far as they arc relevant for the present dispute, are these:

A notice u/s 15(3) of the U.P. Agricultural Income Tax Act was served on the Petitioner on the 18th July, 1853, in connection with the assessment for the assessment year 1360F. After the return had been submitted by the Petitioner, he was assessed to Agricultural Income Tax on the 7th of January, 1954, which was made payable in two instalments. The first instalment fell due on the 14th of March, 1954 and the second instalment on the 14th of September, 1954. There was default in the payment of either instalment. Therefore on either occasion a penalty was also imposed u/s 31 of the Act. On the first occasion the amount of penalty was Rs. 359/- and the second occasion Rs. 50/- only. In January, 1955 proceedings were held by which a part of the property of the Petitioner was sold in realisation of the arrears of tax and the penalty. As the proceeds of sale of his property were insufficient to satisfy the entire amount, a fresh process was issued for attachment of his property by the Collector in March, 1956. It is in respect of this process that the present petition has been made. The ground which the Petitioner has taken against it is that the same having been issued in

March, 1956 more than one year after the second instalment was due on the 14th September, 1954 it is beyond limitation, as prescribed u/s 32 of the Agricultural Income Tax Act. According to the Petitioner, there was no jurisdiction after the expiry of the period of one year aforesaid to issue any such process, which therefore, needed to be quashed.

2. Section 32 of the Act provides in Sub-section (1) that the Collector may, on the motion of the assessing authority, recover any sum assessed as Income Tax or payable by an Assessee as penalty under the Act, as if it were an arrear of land revenue. Sub-section (2) next provides that no proceeding for the recovery of any sum payable under the Act shall be commenced (italicized by us) after the expiration of one year from the date on which the last instalment fixed u/s 30 falls due. The sub-section next provides certain exceptions or instances in which particular periods shall be excluded in computing the period of one year laid down by the main sub-section. Reference will also be necessary here to Section 30 of the Act which says that the amount of Agricultural Income Tax shall be payable in two equal instalments, the first instalment to be paid within one month of the service of the notice of demand and the second instalment within six months from the due date of the first instalment.

3. The two instalments in which the tax assessed on the Assessee was payable were duly appointed in accordance with the above provisions. There is no controversy so far. The second instalment fell due on the 14th September, 1954. It is from this date that the period of one year referred to in Sub-section (2) of Section 32 shall need to be computed.

4. The learned Counsel for the Petitioner has contended that since the second warrant for attachment of property was issued in March, 1956, it was beyond one year from the 14th September, 1954, i.e. the period of limitation fixed therefor. Sub-section (2) of Section 32 on which he has founded his objection says, as was noticed before too, that no proceeding for the recovery of any sum under the Act shall be commenced after the expiration of one year from the date on which the last instalment falls due. The sub-section thus place a restriction on the commencement of the proceedings for the recovery of any sum due under the Act beyond one year from the date or, which the last instalment falls due. It does not, however, provide that the proceedings once commenced within the stipulated period must further be completed within that period. In other words, there is no restriction under it against taking steps-in-aid of recovery after the expiry of the period of one year. The restriction is directed specifically against the commencement of the proceedings for recovery of the demand. Here we may refer to Rule 28 of the Rules framed under the Act, according to which, as provided in sub Rule (4), where an Assessee is, in default, either of payment of any instalment or of any penalty under the Act, the assessing authority may move the Collector to recover the same as arrears of land revenue. It is thus by moving the Collector to recover the arrears etc., as arrears of land revenue that the proceedings for the recovery of the amount are commenced. Admittedly this

was done in the present case within one year from the date on which the last instalment fell due. What has been done beyond 12 months is further writ of attachment by the Collector who admittedly issued a similar writ once before too in January, 1955, but which was unable to satisfy the demand. There is no bar in Section 32(2) against taking steps-in-aid of recovery after the period of one year. Under the Circumstances, we are unable to accept the Petitioner''s contention that the writ of attachment complained against is beyond time and therefore illegal.

5. No other point has been pressed.

6. In the end the petition fails and is dismissed with costs.

