
(1966) 02 MAD CK 0015
In the Madras High Court
Case No : Writ Petition No. 368 of 1964

V. K. Kannan

APPELLANT

Vs

Collector of North Arcot And Another

RESPONDENT

Date of Decision : 17-02-1966

Acts Referred:

Income Tax Act, 1922 — Section 46(2)
Income Tax Act, 1961 — Section 224, 225

Citation : (1966) 61 ITR 293 : (1966) 79 LW 540

Hon'ble Judges : Kailasam, C.J

Bench : Single Bench

Advocate : K. Gopalachari and A. Devanathan, for the Appellant; V. Balasubrahmanyam, K.S. Baktavatchalam, V.V Raghavan and T.S. Subramanian, for the Respondent

Judgement

Kailasam, C.J.—This petition is filed for the issue of a writ of certiorari against the Collector of North Arcot calling for the record in Ref. No. D. 9566/63 on his file and for quashing his order dated February 2, 1963, confirming the order of the Sub-Collector dated December 22, 1961, in R.C.A. No.29526/60. The facts relevant to this petition may be stated. Under a claim to recover a sum of Rs. 1,99,832.96 as Income Tax arrears, the Tahsildar of Gudiyatham acting on the orders of the District Collector of North Arcot brought the properties belonging to the petitioner for sale in revenue auction on June 11, 1959, in two lots. Lot No.2 after a fresh notice for re-sale was notified for sale on July 21, 1960, and was sold on that date and purchased by the second respondent for Rs. 15,000. The petitioner filed an application on August 19, 1960, for setting aside the sale. The Sub-Collector confirmed the sale on December 22, 1961. Though a copy of the order confirming the sale was requested, the petitioner was not granted a copy. He filed an appeal to the Collector under the provisions of section 38, of the Madras Revenue Recovery Act. The Collector dismissed the appeal. A further appeal to the Board of Revenue was also rejected on the ground that the Board had no jurisdiction to interfere with the orders of the District Collector.

2. It is admitted that the tax arrear on the date of attachment of the properties was not Rs. 1,99,832.96 but amounted only to Rs. 1,58,361.71. The amount for which the property was attached was admitted greater than the amount of arrears as on that date, and as the attachment and the subsequent sale by the Collector were for a higher amount than what was actually due, it was contended that the attachment as well as the sale were without jurisdiction and unsustainable in law, and liable to be quashed. It is unnecessary to deal with the other points raised in this petition, because the petition will have to be allowed on the ground that the attachment and the subsequent sale were illegal.

3. The Income Tax Officer is empowered u/s 46(2) of the Indian Income Tax Act, 1922, to forward to the Collector a certificate under his signature specifying the amount of arrears of tax due from the assessee, and the Collector on receipt of such certificate is bound to proceed and recover from such assessee the amount specified therein as if it were an arrear of the land revenue. When the amount due had not been paid pursuant to the terms of the demand, the Collector or the officer empowered by him is entitled to recover the arrear by the attachment and sale of the defaulters land. The property of the defaulter is attached by affixing a notice in some conspicuous part of the land. Section 27 of the Revenue Recovery Act required that the notice shall set forth that, unless the arrear with interest and expenses be paid within the date mentioned, the land will be brought to sale in the due course of law. While section 26 empowers the Collector to proceed to recover the arrears due by the attachment and sale, section 27 enjoins on him to set forth in the notice of attachment the arrears with interest and expenses. The Collector has no jurisdiction to attach or bring to sale the properties for recovering a sum higher than what was legally due on the date of the notice of attachment. It has been held by the Supreme Court in *Income Tax Officer v. Seghu Buchiah Setty*, that, when the tax payable by the respondent was reduced by the Appellate Assistant Commissioner, a fresh demand notice had to be served on the respondent before he could be treated as a defaulter and recovery proceedings initiated against him. The court took the view that the default based on its earlier order before revision and all consequential proceedings must be taken to have been superseded and fresh proceedings would have to be started to realise the dues as found by the revised order. As a result of the above decision several recovery proceedings were invalidated. In order to provide for continuation and validation of these proceedings the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act 11 of 1964 was passed. Section 2(1) (b) of the Act provided that, when the dues were reduced in appeal, it shall not be necessary for the taxing authority to service on the assessee a fresh notice of demand. Section 3(1)(c) declared that no proceedings in relation to Government dues shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal enhancing or reducing the dues. This Continuation and Validation Act will not be of any avail in the present proceedings, as the amount for which the demand was due and attachment made was from the inception higher than the tax that was actually due and,

therefore, not covered by the Validation Act, 1964.

4. It may be noted that under the Indian Income Tax Act, 1922, there was no provision for informing the Collector of any tax paid or about the time granted for payment subsequent to the issue of such certificate. This defect has been remedied by the introduction of sections 224 and 225 in the Indian Income Tax Act, 1961, by empowering the Income Tax Officer to inform the Tax Recovery Officer, of any tax paid or time granted for payment subsequent to the issue of such a certificate by him.

5. So far as the certificate granted by the Income Tax Officer u/s 46(2) of the Indian Income Tax Act, 1922, for recovery of tax for an amount in excess of the liability of the assessee is concerned, there can be no doubt that the subsequent attachment and sale in pursuance of such certificate are illegal. In *Santhosha Nadar v. First Additional Income Tax Officer*, a Bench of this court held that a certificate issued u/s 46(2) showing an amount in excess of what was actually due as arrears of tax did not vitiate the certificate itself but the Collector had jurisdiction even on the basis of the certificate to recover only the amount actually due. It was held that, as the Collector had no jurisdiction under the Revenue Recovery Act either to attach or to bring to sale properties for recovering a sum higher than what was legally due, the subsequent sale was vitiated. As already stated in this case, there is no dispute that the certificate as well as the attachment and sale were for a higher amount than the tax due. It follows, therefore, that the Collector had no jurisdiction to attach or to bring to sale the properties for a higher amount than what was actually due, and the sale will have to be set aside. In *Vimlaben Khimji v. Manvikar*, it was held by the Bombay High Court that when a prohibitory order issued by the Collector for recovery of an amount in excess of the aggregate liability, the prohibitory order was illegal and liable to be set aside.

6. The petition will have to be allowed on the authority of the Bench decision of this court in *Santhosha Nadar v. First Additional Income Tax Officer, Tuticorin*.

7. It was contended on behalf of the respondents that after possession was taken over by the purchaser on February 7, 1962, the petitioner issued a suit notice on March 31, 1962, but failed to file a suit. It was submitted that as the petitioner had a right to agitate this question by way of a suit and as he failed to institute a suit after giving notice, this court should not interfere by issuing a writ of certiorari. This contention cannot be accepted, as the existence of an alternative remedy does not always bar the issue of a writ. In this case it is clear that the attachment and subsequent sale by the Collector are illegal and without jurisdiction and cannot be sustained in law. It will not be appropriate at this stage to deny the relief to the petitioner on the ground that an alternative remedy is available. Mr. V. V. Raghavan, learned counsel for the second respondent-auction purchaser, submitted that if the writ is to be allowed his rights as an innocent purchaser would be adversely affected. This result could not be avoided, as the attachment and sale could not be upheld in law. In the

result the writ petition is allowed. No order as to costs.