

(1986) 09 OHC CK 0006
In the Orissa High Court
Case No : OJC No. 498 of 1978

Sunil Kumar Singh Deo

APPELLANT

Vs

Tax Recovery Officer

RESPONDENT

Date of Decision : 12-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) 29 TAXMAN 185

Hon'ble Judges : R.C. Pattnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : Dhuliram Swamy, for the Appellant;

Judgement

1. Heard. With consent of the counsel for the parties, the matter is heard on merits. In this application under article 226 of the Constitution, the petitioner has assailed the order passed by the TRO, under rule 11 of the Second Schedule to the income tax Act, 1961 ("the Act"), directing sale of the property under attachment.

2. Proceedings initiated under the Orissa Public Demands Recovery Act for recovery of tax for the years 1951-52 to 1958-59 proved abortive, on the holding of the revisional authority that the provisions contained in the Orissa Public Demands Recovery Act were not attracted the provision being those contained in the Act. Proceedings were there after initiated under the Second Schedule for recovery of the tax in question. Various objections raised by the petitioner to the maintain ability of the proceedings and on merits were negated. Hence, this writ application.

3. Mr. Swamy, the learned counsel for the petitioner, has raised a number of contentions. Firstly, the demand notices for the years in question not having been served either on the assessee or on his legal representatives, the proceedings for recovery of tax was not maintain able. The counter affidavit filed by the opposite parties does not categorically stated that demand notices for the

years 1951-52 to 1954-55 were at all served. It has further been argued that service of notice on the receiver, who had been appointed by the Court during pendency of the writ application filed by late Biswambhar Singh Deo challenging the vesting of the estate, did not amount to service of demand notice on the assessee or his legal representatives. It is also contended that the demand notice was not at all served on the petitioner. Hence, the attachment of his property was invalid. It has been contended that the proceeding is not available to be initiated on the basis of certificate transmitted to the TRO by the certificate officer. It is stated that the requisition to the Collector, Sambalpur was without jurisdiction when the Collector, Sundargarh had only jurisdiction to issue notice to the assessee. Lastly, it is argued that no enquiry has been conducted to ascertain if the property belonged to the petitioner and if the same was liable to be proceeded against under the law. Levy of penalty and interest in the facts and circumstances has also been challenged as without authority.

4. The learned counsel for the revenue has endeavoured to justify the action by referring to various provisions contained in the Act and the Second Schedule thereto.

5. Non-service of demand notice goes to the root of jurisdiction of the revenue officer initiating the proceeding for recovery of tax. Some other questions urged also require investigation into facts, which can appropriately be done only by the original authority. We, therefore, vacate the impugned order, Annexure 1, and remit the matter to opposite party No. 1 with a direction to determine the questions raised after giving the parties an adequate opportunity of hearing. The writ application is accordingly disposed of. There would be no order as to costs.