
(1961) 04 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 126 of 1958

Suganmal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-04-1961

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : (1961) J LJ 999

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; M. Adhikari Advocate General for State, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—The petitioner in this case is the Managing Proprietor of Messrs Bhandari Iron and Steel Company, Indore, engaged in the business of mechanical engineering, iron and brass foundry, and steel re-rolling. During the years 1939 to 1948 the Government of the former Holkar State recovered from the Company Rs. 1, 75, 722-5-2 as industrial tax. The tax was levied and recovered under the Indore Industrial Tax Rules 1927. The Company's appeals against the assessment for those years were allowed by the Appellate Authority under the Rules in 1955. The assessment orders under the demand notices for each year were set aside. No direction was, however, made in any appeal with regard to the refund of the tax amount recovered from the Company. After the setting aside of the orders of assessment the petitioner made a demand of the Government for the refund of the industrial tax amount which had been recovered from the Company. A sum of Rs. 74, 961-9-0 was refunded to the applicant. A further sum of Rs. 37,951-7-0 was adjusted against the petitioner's liability for excess profits duty. The balance of Rs. 62, 809-5-2 out of the Sum of Rs. 1,75, 722-5-2 recovered from the applicant remained to be refunded to the applicant. The petitioner's request for the return of this balance was rejected by the former

State of Madhya Bharat. Thereupon, this application under Article 226 of the Constitution was filed for the issue of a writ of mandamus directing the opponent-State to refund the amount of Rs. 62, 809-5-2 to the petitioner.

2. The petition has been opposed by the opponents on the grounds that the applicant was not entitled to receive back the amount of Rs. 62, 809-5-2, that the claim for refund was barred by limitation, and that the petitioner's proper remedy for refund was by way of a suit and not by way of proceedings under Article 226.

3. Having heard learned counsel for the parties we have reached the conclusion that this application must be dismissed. The Indore Industrial Tax Rules under which the petitioner was assessed and he paid the amount of industrial tax do not contain any provision for the refund of a tax amount to the assessee on the setting aside of an assessment. Shri Chaphekar, learned counsel appearing for the petitioner, relied on rule 8-A (2) of the Rules to contend that on the setting aside of the assessment it was obligatory on the State to refund the amount of tax to the petitioner. In our judgment Rule 8-A (2) has no applicability whatsoever here. It only provided that on completion of the final assessment after the provisional assessment the difference, if any, in the tax payable should be recovered from or refunded to the assessee as the case may be within one month of the date of completion of the final assessment. It is difficult to spell out from this a statutory obligation for the refund of the tax amount to the assessee in the event of the final assessment being set aside. When, therefore, the Rules do not cast any statutory obligation on the State to refund the tax amount there can be no question of the issue of a writ of mandamus for enforcing a statutory duty or obligation.

4. Learned counsel then said that the orders passed in the various appeals by the Appellate Authority setting aside the assessments, by necessary implication enjoined the State to refund the amount of tax recovered from the petitioner. We do not agree. It is quite true that there can be no question of the refund tax unless the assessment itself is set aside. From this it does not follow that whenever an order of assessment is set aside it necessarily involves an implied direction for the refund of the tax amount. That apart, the petitioner's claim here is for a refund of the balance of Rs. 62,809-5-2 only and not of the entire amount recovered from the Company as industrial tax. It is difficult to read in any of the orders passed by the Appellate Authority setting aside the entire assessment, a direction for the return of this balance. Even if it be taken that the orders of the Appellate Authority necessarily imposed an obligation to refund the tax amount, a writ of mandamus cannot be issued for that purpose. To do so would be to execute the decisions of the Appellate Authority setting aside the assessments. A writ of mandamus cannot be issued for the execution of a decree or an order. In this connection it would be sufficient to refer to a decision of the Calcutta High Court in *Kesho Prasad Singh vs. The Board of Revenue* ILR 38 Cal. 553. That was a case where the plaintiff had obtained a decree for recovery of

possession of an estate against an infant under the Court of Wards After the suit was decreed by the trial Court the defendant, viz, the Court of wards, preferred an appeal to the High Court. Pending the appeal, the plaintiff made an application to the Court of Wards for the release of the estate and handing over possession of the estate to him in accordance with the decree of the trial Court. When the Court of Wards declined to comply with the plaintiff's request, the plaintiff made an application to the Calcutta High Court u/s 45 of the Specific Relief Act and obtained a rule calling upon the Court of Wards to show cause why the estate should not be released and delivered to the plaintiff. In discharging the rule the learned Judges of the Calcutta High Court observed:

""It is an elementary principle that recourse ought not to be allowed to an extraordinary remedy of this description, when it is not really needed. In the case before us, the plaintiff is entitled to sue in ejectment; he has brought such a suit and has been successful; he is entitled to execute his decree, but has not yet taken any steps in that direction. It is well settled that a mandamus will never be granted to enforce the general law of the land which may be enforced by action; for instance, where the applicant has the ordinary legal remedy of an execution, mandamus does not lie".

In Reg. vs. The Victoria Par Company (1841) 1 Q B. 288: 55 RR 249, action was brought against the treasurer of a Company and judgment was entered up against the Company The Company had no assets. A writ of mandamus was sought commanding the Company to pay a sum of money recovered from them in the action. The Court refused to issue a writ of mandamus. The Court observed:

".....here the plaintiff seeks only the payment of the debt and costs: for this an execution by fufa is a perfect remedy in its nature; and, if we were to issue the writ because in this particular case there are no corporation chattels seizable. it would be difficult on principle to refuse to issue it in any case where the sheriff should return nulla bona, whether the writ had issued against a corporation or an individual; for in principle there is no distinction between the two. We are compelled, therefore, to refuse the rule for a mandamus to the corporation to pay."

5. The fact that the Industrial Tax Rules did not prescribe any procedure for the execution of the order of the Appellate Authority does not in any way affect the position. In that case the petitioner's remedy for the execution of the decision of the Appellate Authority lies in instituting a suit for the enforcement of the decision, claiming the relief of refund of the tax amount.

6. Learned counsel referred to some decisions in which while quashing an assessment order a direction for the return of the tax amount to the assessee was made under Article 226. There is no analogy between those cases and the present one. The present petition is not one challenging the validity of the assessment to industrial tax and seeking a writ for quashing the assessment and

as a consequential direction for the refund of the tax. What the petitioner wants is a direction to enforce the decisions of the Appellate Authority by calling upon the State to refund the amount of the tax. Such a direction, as pointed out earlier, cannot be made. Even in cases where the validity of an assessment is challenged and a prayer for a direction for the refund of the tax collected is made, such a direction is not generally made when it involves disputed questions of law and fact. The decisions in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, , and *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, , point out that while considering the question whether a direction for refund of an amount should or should not be made in the exercise of the Court's discretion under Article 226 the Court must have regard to estoppel, acquiescence, limitation, and the like. A claim for refund can thus always be resisted by the State on such pleas, which can appropriately be adjudicated upon in a suit. The High Court cannot determine disputed question of fact, and if without deciding such questions of fact the Court were to issue a writ of mandamus for the refund of the tax amount, that would deprive the State of the liberty of raising pleas of estoppel, acquiescence, limitation, and the like against the refund.

7. For all these reasons, this petition is dismissed. The applicant shall pay the costs of this petition. Counsel's fee is fixed at Rs. 200. The balance of the security amount shall be refunded to the petitioner.