

(1957) 03 AHC CK 0039

In the Allahabad High Court

Case No : Civ. Miscellaneous Application No. 327 of 1956

State of U.P.

APPELLANT

Vs

Raja Syed Mohd. Sadat Ali Khan

RESPONDENT

Date of Decision : 13-03-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Land Revenue Act, 1901 — Section 11, 14, 14A, 2, 2(4)

Citation : (1957) 27 AWR 452

Hon'ble Judges : Mootham, C.J.;Randhir Singh, J

Bench : Division Bench

Advocate : Addl. Standing, for the Appellant;

Final Decision : Dismissed

Judgement

Mootham, C.J.—These applications were originally argued before a bench of which the late Mr. Justice Kidwai was a member. Owing to the lamented death of that learned Judge they have been reargued before this bench.

2. His Highness the Maharaja of Kapurthala and the Rajas of Nanpara and Payagpur had their principal estates in the district of Bahraich. They also had properties in other districts of Avadh the total agricultural income derived by each of them from these various properties being over one lakh of rupees. They were assessed to Agricultural Income Tax upon this income by Sri K.C. Chaudhri, upon whom had been conferred, by a Notification under the U.P. Land Revenue Act, the powers of an Addl. Collector in the district of Bahraich.

3. Each of the Assesseees filed a petition in this Court the issue of a writ to quash that assessment on the ground, among others that the Addl. Collector had no jurisdiction to make the assessment, he not being a "Collector" within the definition of that term given in the Agricultural Income Tax Act.

4. The learned Advocate General, however, contended that by reason of Sections 14 and 14A of the U.P. Land Revenue Act, the Addl. Collector could do whatever

the Collector could do, not only under the Land Revenue Act but also under "any other law for the time being in force." Consequently it was urged that the assessment made by the Addl. Collector of Bahraich, although he did not come within the definition of "Collector" under the Agricultural Income Tax Act and he was not an officer appointed by the State Govt. u/s 14 of that Act, was valid.

5. This Court over-ruled the contention of the learned Advocate General on the ground that, in cases such as those with which we are dealing, the Collector made the assessment not u/s 14 of the Agricultural Income Tax Act, which confined his authority to income derived "within his revenue jurisdiction" but because he was the authority prescribed by Rule 8(1)(a) of the rules made u/s 44(2)(o) of the Agricultural Income Tax Act. The Addl. Collector had no such jurisdiction conferred upon him and could (sic) exercise the powers of a Collector with by his district. He could not therefore make assessment in those cases in which part of income in respect of which the assessment was to be made was derived from property outside the district in which he exercised the powers of an Addl. Collector. The order of the Addl. Collector was found in each of the three cases to be without jurisdiction and was quashed by an order dated 28-4-1955.

6. In February, 1956, an Ordinance was issued making certain amendments in the Agricultural Income Tax Act. This was followed in May, 1956, by Act, XIV of 1956. Among the amendments made was one by which the scope of the definition of "Collector" in Section 2(4) of the Principal Act was extended, at from the date of the enforcement of the Principal Act, so as to include an Addl. Collector By Section 10(1)(a) of the Amending Act "Collector" in Rule 18 was also amended in a similar manner with retrospective affect from the date of enforcement of the rule. Section 10(1)(b) presided as followes:

all orders made, actions or proceedings taken, directions issued or jurisdictions exercised under or in accordance with the provisions of the Principal Act or of any rule framed the reunder prior to the amendment of that Act by Section 2 of this Act shall be deemed to be as good and valid in law as if Section 2 aforesaid had been in force at all material dates.

7. Section 11 of the Amending Act then provides.

Where before the commencement of this Act any court or authority has in any proceedings under the Principal Act, set aside any assessment made by an Addl. Collector or Addl. Asstt. Collector in charge of a sub-division merely on the ground that the assessing authority had no jurisdiction to make an assessment, any party to the proceedings may, at any time within ninety days from the date of commencement of this Act apply to the Court or authority for a review of the proceedings in the light of the provisions of this Act, and the Court or authority to which the application is made shall review the proceedings accordingly and make such order, if any varying or revising the order previously made, as may be necessary to give effect to the provisions of the Principal Act as amended by Sections 2 and 8 of this Act:

8. Provided that, on any such application, the Court or the authority may make such order as to the costs of the application and of the proceedings as it may deem just and proper.

9. These three applications were made by the State Government which purported to act u/s 11 of the Act, That section applies however only to cases in which the assessment has been set aside in any proceedings under the Principal Act. In the cases before us the assessment has not been set aside in any proceedings under the Principal Act but in exercise of the jurisdiction vested in this Court under Article 226 of the Constitution. These three petitions are therefore not maintainable and we accordingly dismiss them. The opposite parties in Civil Miscellaneous Applications Nos. 327 and 329 of 1956 will get their costs which we assess at Rs. 100/ - in each case. The opposite party in Civil Miscellaneous Application No 328 of 1956 did not contest: he will, therefore, get no costs. We assess the fee of the Standing Counsel at Rs. 100/ - in each case.