(1984) 02 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1378 of 1983

Shri Sukhdev Chand, Asst. Commissioner of Income Tax, Acquisition Range	APPELLANT
Vs	
Shri Kashmir Singh Bhullar and Others	RESPONDENT

Date of Decision : 03-02-1984

Acts Referred:
Income Tax Act, 1961 — Section 293

Citation : (1984) 42 CTR 345 : (1984) 150 ITR 578 : (1985) 1 RCR(Criminal) 149 : (1985) 20 TAXMAN 436

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Ashok Bhdn and Ajai Mittal, for the Appellant; S. Kuldip Singh and G.C. Gupta, for the Respondent

Judgement

S.S. Sodhi, J.—Where jurisdiction of the civil court is specifically barred by statutory provisions, can mere allegations of main, fides vest it with the requisite jurisdiction ? This would indeed be a startling proposition to accept, but as it happens the impugned order here of Shri A.S. Garg, Additional District Judge, Chandigarh, is founded upon precisely such premises.

2. Shri Kashmir Singh Bhullar of the P.C.S. (Judicial) Branch purchased a residential plot in Chandigarh. Proceedings in respect of the purchase of this plot were initiated against him under Chapter XX-A of the I.T. Act, 1961. It was these proceedings which Shri Kashmir Singh Bhullar sought to challenge in the civil court by alleging mala fides against Shri Sukhdev Chand, Defendant, Assistant Commissioner of Income Tax (Acquisition) Range, Ludhiana. In this suit a preliminary objection was raised with regard to the jurisdiction of the civil court to go into this matter in view of the provisions of Section 293 of the I.T. Act, 1961, which clearly bar the jurisdiction of the civil court in matters covered by this Act.

3. By a very peculiar process of reasoning which is best expressed in the very

words of the trial court itself, the objection regarding the jurisdiction of the civil court was overruled, it being observed "when serious mala fides levelled against defendant No. 2 who has not till today cared to transfer the case from his file to some other file, on the face of it, looks mala fide. Otherwise a person cannot be a judge in his own cause. Once a serious allegation is levelled against an Officer personally and the Officer as such is conducting an enquiry in a matter which is already settled by another branch of the Government would be reflective that the enquiry is being conducted for some ulterior motives. Hence I am of the considered view that in the circumstances given above the civil court has got jurisdiction ...."

4. It is indeed an unheard of proposition of law that allegations of mala fides can confer jurisdiction upon a court which the court otherwise lacks or where its jurisdiction is specifically barred as in the present case u/s 293 of the Act.

5. In dealing with this matter, it would also be pertinent to note that Shri Kashmir Singh Bhullar had earlier moved an application for temporary injunction to stay the proceeding initiated against him under the I.T. Act. This application was declined by Shri A.S. Garg by his order of July 26, 1982, holding that the Income Tax Authorities were competent to proceed in the matter according to law. In this background it becomes all the more curious how the order now under challenge came to be passed.

6. Legal issues apart, it has now been pointed out by Mr. Ashok Bhan, counsel for the Union of India, that the matter of Shri Kashmir Singh Bhullar is now no longer before Sukhdev Chand as he has since been transferred and it is now being dealt with by some other officer.

7. There is thus no escape from the conclusion that the impugned order was contrary to law and wholly unwarranted. The civil court clearly had no jurisdiction in the matter. This revision petition is consequently accepted and the suit of the plaintiff is accordingly ordered to be dismissed with costs. This petitioner shall also be entitled to costs of this petition.

