
(1968) 05 AHC CK 0016
In the Allahabad High Court
Case No : Special Appeal No. 31 of 1966

State of Uttar Pradesh and Another	Vs	APPELLANT
Raja Ram Pratap Singh		RESPONDENT

Date of Decision : 15-05-1968

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 20, 23, 30, 32(2)

Citation : AIR 1968 All 400

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

Bench : Division Bench

Advocate : T.S. Trivedi, for the Appellant;

Final Decision : Allowed

Judgement

Jagdish Sahai J.

1. This special appeal is directed against the judgment of N. U. Beg, J. dated 6th January 1966. The respondent, Raja Ram Pratap Singh, filed writ petition No. 320 of 1965, which was allowed by Beg, J. by means of the judgment mentioned above. By means of the writ petition proceedings for realisation of arrears of tax were sought to be quashed.

2. The father of the petitioner-respondent, Raja Ram Pratap Singh, was the proprietor of the Katiyari Estate. Admittedly he was assessed to agricultural income tax as also to large land holdings tax. A sum of Rs. 91,005.69 P. was being recovered from him as arrears of agricultural income tax in respect of the year 1359 F., a sum of Rs. 8,140.90 P. (inclusive of a sum of Rs. 1,615.65 by way of penalty) for the year 1361 F., a sum of Rs. 5,036.63 P. (inclusive of a sum of Rs. 900.00 by way of penalty) for the year 1363 F., a sum of Rs. 7630.55 P. for the year 1365 F., and a sum of Rs. 11,323.56 (inclusive of a sum of Rs. 900.00 by way of penalty) in respect of the year 1366 F. A sum of Rs. 11,416.00 (inclusive of Rs. 1141.00 by way of penalty) was being recovered from him as large land holdings tax in respect of the year 1367 F. and a sum of Rs. 10,995.02

(inclusive of Rs. 720.00 by way of penalty) in respect of the year 1366 F. The total amount of the agricultural income tax that was sought to be recovered from the respondent is Rs. 1,04,183.22 P. and that of the large land holdings tax is Rs. 41,324.02 P. Some amounts Were also being recovered from the petitioner as arrears of land revenue.

3. The petitioner's case before the learned single Judge was that by virtue of the provisions of Section 32(2) of the U. P. Agricultural Income Tax Act, 1948 (hereinafter referred to as the Act) and Section 23 of the U. P. Large Land Holdings Tax Act, 1957 (hereinafter referred to as the Act of 1957) these recoveries could not be made as the claims become barred by time. This submission found favour with the learned single Judge, who as already said earlier, allowed the writ petition and quashed the proceedings of recovery initiated by means of the notice dated April 28, 1965 The learned single Judge did not record any finding with regard to the amount sought to be recovered as land revenue nor did he hold that the same could not be recovered, but he allowed the writ petition in its entirety.

4. With great respect to the learned single Judge we do not agree with the view taken by him. It is true that u/s 32(2) of the Act "no proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date on which the last instalment fixed u/s 30 falls due." This sub-section, however, has a proviso, which reads:--

"(i) Where an assessee has been treated as not being in default under proviso to Sub-section (3) of Section 30, as long as his appeal is undisposed of, be reckoned from the date on which the appeal is disposed of;

(ii) Where recovery proceedings in any case have been stayed by any order of a court of any other authority, be reckoned from the date on which the order is withdrawn;

(iii) Where the date of payment of agricultural income tax has been extended by any authority, be reckoned from the date up to which the time for payment had been extended;

Provided further that nothing in the foregoing proviso shall have the effect of reducing the period within which proceedings for recovery can be commenced, namely, after the expiration of one year from the date on which the last instalment fixed u/s 30 fell due."

5. Therefore properly analysed the provision is to the effect that no proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date on which the last instalment fixed u/s 30 falls due. In case an appeal has been filed, and the assessee not having been treated as defaulter, the period of one year shall run from the date on which the appeal has been disposed of. Similarly, if there is a stay order then the period of one year shall run from the date on which the order is withdrawn and in a case

where the period of payment has been extended, the date from which the period of one year would be reckoned would be the date upto which the time for payment has been extended.

6. Section 20 of the Act provides for issue of a notice of demand after an assessment has been made. Section 21 confers upon an assessee the right to file an appeal in respect of an assessment order and Section 22 confers on the revision board the power to revise any order passed by any authority subordinate to the board (including an order of assessment). Section 23 of the Act reads:--

"An authority passing any final order u/s 21 or Section 22 shall communicate such order to the assessee and the prescribed authority. "

Therefore after an appeal has been disposed of or after a revision application has been decided, the appellate authority or the revising authority, as the case may be, is required to communicate to the assessing authority the order passed by it. Section 30, so far as relevant for our purposes, reads:--

"The amount specified in any notice of demand u/s 20 or in any order communicated u/s 23 shall be payable in two equal instalments.".

This would show that even though a notice of demand is issued u/s 20, in a case where an appeal or a revision application has been decided, the amount mentioned in the order communicated u/s 23 and not the one mentioned in the notice of demand issued u/s 20 shall be payable in two equal instalments. Once an order has been passed in appeal or revision, the notice of demand issued u/s 20 would yield place to the appellate or re-visional order communicated u/s 23. In other words the order communicated u/s 23 would supersede the notice of demand u/s 20. With great respect to Beg, J., we are of the opinion that this aspect of the case was not considered by him and he proceeded on the footing that the notice of demand issued u/s 20 was still effective. If the appellate authority or the Revision Board have passed orders and communications have been made u/s 23, the period of one year would not run from the date of the notice of demand but from the date on which the appeal was disposed of or if the payment has been stayed, from the date on which that period of stay has ended. In the present case, in view of the circumstance that an appeal was filed and a revision application was made, an examination of the orders passed by the appellate authority and the revision board becomes necessary. At the hearing before the learned single Judge it was not fully appreciated that Section 32(2) of the Act provides for the period of one year to run from the date of the last instalment fixed u/s 30 of the Act which in the case of appellate or revisional orders would be different from the instalments fixed in the notice of demand.

7. Coming to the demands under the Large Land Holdings Tax Act, we would like to point out that the proviso to Section 23 of that Act of 1957 clearly states that "provided that the processes mentioned in Clauses (c),(e), (f) or (h) of Section 146 of the U. P. Land Revenue Act, 1901, or those mentioned in Clauses (c) and (f) of Section 279 of the U. P. Zamindari Abolition and Land Reforms Act, 1950,

shall be issued only after the other processes mentioned in the said sections of the aid Acts have been exhausted." Sub-section (2) of Section 23 of this Act reads:

"No proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of two years from the date on which it fell due:

Provided that the period of two years herein referred to shall--

(i) where an assessee has been treated as not being in default under proviso to Sub-section (3) of Section 19 as long as his appeal or revision is undisposed of, be reckoned from the date on which the appeal or revision is disposed of;

(ii) where recovery proceedings in any case have been stayed by an order of a court or any other authority, be reckoned from the date on which the order is withdrawn; and

(iii) where the date of payment of holding tax has been extended by any authority, be reckoned from the date upto which the time for payment had been extended."

8. In this case also it requires examination whether before recourse to Clauses (c) and (f) of Section 279 of the U. P. Zamindari Abolition and Land Reforms Act was made, other processes contained in that provision have been exhausted or not. It would also be necessary to enquire whether the period of two years had expired even after taking into consideration what is contained in the proviso to Section 23 of the Act. Since these points were not considered by the learned single Judge and since their consideration is absolutely necessary, we are satisfied that the case should be remanded to a learned single Judge.

9. With regard to the amounts sought to be recovered as land revenue, there is a dispute between the parties. According to the learned Chief Standing Counsel, there can be no objection whatsoever to the realisation of those amounts. Mr. Dhaon, on the other hand, contends that that amount is not payable.

10. The result is that we allow this appeal, set aside the judgment of Beg, J., dated 6th January, 1968 and remand the case to a learned single Judge of this Court, who shall hear the Writ Petition afresh after giving the parties a fresh opportunity of filing affidavits. In the circumstances of the case, the parties shall bear their own costs.