(1962) 02 CAL CK 0021

Calcutta High Court

Case No: Civil Rule No. 1651 of 1959

Kumar Purnendu Nath Tagore		APPELLANT
	Vs	
Income Tax Officer		RESPONDENT

Date of Decision: Feb. 28, 1962

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1963) 48 ITR 259

Hon'ble Judges: Binayak Nath Banerjee, J

Bench: Single Bench

Advocate: M.N. Banerjee and Amiya Lal Chatterjee, for the Appellant;Balai Lal Pal, N.C. Chakravarthy and D.N. Basu, for the Respondent

Judgement

Binayak Nath Banerjee, J.

This Rule fails on a preliminary ground. The petitioner, Kumar Purnendu Nath Tagore, is one of the sons of Raja Prafulla Nath Tagore, since deceased. Raja Prafulla Nath Tagore died leaving a will and leaving five sons, including the petitioner, him surviving. On August 24, 1938, this court granted probate of the will of Raja Prafulla Nath Tagore to his five sons who were the executors. About ten years thereafter, the executors were removed from office and the Administrator-General was appointed the administrator of the estate. Up to the year 1948, the estate had not been assessed to income tax for the years 1946-47, 1947-48 and 1948-49. On September 30, 1950, there was, however, an assessment order made in respect of the estate on the Administrator-General for the year 1946-47. This assessment order suffered vicissitudes in successive appeals and ultimately the Appellate Assistant Commissioner set aside the entire assessment proceedings against the Administrator-General for the year 1946-47. Thus ended the first chapter of activities on the part of the income tax authorities to assess the estate of Raja Prafulla Nath Tagore.

2. The second chapter began with a notice u/s 34 of the income tax Act issued to "Kumar Purnendu Nath Tagore and others, Executors to the estate of Raja Prafulla Nath Tagore". Pursuant to that notice Kumar Purnendu Nath Tagore filed a return under protest. With the nature of the protest I am not concerned in this Rule at this stage for reasons which I shall presently state.

3. Notwithstanding the protest, there was an assessment made on the basis of the aforesaid notice. That order of assessment was made on February 24, 1956. Against that order of assessment Kumar Purnendu Nath Tagore filed an appeal before the Appellate Assistant Commissioner of income tax. Admittedly, the said appeal is pending. During the pendency of the appeal, the petitioner, Purnendu Nath Tagore, moved this court and obtained the present Rule, under article 226 of the Constitution, challenging the assessment, as also the certificate proceedings started on the basis thereof.

4. Mr. Balai Lal Pal, the learned advocate for the respondents-income tax authorities, contended that the petitioner not only had an alternative remedy but had taken recourse to that, namely, by way of an appeal against the order of assessment to the Appellate Assistant Commissioner. He was, therefore, not entitled to challenge the assessment by way of an application for a high prerogative writ during the pendency of the appeal. In my opinion, the preliminary objection ought to be upheld.

5. It is no doubt true that the existence of the alternative remedy is not an absolute bar to the jurisdiction of the High Court to entertain an application under article 226 of the Constitution. In the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, Rajagopala Ayyangar J. observed:

"We must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this court but it is sufficient to refer to two cases. In Union of India (UOI) Vs. T.R. Varma, , Venkatarama Ayyar J. speaking for the court said:

''It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court to issue a writ; but, as observed by this court in Rashid Ahmed v. Municipal Board, Kairana AIR 1950 SCR 163, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs: vide also K.S. Rashid and Son Vs. The

Income Tax Investigation Commission etc., . And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under article 226, unless there are good grounds therefor."

There is no difference between the above and the formulation by Das C.J. in The State of Uttar Pradesh Vs. Mohammad Nooh, ."

6. But, although it is so, different considerations will apply where the alternative remedy had been resorted to by the aggrieved party before he approached the High Court for remedy under article 226 of the Constitution. Having taken recourse to the alternative remedy he should not be allowed to invoke again the jurisdiction of the High Court under article 226 of the Constitution for relief and this is particularly so in disputes over assessment of income tax, because of the observations of the Supreme Court in the case of C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, in which Shah J. observed:

"In our view, the petition filed by the appellant should not have been entertained. The income tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the income tax authorities, and the appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Tribunal."

7. For the reasons aforesaid, I hold that the preliminary objection ought to succeed and I discharge this Rule. I make no order as to costs. The operation of this order is stayed for three weeks from today in order to enable the petitioner to appeal against this order.