

(2004) 12 DEL CK 0082

Delhi High Court

Case No: WPC 1844 of 1995

Creations and Another

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Dec. 9, 2004

Citation: (2005) 119 ECR 282

Hon'ble Judges: B.C. Patel, C.J; Badar Durrez Ahmed, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

B.C. Patel, C.J.

In the instant case how the respondent Union of India is acting against the interest of revenue is indicated by the inaction on the part of the Union of India in not moving the Court earlier and by non filing of the reply even till today.

2. This petition was filed in the year 1995 as a demand was raised on the petitioners to the extent of Rs. 1,35,788.60 by an order dated 29.6.1989. The demand notice was served for the first time on the petitioner in the year 1995. The Division Bench while issuing notice observed "It is stated that the petitioner was unaware of any such order and for the first time he came to know when the demand was sought to be enforced as arrears of land revenue by the District Collector Office. It is stated that u/s 128 of the Customs Act appeal would not be maintainable in as much as there will be delay of over 6 years. Notice to the respondents for 8.11.1995 to show cause as to why Rule Nisi be not issued." On giving bank guarantee the petitioner has been protected.

3. On 8.11.1995 the Court granted four weeks further time as prayed by the learned Counsel for the Union of India to file counter affidavit. On 31.1.1996 the Court was constrained to issue Rule and it was not inclined to grant any further time to the respondents to file the counter affidavit. It may be noted that till today the counter

affidavit has not been filed after issuance of Rule and the contention of the petitioner about non service has remained uncontroverted.

4. Our attention is invited by the learned Counsel for the respondents to point out that the petitioner was aware of the proceedings and for that purpose Annexure-D was shown to us. It may be noted that it appears to be a cyclostyled order. However, the following portion thereof is required to be noted:

The Party Was Informed Vide This Office Letter (Regd.) No. 576 Dated 24.9.1989 That They Could Make Written Submission If They Disputed The Demand and Also An Opportunity To Appear For Personal Hearing Was Given On 11.5.89.

It is required to be noted that the portion reading thereafter "They Requested For Extention In Date and Accordingly The Date Of Personal Hearing Was Re-Fixed On" has been scored out. In the said annexure thereafter again it is stated that notices date 8.12.1983 and 14.12.1983 were issued. However, the same were returned undelivered. Thus, it is clear that the two demand notices were issued and were returned undelivered. It is not possible to accept the submission of the learned Counsel for the Union of India that earlier notice which was issued was served and the petitioner had knowledge about the demand. When the latter portion is deleted in the aforesaid letter, it cannot be said that the petitioner had the knowledge. Till today no evidence is produced before the Court that the petitioner was served. Even the order clearly reveals that nobody appeared for the party and the case was decided ex-parte. A copy of this order was not served on the petitioner immediately. He came to know only when the District Collector called upon him for recovery under the Land Revenue Code in 1995. It is in this background the matter is required to be considered.

5. It is not clear what prevented the Union of India from filing the counter affidavit immediately. In a case like this, on the returnable date, the counsel for the Union of India could have filed the affidavit stating that petitioner was served or should have made a statement that an opportunity of hearing will be given to the petitioner as it was not given earlier and the order will be passed afresh after hearing the notice/petitioners. Unfortunately that was not done. We find that as no opportunity was given to the petitioner, the rules of natural justice are grossly violated and Therefore, we are required to interfere in this matter at this stage as Rule has been issued long back and facts are not controverter.

6. In view of what has been discussed above, we quash and set aside the order dated 29.6.1989 at Annexure D, the notice dated 28.3.1995 at Annexure D-I and the notice at Annexure F. The respondents are directed to hear the petitioner and thereafter to pass an order in accordance with law. The petitioner is directed to ensure that the bank guarantee is kept alive till the order is made by the competent authority. With these directions, the petition is disposed of.