
(1976) 06 CAL CK 0024
In the Calcutta High Court
Case No : A.O.D. No. 2633 of 1975

Union of India

APPELLANT

Vs

Jagadish Chandra Agarwal

RESPONDENT

Date of Decision : 25-06-1976

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(f), 21, 22
Income Tax Act, 1961 — Section 269(D)(1), 269C, 269I, 269R

Citation : 80 CWN 836

Hon'ble Judges : S.P. Mitra, C.J.; S.K. Datta, J

Bench : Division Bench

Advocate : G. Mitter, A.G., Ajit Kr. Sengupta and S.N. Dutt, for the Appellant; Sudhindra Kr. Kar, for the Respondent

Judgement

S.P. Mitra, C.J.—This is an appeal from a judgment of Mr. Justice Sabyasachi Mukharji delivered on the 22nd August, 1975. The learned trial Judge was considering whether an interim order of injunction obtained in a writ application should be vacated. On the 14th June, 1973 the income tax Authorities issued a notice u/s 269(D) (1) of the income tax Act, 1961 with respect to a property which the petitioner had purchased. The petitioner by a writ application moved on the 20th September, 1973 challenged the notice. He obtained a Rule and an interim injunction. The grounds of the challenge are numerous. One of the grounds is that the provisions of sections 269C to 269I and 269R of the income tax Act, 1961 are ultra vires Articles 14, 19(1) (f) and 31 of the Constitution. The Union of India and the other respondents before the trial Judge filed their counter affidavits stating, inter alia, that the order of injunction should be vacated and the application dismissed.

2. When the application came up for hearing on the 22nd August, 1975 the order of injunction was continuing.

The learned trial Judge's attention was drawn to a proclamation issued by the President of India and published in the Gazette of India on the 27th June, 1975.

The proclamation reads as follows:

In exercise of the powers conferred by clause (1) of Article 359 of the Constitution, the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Article 14, Article 19, Article 21 and Article 22 of the Constitution and all proceedings pending in any Court for the enforcement of the abovementioned rights shall remain suspended, for the period during which the proclamation of emergency made under Clause (I) of Article 352 of the Constitution on the 3rd December, 1971 and on the 25th June 1975 are both in force.

3. In view of the aforesaid proclamation, the learned Judge has taken the view that since the application involves enforcement of right conferred under Article 14 of the Constitution, the application should remain adjourned sine die with liberty to the parties to mention for hearing after the proclamation is revoked. But the order of injunction would continue so long as the emergency subsists.

4. In our view, in a case of this nature the Court has to examine the grounds set forth in the petition. If the application relates to enforcement of right conferred by any of the aforesaid Articles, the application would remain suspended. But any interim order obtained on the ground of violation of rights conferred by the said Articles has to be vacated in view of the judgment of this Court in the case of *Kanhaiyalal Agarwala and anr. v. Union of India and ors.*, reported in 80 C.W.N. 395= (1976) (1) C.L.J. 293. The reason is that an interim order is made in aid of the final order that may be passed. In view of the emergency, the final order cannot be passed. The interim order therefore cannot also continue.

5. But if the Court finds that apart from enforcement of rights conferred by the aforesaid Articles there are other grounds in the petition the court may give an opportunity to the petitioner to abandon the grounds relating to enforcement of rights under the aforesaid Articles and proceed with the application based on the other grounds only. If the petitioner chooses this course the application may be proceeded with and the interim order, if any, based on the other grounds may also be continued, if found tenable on merits. In this case, the proper course is to examine the petition and give opportunities to the petitioner to choose his course of action. If the petitioner says that he would stick to the grounds of enforcement of rights conferred by the aforesaid Articles, then the entire application shall remain suspended till the emergency is over. The court will then examine whether the interim order was made on the basis of violation of rights conferred by the above Article only or on the basis of other grounds as well. If it was made on the basis of violation of: rights conferred by the said Articles only, the interim order would be vacated. If, not, the interim order would continue if the Court thinks it proper to do so on these other grounds. We therefore direct that this application be remanded to the learned trial Judge for examination of the merits of the petition in the light of the observations we have made. The judgment under appeal is set aside. The appeal is disposed of as above.

There will be no order as to costs.

The above judgment will also govern the other appeal, that is, F.M.A.T. No. 2634 of 1975 which is also disposed of without any order as to costs.

S.K. Datta, J.

I agree.