(1989) 08 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 9480 of 1989

SP. Dhanalakshmi APPELLANT

Vs

Assistant Director of Investigation RESPONDENT

Date of Decision : 17-08-1989

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(3), 132(5), 32
Wealth Tax Act, 1957 — Section 37A

Citation : (1992) 194 ITR 349

Hon'ble Judges : Bhakthavatsalam, J

Bench : Single Bench

Advocate : P.R. Ranganathan, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is to issue a writ of mandamus directing the respondent to hand over the petitioner''s

stridhana jewels (ten items listed in the annexure to the petition) to her.

2. Notice of motion was ordered on July 19, 1989.

3. Mrs. Nalini Chidambaram appears for the respondent on instructions.

4. The writ petitioner was an assessee under the Income Tax Act for the year 1977-78. She alleges that, in her return for the year 1977-78, she

included her wealth for 1977-78 and 1978-79 claiming that the stridhana jewels listed along with the return less the liability due by her was less

than the taxable limit. It seems that the petitioner''s father-in-law''s house was raided in April, 1982, and a panchanama was prepared in which the

jewels are listed as belonging to her. The allegation is that so far no order has been passed by the Income Tax Department on the petition even

though seven years have gone by. It seems that, during 1984, the doors of the rooms were opened without notice to the petitioner or her husband

and in that regard certain contempt proceedings were taken in Contempt Application No. 72 of 1984. Sathiadev J. considered the matter in detail

and passed an order, which is reported in V. Chidambaram Vs. D. Venkatesan, Asst. Director of Inspection (Intelligence) and Others, . Now, the

petitioner has come forward before this court on the ground that no warrant has been issued against the petitioner nor were proceedings initiated in

respect of her properties by the Department. It is alleged in the affidavit that the law regarding the powers of the respondent u/s 132, as has been

consistently held by the Supreme Court, is that once the period of limitation of 120 days was over and when there is no communication of

extension of time of 90 days within the prescribed time, the continuance of seizure of the assessee''s assets is thoroughly illegal under article 19(1)

(f) of the Constitution of India. The petitioner alleges that, in this case, no order has been passed by the respondent within the prescribed time and

that the petitioner is entitled to get back the assets seized. It is also alleged in the affidavit that the marriage of the petitioner''s daughter is fixed for

September 4, 1989, and she requires the jewels for making necessary ornaments from out of a portion of the same. It is also alleged that since her

husband was kept out of possession of the suit properties now pending in the Sub-Court since 1982, they have no substantial means to conduct

the marriage which has been fixed. It is alleged that the petitioner filed an application on September 17, 1987, before the respondent praying that,

in view of the assessment by the Income Tax Department and the fact that the jewels are not unaccounted for, she would be grateful if the jewels

are returned to her and also requested the respondent to apply to the Sub-Court as ordered by Sathiadev J. It is alleged that, after two years, a

reply dated May 5, 1989, has been received which is to the following effect :

With reference to your letter dated Nil addressed to the Assistant Director, requesting for the release of jewellery, you are informed that the

matter of ownership of jewellery in M. R. M. S. P. House, Devakottai, is under litigation. This Department is not concerned with fixing of the right

of ownership of the jewellery available in M. R. M. S. P. House, Devakottai. You are, therefore, requested to approach the appropriate authority

in the matter.

5. Alleging that the Department cannot abrogate its duties, the petitioner has come forward to this court stating that the respondent owes a duty

administering the Wealth-tax Act to return the jewels by the respondent is prima facie contrary to the tenets of section 132 of the Income Tax Act

and as such the petitioner is entitled to get return of the jewels.

6. Mrs. Nalini Chidambaram, learned counsel for the respondent, on instructions, submits that, pursuant to the warrant of authorisation issued by

the competent authority u/s 132 of the Income Tax Act, 1961, a search was conducted in the premises of M. R. M. S. P. House, Devakottai,

during April, 1982. It is stated that search proceedings were conducted after permission was obtained from the Original Side of this court in

Application No. 1133 of 1982 on March 24, 1982, in view of the pending litigation among the family members. Learned counsel further submitted

that this court directed the Advocate-Commissioner to hand over the keys of the premises to the respondent and to render assistance to the

authorities in executing the search warrant issued u/s 132 of the Income Tax Act and u/s 37A of the Wealth-tax Act. It seems that, during the

course of search proceedings, an inventory of the articles was taken and the nine rooms in the said house were sealed and Prohibitory orders u/s

132(3) of the Income Tax Act, 1961, were passed (underlining is mine). As such, according to the learned counsel, there was no seizure of any

item of jewellery or other valuable articles since the Advocate-Commissioner. During October, 1982, a letter was issued by the authorised officer

u/s 132 of the Income Tax Act to the family members of M. R. M. S. P. House, Devakottai, requiring them to explain the discrepancy in the

jewellery items disclosed under the Income Tax Act and the Wealth-tax Act and the items of jewellery found in the course of search. It is brought

to my notice that W. P. No. 8843 of 1982 was filed by one Chidambaram challenging the letter and the writ petition is pending before this court. It

is stated by learned counsel that the petitioner is not assessed to wealth-tax and hence the details of her wealth are not known. Learned counsel,

on instructions, states that the respondent does not admit the claim of the petitioner that the items of jewellery belong to her. It is stated by learned

counsel that litigation among the members of the family for partition is pending. Section 132(5) of the Income Tax Act is not applicable to the facts of this case, since no seizure of jewellery has been made in this case and only a prohibitory order u/s 132(3) of the Income Tax Act has been

passed. Learned counsel states that, in any event, the Department is not in possession of the said items of jewellery nor does the Department

possess the keys of the premises and as such the question of issue of the writ of mandamus does not arise.

7. Mr. P. R. Ranganathan, learned counsel for the petitioner, contends that though the rooms of the premises were sealed in 1982, no action has

been taken so far and seven years have gone. Learned Counsel further contends that no assessment is made so far and even the original

assessment made in 1977-78 has not been touched by the Department till date. Learned counsel contends that the petitioner approached the

Department for the return of the jewels in September, 1987, and having kept quiet for two years, the Department has sent the reply now in May,

1989, which has been extracted above. This letter, in the argument of Mr. P. R. Ranganathan, is against all the canons of equity and fair-play. The

respondent was also informed of the urgency of the petitioner in the matter, and having wasted seven years, the respondent should not be allowed

to say that only a prohibitory order was passed u/s 132(3) of the Income Tax Act and that no order has been passed u/s 132(5) of the Act.

Learned counsel states that the judgment of Sathiadev J. in the contempt proceedings has been reported in V. Chidambaram Vs. D. Venkatesan,

Asst. Director of Inspection (Intelligence) and Others, .

8. Mrs. Nalini Chidambaram states that only a prohibitory order was passed for which no time limit is provided in the Act. She contends that it is

not correct to say that an order u/s 132(5) has been passed in this case and, as such, the contentions of learned counsel for the petitioner should

fail. Learned counsel refers to the earlier order of this court passed by Sathiadev J., in W. M. P. No. 15612 of 1982, in W. P. No. 8843 of 1982.

The learned Judge, after considering the matter in detail, has observed at page [1987] 167 ITR 451 as follows :

On the aspect of handing over of the seized goods and the key of the premises, u/s 132 of the Act, it is for the first respondent to move the Sub-

Court, Devakottai, in O. S. No. 50 of 1982, and, according to orders obtained, proceed further with the matter. In the event of the first respondent not seeking for directions, then as above stated, it is open to any of the parties to the suit to seek suitable directions, with notice to all

parties in the suit, and in a particular, the first respondent.

9. In view of this, learned counsel submits that the writ of mandamus should not be issued.

10. I have considered the arguments of learned counsel for the petitioner and the respondent. I do not think that this is a fit case where a writ of

mandamus could be issued at this stage especially when an order has been passed by Sathiadev J. in the earlier proceedings which is extracted

above and also reported in V. Chidambaram Vs. D. Venkatesan, Asst. Director of Inspection (Intelligence) and Others, . The learned Judge has

clearly held that with regard to the handing over of the seized goods and the key of the premises u/s 132 of the Act, it is for the respondent to

move the Sub-Court, Devakottai, in O. S. No. 50 of 1982, and according to the orders obtained, proceed further with the matter. In view of this

order of Sathiadev J., I do not think that I can issue a writ of mandamus. The only course open to the petitioner is to move the Sub-Court in this

matter for directions within a reasonable time. As such, it is enough if I direct the respondent to move the Sub-Court, Devakottai, to obtain orders

and proceed further with the matter, as directed by Sathiadev J., in W. M. P. No. 15612 of 1982 with regard to jewels, etc. Hence, the

respondent is directed to move the Sub-Court, Devakottai, before August 31, 1989, with regard to the request of the petitioner for the return of

the jewels after giving notice to all the parties in the suit.

11. I have already stated that no writ of mandamus can be issued in view of the earlier order of this court. The only course which can be adopted

in the circumstances of the case is to direct the respondent to move the Sub-Court as per the earlier order. At any rate, I have to point out that it is

not fair on the part of the Department to keep the matter pending for 7 1/2 years after passing the prohibitory order against the assessee. It is the

duty of the respondent, I think, to pass an order either way and leave the matter to be fought out by the affected parties. Even to give the present

reply, the Department has taken two years, when the petitioner had approached the respondent in 1987. I think that the action of the Department

in this matter cannot be said to be right. The Department had not replied to the petitioner at the earliest point of time so that she could have taken

any other steps for getting the jewels for the marriage of her daughter. I think that it is high time that the officials of the respondent-Department

understood that they are also bound by the rule of law. They are also expected to reply to any representation at the earliest point of time. Here is a

hard case where a lady who wants her jewels which are of course under litigation and a prohibitory order u/s 132(3) is not able to get back her

jewels even after 7 1/2 years have passed. The Department should take expeditious action to finalise the matter or to pass an order at least on the

representation made by the petitioner immediately. It is unfortunate that it has not been done in this case. I do hope that the Department will not

repeat the same in future in such cases. With these observations, the writ petition is dismissed. No costs.