(1960) 07 KL CK 0054

High Court Of Kerala

Case No: O.P. No. 737 of 1958

Krishna Iyer		APPELLANT
	Vs	
District Collector, Trichur and Others		RESPONDENT

Date of Decision: July 18, 1960

Acts Referred:

- Constitution of India, 1950 - Article 226
- Revenue Recovery Act, 1890 - Section 3(1)

Citation: (1960) KLJ 1120

Hon'ble Judges: Anna Chandy, J

Bench: Single Bench

Advocate: Panampilli Govinda Menon, P.K. Krishnankutty Menon and P. Narendra Menon, for the Appellant; G. Rama Iyer, for the Respondent

Final Decision: Allowed

Judgement

Anna Chandy, J.

The petitioner is a merchant doing business in Bombay and is now residing in his native village at Chalakudi. Respondents 1 to 3 are respectively the District Collector, Trichur, the Deputy Collector (income tax), Ernakulam and the Tahsildar, Mukundapuram. In 1947 the petitioner started a partnership business with three others in Bombay. The said business was done in Bombay as well as in Collem (Goa) in Portugese Territories. In 1950 the partnership was dissolved and the petitioner took over the entire business. Thereafter he continued the business at the same places as the sole proprietor. Since December 1953 on account of restrictions regarding travel from Indian Territories to the Portugese Territories and by reason of prohibition and restriction for remittance of money from Goa to India he could not continue the business in Goa and had to leave large assets and amounts belonging to the business at Goa without being able to take them over to the Indian Territories. For the assessment year 1950--51 corresponding to the account year

ending on the 31st March 1950 the income tax Officer, Bombay passed an assessment order on 23--12--1954 u/s 23(3) of the income tax Act, 1922 determining the total income of the partnership firm at Rs. 3,86,659/- the petitioner''s share of the income being Rs. 1,93,334/-. On appeal by the petitioner to the Appellate Assistant Commissioner, Bombay the total income of the firm was reduced to Rs. 3,01,261/- and the petitioner''s total income was reduced to Rs. 1,07,897/-. In pursuance of that order the income tax Officer by his order dated 16--4-1957 determined the petitioner''s total income for 1950--51 at Rs. 89,938/-. On the same day the income tax Officer served on the petitioner an assessment form showing that he was liable to pay an amount of Rs. 42,801. 69 nP. by way of income tax and super-tax for 1950--51. The said order and the assessment form are marked as Ext. P. 5 series. The notice of demand u/s 29 of the Act for the said amount dated 17--6--1957 was also served on the petitioner which is marked as Ext. P. 6.

2. For the assessment year 1952--53 corresponding to the account year 31st March 1952 the income tax Officer, Bombay assessed the petitioner to pay an amount of Rs. 4,465--5--0 by way of income tax and surcharge in respect of his business in Goa and served on him a demand notice u/s 29 of the income tax Act dated 6--11--1956 for the payment of the said amount within ten days. The said demand notice is marked as Ext. P. 7.

3. The entire tax of Rs. 47,277. 74 nP. for which the petitioner was assessed for the assessment years 1950--51 and 1952--53 is in respect of his income that arose outside the taxable territories of India, that is, in Goa in the Portugese territories from where remittance of money to India is prohibited. Long before the assessments referred to above were made the Goa Government introduced prohibitions and restrictions with regard to transmitting monies, income or assets to Indian Territories. On 23--11--1954 the petitioner applied to the Government Bank of Goa to transfer to the Indian Union Rs. 90,000/- out of his monies there to which they replied expressing their inability to accede to his request. True copies of the said letter and reply are marked Ext. P. 8 series. The Government of India have also imposed restrictions and prohibitions regarding travel of Indian citizens to Goa. On applying to the Government of Bombay State, for travel facilities to Goa, the petitioner got a reply from them on 19--1--1957 informing him that "according to the present policy of the Government of India, Indian citizens are not allowed to go to (Goa". The said order is marked as Ext. P. 9. On account of the above prohibitions and restrictions, all the petitioner''s assets and income for the above said assessment years have been blocked up in Goa and he has not been able to bring them over to India. On issue of demand notices to the petitioner for payment of the tax in respect of the assessment years 1950--51 and 1952--53 he wrote to the income tax Officer, Bombay State, that as his assets and funds were blocked up in Goa on account of the above said prohibitions and restrictions, he was unable to remit the same. The petitioner also wrote to the Commissioner of income tax, Bombay City requesting that he may be treated as a non-defaulter u/s 45 of the

income tax Act and to stay recovery proceedings of the tax amount until he is able to transfer his assets and income from Goa to the Indian Union. True copies of three such letters are produced and marked as Ext. P. 10 series. As a result of these letters the petitioner was allowed from lime to time extension of time for payment of arrears of tax till 30--6--1956 or till remittances from Goa were permitted, whichever is earlier. The letter dated 17--2--1956 from the Commissioner of income tax extending time till 30--3--1956 is marked as Ext. P. 11. The petitioner was also allowed to pay arrears of tax in monthly installments and time was allowed till 31--1--1957 for payment of the amount for the year 1952-- 53. The said order is Ext. P. II (a). In spite of repeated requests from the petitioner the income tax authorities have not stayed the proceedings for recovery of arrears of tax for the assessment years 1950-51 and 1952-53, though they have by their above letters conceded that he is entitled to relief under the provisions of Section 45 of the income tax Act.

4. Realising that he could not recover the arrear tax from the petitioner and declare him a defaulter by virtue of Section 45 of the income tax Act, the income tax Officer, Bombay on 17--9--1957 issued a notice u/s 44 of the Act to one B. M. Desai of Bombay who was one of the partners of the firm for realization of the tax for the assessment year 1950-51, but the said proceedings were quashed by the High Court of Bombay on 31--3--1958. On 13--10--1958 the 3rd Respondent presumably under the orders of Respondents 1 and 2 has served on the petitioner a demand notice u/s 24 of the Travancore-Cochin Revenue Recovery Act (7 of 1951) intimating that unless he pays the arrears of tax for 1950-51 and 1952-53 within seven days from the date of the service of notice his immovable properties will be attached and proceeded against for the realization of the said arrears. The demand notice is produced and marked as Ext. P. 12.

5. The petitioner alleges that Ext. P. 12 notice and the revenue recovery proceedings proposed to be taken are bad, void, ultra vires, ineffective, oppressive and inoperative in law and without jurisdiction for the following reasons :--

(a) Since he is not a defaulter as contemplated by the provisions of the income tax Act and he has not been declared as such by the income tax Authorities, the tax due for the assessment years 1950-51 and 1952-53 is in respect of his income in Goa outside the taxable territories and the said income could not be brought into the taxable territories on account of prohibitions and restrictions for remittance of money from Goa to the taxable territory, therefore by virtue of the proviso to Section 45 of the income tax Act the income tax Authorities could not treat him as a defaulter in respect of the tax due for the said assessment years. Since he is not a defaulter no proceedings for the recovery of the said tax could be initiated u/s 46 of the income tax Act or under the provisions of the Revenue Recovery Act, 1951.

(b) Respondents have no jurisdiction to take out proceedings against the petitioner under the provisions of the Travancore-Cochin Revenue Recovery Act as he is not a defaulter and is entitled to the benefits of the proviso to Section 45 of the income

tax Act.

(c) The demand notice for the tax due in respect of the assessment year 1950-51 was made on 17--6--1957 while that for the assessment year 1952-53 was made on 6--11--1956 and therefore the recovery proceedings, commenced after one year from the dates of such notice, are against the provisions of Section 46(7) of the Act, and any action for recovery of the tax for these years is time-barred.

6. On these grounds the petitioner prays that the Court may be pleased to issue a writ in the nature of certiorari or other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the case from the respondents and quashing the demand notice Ext. P. 12 dated 7--10--1958 served on him by the 3rd respondent. He also prays for the issue of a writ in the nature of prohibition or other appropriate order or direction under Article 226 prohibiting the respondents, their officers, servants and agents from enforcing or taking any steps or proceedings in pursuance of the said demand notice or from initiating, or taking any steps against him for the recovery of the arrears of tax.

7. In the counter-affidavit filed by the 3rd respondent he has stated as follows :--

He received a certificate u/s 3(1) of the Revenue Recovery Act of 1890 from the Additional Collector of Bombay for recovery of Rs. 46,931.76 nP. being arrears of income tax from the petitioner who has properties in Trichur District. Pursuant to this, he issued the demand notice and the action taken by him is in conformity with law and not open to any objection. The certificate issued under the Revenue Recovery Act is conclusive of the matters mentioned therein and it is not open to the petitioner to dispute its correctness or its validity. The petitioner is put to the proof of the allegations contained in paras 2 to 14 of his affidavit and the allegations could not be adjudicated in these proceedings to which the income tax Officer concerned is not a party. The grounds urged in support of the case that the demand notice and the revenue recovery proceedings proposed to be taken are void, ultra vires ineffective and without jurisdiction are not admitted and the Revenue Recovery Acts Central as well as the State confer sufficient authority on the respondents to initiate proceedings for the recovery of arrears of tax mentioned in the certificate. The plea of time bar is also not tenable. On these grounds it is prayed that the writ petition may be dismissed.

8. Though in the counter filed by him the 3rd respondent put the petitioner to the proof of the relevant averments in support of the case that he could not be treated as defaulter under the proviso to Section 45 of the income tax Act, the correctness of the averments was not disputed before me and arguments proceeded on the ground that the proviso to Section 45 is applicable to the case. The proviso to Section 45 reads thus:--

Provided further that where an assessee has been assessed in respect of income arising outside (the taxable territories) in a country, the laws of which prohibit or

restrict the remittance of money to (the taxable territories), the income tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into (the taxable territories) and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

The averments in the petitioner''s affidavit taken along with Ext. P. 8 series, P. 9, P. 10 series and P. 11 series the correspondence which passed between the petitioner and the income tax authorities, Bombay clearly establish that the assessment was in respect of income which arose in Goa the laws of which prohibited and restricted the remittance of any money to India. It is further not disputed that the restrictions and prohibitions are still in force.

9. The main objection and practically the only one raised by Shri. G. Rama Iyer, Advocate for the income tax Department is that this Court is not competent to adjudicate the validity of the assessment order made by the income tax Officer, Bombay in these proceedings to which the officer is not a party and no writ quashing the assessment order passed by the officer who is residing outside the jurisdiction of this court could be issued.

10. It is to be noted that the petitioner does not seek for cancellation of the assessment order and the prayer in the petition is only for the issue of a writ quashing the demand notice Ext. P. 12 issued by the 3rd Respondent and to prohibit the respondents, their officers and agents from enforcing or taking any steps or proceedings in pursuance of the said demand notice.

11. It is well settled that:--

Where one of the respondents to a petition for the issue of a writ under Art. 226 is amenable to the jurisdiction of the High Court by reason of his residence and the location of his office within the State and all the activities complained about are activities confined to the State, the High Court would be competent to entertain an application under Art. 226 even if the other respondent is not so amenable to its jurisdiction particularly when a writ against the first respondent, if issued, is sufficient for stopping completely the mischief complained against.

Vide the Full Bench decision in Thangalkunju v Venkitachalam AIR 1954 Travancore-Cochin 131.

12. It was contended by Sri. G. Rama Iyer that the 3rd respondent being only the agent of the income tax Officer, Bombay who is the principal who was directing his activities, the relief sought for could not be granted in these proceedings to which the principal is not a party. It is well-settled that:

there can be no agency for the commission of a wrong and the agent can certainly be prohibited from obeying the unlawful directions of his principal and even if the

principal cannot be reached by reason of his being outside the territories, the arm of law can certainly reach the agent who is guilty of having committed the wrong and the High Court could certainly issue a writ against him under Art. 226.

The above observations were made by the Supreme Court in T.K. Musaliar v Venkitachalam AIR 1956 S C 247.

That was a case where a petition was filed against the Indian income tax Investigation Commission having its office in New Delhi and the official authorised by the Commission to work in Travancore u/s 6 of the Travancore Taxation of Income (Investigation Commission) Act. It was contended on behalf of the Investigation Commission that the Travancore-Cochin High Court had no jurisdiction to issue a writ against it under Article 226 as it was not within the jurisdiction of that court. The decision of the Kerala High Court reported in Subramonia Iyer v The income tax Officer, New Delhi 1957 K.L.J. 662 also may be referred to in this connection. That decision was given in an application under Article 226 to quash an order of assessment passed by the income tax Officer, New Delhi which was sent for execution to the Collector of Trivandrum District. Both the income tax Officer, New Delhi as well as the Collector of the Trivandrum District were parties to the petition. In that case the order of assessment was sought to be quashed on the ground that the petitioner was residing in and carrying on business in the State of Travancore and the State authorities had assessed him to tax on the identical amount. Though this Court held that it had no jurisdiction to issue a writ to quash the order of assessment passed by the 1st respondent who was outside the territorial jurisdiction of this court, steps taken by the 2nd respondent for recovery of the tax from the petitioner were quashed as they were taken without jurisdiction. In this case the petitioner could not be treated as a defaulter by virtue of the proviso to section 45 of the income tax Act and as such the respondents 1 to 3 who are within the territorial jurisdiction of this court could be restrained from taking any step in pursuance of the incompetent order of assessment.

13. The only other point that remains to be considered is whether the action for the recovery of the tax for the assessment year 1950-51 and 1952-53 is barred by limitation. Section 46(7) of the income tax Act enjoins:--

Save in accordance with the provisions of sub-section (1) of section 42 (or of the proviso to section 45), no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of (the financial year) in which any demand is made under this Act.

14. The demand notice for the year 1950-51 (Ext. P. 4) was given on 11--6-1956 and that for the year 1952-53 (Ext. P. 7) on 6--11--1956. The financial year in which the demands were made runs from 1-4-1956 to 31-3-1957. Therefore the last day for the commencement of recovery proceedings is 31-3-1958. The income tax Officer''s certificate for taking proceedings was issued only on 21--5--1958. However from the

income tax file which was produced in court it is seen that in respect of the assessment year 1950-51 a distraint warrant was issued by the authorities on 15--3--1957 within the period of one year. Therefore there is no bar for recovery of the tax due for 1950-51 and the bar is only in respect of the assessment year 1952-53. Since the petitioner is not a defaulter as contemplated by the provisions of the income tax Act the respondents have no jurisdiction to take out proceedings against the petitioner for the realization of the arrears of tax and they are hereby prohibited from taking any step or proceeding under the Travancore-Cochin Revenue Recovery Act for the realization of the arrears.

The petition is thus allowed with costs inclusive of Advocates'' fee Rs. 150/-.