

(1987) 08 KL CK 0035

High Court Of Kerala

Case No: W.A. No. 423 of 1987

K.T. Thomas

APPELLANT

Vs

Commissioner of Income Tax
and Another

RESPONDENT

Date of Decision: Aug. 31, 1987

Acts Referred:

- Income Tax Act, 1961 - Section 220, 230A

Citation: (1988) 71 CTR 175 : (1990) 185 ITR 292

Hon'ble Judges: K.S. Paripoornan, J; K. Sreedharan, J

Bench: Division Bench

Advocate: M.M. Abdul Aziz, for the Appellant; P.K. Ravindranatha Menon, for the Respondent

Judgement

K. Sreedharan, J.

The petitioner in Original Petition No. 2413 of 1987 (see [K.T. Thomas Vs. Commissioner of Income Tax and Another](#),) is the appellant. That petition was filed for the issuance of a writ of certiorari or other writ or direction to quash exhibits P-4, P-7 and P-10 and also for the issuance of a writ of mandamus directing the first respondent, the Commissioner of Income Tax, to issue a certificate u/s 230A of the Income Tax Act for the sale of the property owned by the petitioner. By exhibit P-4 order, the Tax Recovery Officer, Calicut, came to the conclusion that the petitioner violated the provisions contained in Rule 73(1)(a) and (b) of Schedule II to the Income Tax Act and, accordingly, ordered his detention in civil prison. By exhibit P-7 order, the Commissioner of Income Tax (Appeals) dismissed the appeal filed by the petitioner against exhibit P-4 order. By exhibit P-10, the Tax Recovery Officer informed the petitioner that proclamation for sale of his property will be settled on March 25, 1987. The learned single judge, after an elaborate survey of the entire facts and circumstances, came to the conclusion that the respondents were justified in finding that there has been a dishonest transfer of the property and that the

petitioner had also concealed details of his property from the Department. Consequently, exhibits P-4 and P-7 orders were sustained. Regarding exhibit P-10 notice, it was observed that if the petitioner had got any objection relating to exhibit P-10 notice on merits, he can raise those objections before the Tax Recovery Officer. In the above view, the original petition was dismissed by judgment dated April 28, 1987 (see [K.T. Thomas Vs. Commissioner of Income Tax and Another,](#)). Hence, this appeal.

2. The short facts in relation to the dispute involved in the case are as follows :

The petitioner was an assessee under the Income Tax Act and Wealth-tax Act up to 1970-71 and 1977-78, respectively. The arrears of tax due as per the assessments made against him as on November 30, 1986, amounted to Rs. 7,87,784. Certificates for realisation of that amount were issued. Those certificates were issued beginning from March 21, 1981, and ending with March 30, 1985. The petitioner owned two properties in Calicut known by the names, "Bright House" and "Kara South Bungalow". These properties were equitably mortgaged to the Chartered Bank. The bank instituted O. S. No. 84 of 1981 before the Subordinate Judge's Court, Calicut, and obtained a decree charged on the property. The decree liability was got assigned to one Smt. Jolly Thomas, one of the directors of Malabar Produce and Rubber Company. The petitioner negotiated with Smt. Jolly Thomas for the sale of Bright House. An agreement to sell the property was executed. Later, in October, 1984, a registered lease was executed and Smt. Jolly Thomas was put in possession of the property in pursuance thereof. The petitioner then received a sum of Rs. 3,00,000 from the lessee. He opened a new bank account with the Catholic Syrian Bank, Cherutty Road Branch, Calicut, and got the said amount deposited in it. Thereafter, he withdrew the entire amount for paying two of his alleged creditors, namely, Don Bosco Enterprises and Ittyavira. The receipt of the amount, the opening of the account with the Catholic Syrian Bank and the withdrawal of the amount for paying the two alleged creditors were kept secret from the Income Tax authorities. On March 20, 1985, the petitioner informed the Commissioner of Income Tax that his property, Bright House, is being sold for Rs. 5,00,000, that he would be able to pay the Department Rs. 1.5 lakhs out of the sale consideration and that he may be issued a certificate u/s 230A of the Income Tax Act. On enquiry by the Income Tax Officer, Calicut, it was revealed that the sale consideration was not Rs. 5,00,000 as contended by the petitioner, but it was Rs. 9.75 lakhs. The petitioner then explained that Rs. 4,60,000 was due to the purchaser, Smt. Jolly Thomas, that Rs. 3,00,000 have to be paid to his relatives in discharge of earlier loans, that he would require Rs. 1,01,000 for meeting other expenses and that the balance for payment of arrears to the Department will be Rs. 1.14 lakhs. He further stated before the Officer that the second item of property has been acquired by the State and that the entire amount of compensation is available for discharging the liability towards the Income Tax dues and wealth-tax dues. The Income Tax Officer, on an enquiry, found that the entire compensation amount is not available for discharging

the Income Tax liabilities because the property was subject to other liabilities. Under these circumstances, the certificate u/s 230A was not issued. Then the petitioner approached this court by filing O. P. No. 4293 of 1986 for the issuance of a writ of mandamus directing the respondents to issue the certificate. This court, by judgment dated June 10, 1986, disposed of the original petition with a direction to the Commissioner to pass a final order on the petitioner's application within one month from that day. By order dated June 24, 1986, the Commissioner of Income Tax refused to issue the certificate unless the petitioner paid the entire amount due as arrears of tax. That order was challenged before this court in O. P. No. 4877 of 1986. This court, by judgment dated September 30, 1986, directed the Commissioner to reconsider the issue and observed :

"There had not been a proper consideration of all the relevant materials. Exhibit P-5 appears to be arbitrary and unreasonable in view of that circumstance. It is necessary that the respondent is directed to reconsider the matter and dispose of the representation afresh."

Thereafter, proceedings were initiated under Rule 73(1) of the Second Schedule to the Income Tax Act, 1961. The Tax Recovery Officer passed exhibit P-4 order on December 23, 1986, ordering the arrest and detention of the petitioner. The appeal filed against that order was disposed of by the Commissioner of Income Tax, Cochin, on March 2, 1987, by exhibit P-7 order.

3. From the averments made by the petitioner, it appears that he represented to the Income Tax Department that sale of his property known as "Bright House" was for Rs. 5,00,000, out of which there will be a surplus of Rs. 1.5 lakhs for discharging the tax liabilities after meeting the liabilities due to the bank. On enquiries made by the Income Tax authorities, they came to know that the sale was for a sum of Rs. 9.75 lakhs. When this fact was put the petitioner, he came forward with an explanation that Rs. 4.60 lakhs was due to Smt. Jolly Thomas, the purchaser of the decree, that Rs. 3,00,000 was required to pay off the earlier loans to his close friends and relatives, that Rs. 1,01,000 was required for his expenses and that the balance left for discharging the tax liabilities will only be Rs. 1.14 lakhs. At the time of hearing, learned counsel appearing for the Revenue placed before us a photostat copy of an agreement to sell the property entered into between the petitioner and Smt. Jolly Thomas. That was for a sum of Rs. 14,00,000. The execution of the document was admitted by learned counsel appearing for the petitioner after consulting his client who was present in court. These circumstances lead to the inference that the petitioner was trying to conceal the true nature of the dealings between him and Smt. Jolly Thomas from the Income Tax Department.

4. The petitioner applied for the certificate u/s 230A of the Income Tax Act on March 20, 1985. He had registered a lease deed in respect of his property, Bright House, in favour of Smt. Jolly Thomas in October, 1984. In pursuance of that lease deed, Smt. Jolly Thomas was put in possession of the property. The agreement to sell the

property referred to earlier was also executed even earlier. The petitioner received Rs. 3,00,000 from Smt, Jolly Thomas. These facts were kept concealed. The three lakhs rupees received by the petitioner were, according to him, used for discharging the liabilities due to Don Bosco Enterprises, Trichur, and to one Sri K.J. Ittyavira. The so-called debts due to the above-mentioned Don Bosco Enterprises and Sri K.J. Ittyavira are not evidenced by any document. From exhibit P-5 representation given by the petitioner to the Tax Recovery Officer, it is seen that loan from Don Bosco was taken in June, 1984, and that the liability towards Sri K.J. Ittyavira is not borne out by any document.

5. The petitioner before the learned single judge--the appellant before us--raised a contention that the second item of property held by him, namely, Kara South Bungalow, was acquired by the State, that the compensation amount awarded by the Land Acquisition Officer has been deposited in court and that the whole amount is available for discharging the tax liabilities. The Tax Recovery Officer, in exhibit P-4, found that the amount of Rs. 4,25,000 said to have been deposited in the court at Calicut will not be available in its entirety for payment of arrears of Income Tax. The Tahsildar, Calicut, has attached that amount for realising the arrears of revenue amounting to Rs. 1,73,884. The Corporation of Calicut has a claim to the tune of Rs. 32,961 being arrears of property tax. The Kerala State Civil Supplies Corporation has attached an amount of Rs. 13,403. So also, Pierce Leslie and Company, Thali Devaswom, and Government of Kerala have put forth jenmam and tenancy rights over the property and they are also advancing claims on the amount in deposit. Thus, according to the Officer, nothing substantial will be left to liquidate the arrears of Income Tax from the said compensation award. This conclusion of the Tax Recovery Officer was further scrutinised by the Commissioner of Income Tax in exhibit P-7 order and he has come to the same conclusion. Under the above circumstances, the learned single judge came to the conclusion that the petitioner had not disclosed to the Department the entire facts and the true facts in relation to his properties. We do not find any way to take a different view in the matter.

6. As stated earlier, the petitioner did not inform the Department about the receipt of Rs. 3,00,000 by him in October, 1984. He had not shown that there was a pressing necessity to pay Rs. 1,90,000 to Don Bosco Enterprises and Rs. 1,10,000 to Sri K.J. Ittayavira. The petitioner had come by substantial amounts for paying a good portion of the arrears of tax due to the Government. But he concealed that and secreted the same. In such a situation, the learned single judge was perfectly justified when he observed (at p. 289 of 173 ITR) :

"His obvious attempt in the first instance was to conceal the receipt of Rs. 3 lakhs."

Conceding the arguments put up by learned counsel appearing for the appellant that Smt. Jolly Thomas had obtained the rights under the decree charging the property to a sum of rupees four lakhs odd, we shall proceed to examine the rights now obtained by her by execution of the agreement to sell the lease deed. It is

conceded that the petitioner executed the agreement to sell the property "Bright House" to Smt. Jolly Thomas. In pursuance of that agreement to sell, Smt. Jolly Thomas has been put in possession of the property. She has got a leasehold interest under the lease deed executed in October 1984. In pursuance of the lease deed and the agreement to sell the property, Rs. 3 lakhs were received by the appellant and Smt. Jolly Thomas was put in possession of the property. This can be considered to be one in part performance of the agreement to sell. She can use such a right of having come into possession in part performance of the agreement of sale as a shield against the Department when the Department tries to proceed against the property. In this view of the matter, we are of the opinion that the petitioner has dishonestly removed his property, Bright House, from the reach of the Income Tax Department as contemplated by Rule 73(1)(a) of the Second Schedule to the Income Tax Act.

7. As stated earlier, the appellant concealed the receipt of three lakhs rupees from the Department. His liability to pay the Income Tax and wealth-tax arose not later than the close of the respective accounting years. The receipt of a substantial sum of Rs. 3,00,000 was after the liability to the Department came into existence. He failed to pay even a substantial portion of the arrears. In this view also, the learned single judge was right when he observed (at page 289 of 173 ITR) :

"The respondents were, therefore, justified in holding that there has been dishonest transfer of property and that the petitioner had also concealed details of his property from the Department and that he had not utilised the sum of Rs. 3 lakhs for payment of his tax dues."

8. In view of the circumstances detailed above, we find no ground to interfere with the decision of the learned single judge. The appeal, therefore, fails. It is accordingly dismissed.