ANDHRA PRADESH HIGH COURT

Polisetty Narayana Rao

Vs.

Commissioner of Income-tax

Civil Misc. Petn. No. 4271 of 1955

(Subba Rao, C.J. and Bhimasankaram, J.)

02.09.1955

JUDGMENT

Bhimasankaram, J.

1. This is a petition to direct the stay of the collection of Income-tax arrears pending the disposal of a reference under Section 66 (2) of the Income-tax Act. The petitioner was assessed as a Hindu joint family. It consists of two branches, one branch represented by Polisetti Narayana Rao and the other by his brother Govinda Rao. Narayana Rao was the Kartha of the family and in that capacity submitted returns for the assessment years 1946-47 and 1947-48 on 7th November 1946 and 15th September 1947, respectively. In the assessment proceedings, the assessee claimed that there was a partial partition in the family and that certain specific items, viz., house properties, cloth and yarn business and Sudarsana Oil Mill business were divided between the two branches. The Income-tax Officer negatived the claim of division, but on appeal to the Appellate Assistant Commissioner it was upheld. On further appeal by the Department it was held by the Tribunal that there was division as regards some of these properties and that there was none as regards certain others. The assessee thereupon applied to the Income-tax Appellate Tribunal to state a case and refer to the High Court a question formulated by him. There were two appeals before the Tribunal. I. T. A. Nos. 5831 and 5832, arising out of two assessments for the above mentioned assessment years. The Tribunal declined to do so and the matter was brought before us by the assessee under Section 66 (2) of the Income-tax Act. This Court directed the Tribunal to state a case and submit for the opinion of this Court a question of law arising out of their decision. That order of this Court was passed on C. M. P. Nos. 4391 and 4392 of 1954. The present petition is filed as an Interlocutory Application in C. M. P. No. 4392 of 1954, which was the main petition and seeks stay, as above stated, of the collection of arrears 'pending disposal of the case directed to be referred by C. M. P. No. 4392 of 1954.' Now, it is to be noticed that C. M. P. No. 4392 of 1954 is the application referred to in clause (2) of Section 66 of the Act and that has already been ordered by this Court, requiring the Appellate Tribunal to state the case and to refer a question. In due course, a reference will be made by the Income-tax Appellate Tribunal upon the requisition so issued and the case when it is so stated and referred will be taken on the file of this Court as a 'referred case'. The C. M. P. as such has been ordered and the referred case as such is yet to be on the file of this Court. How far it can be said that there are, in these

circumstances, any proceedings pending on the file of this Court is a matter which has, however, not been argued before us and we are not to be supposed as expressing any opinion on it.

2. The learned Advocate-General for the Commissioner of Income-tax, Hyderabad, questioned the jurisdiction of this Court to issue any such order as is sought by the assessee. He referred to clause (7) of Section 66 which runs as follows :

> "Notwithstanding that a reference has been made under this section to the High Court, the Income-tax shall be payable in accordance with the assessment made in the case : provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow (unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order, authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.)"

He argues that the power of this Court under Section 66 (2) is merely consultative and advisory, that this Court has no power to pass a decree or order under the Income-tax Act, that the above non obstante clause debars the passing of any order directing a stay, and that the only power that the High Court has to direct stay with respect to any matter concerning the tax is what is contained in the above proviso, whereby the High Court is entitled to make an order postponing payment of any refund payable by the Commissioner. This argument is countered by the learned counsel appearing for the petitioner by invoking our jurisdiction under Section 151, Civil Procedure Code and Article 227 of the Constitution of India. The learned counsel points out that the proviso to Article 225 of the Constitution of India removes the limitations previously in force upon the powers of the High Court because of Section 226 (1) of the Government of India Act, 1935 (corresponding to Section 106 of the earlier Act of 1919).

3. Now it is true that the proviso to Article 225 removes the bar upon the exercise of 'original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof,' but it is obviously not an Article conferring jurisdiction. All that this proviso does is to take away the restrictions which were imposed by Section 226. So long as that section was in force, the High Court could not have acted under Section 151 of the Code of Civil Procedure to stay the collection of income-tax pending a reference, there being little doubt that the High Court would be exercising original jurisdiction in answering a reference. The question, therefore, now is whether the inherent power vested in the High Court under Section 151 is wide enough to apply to a case like the present. Reference has been made by learned counsel to the decision in *Hukum Chand Boid v. Kamalanand Singh*[1], where Woodroffe, J., observed as follows :-

> "The Court has, therefore, in many cases, where the circumstances require it,

[1] ILR 33 Cal 927

> acted upon the assumption of the possession of an inherent power to act ex debito justitiae and to do that real and substantial justice for the administration, for which it alone exists."

4. Mookerjee, J., in the same case stated as follows :-

> "It may be added that the exercise by Courts, of what are called their 'inherent powers' or 'incidental powers' is familiar in other systems of law, and such exercise is justified on the ground that it is necessary to make its ordinary exercise of jurisdiction effectual, because, when jurisdiction has once attached, it continues necessarily and all the powers requisite to give it full and complete effect can be exercised, until the end of the law shall be attained". This principle has been approved in *Neelaveni v. Narayana Reddi*[2], and followed by the Madras High Court in several cases. (Vide *Manickam Chettiar v. Income-tax Officer, Madura*[3], *Ankalu Reddi v. Chinna Ankalu Reddi*[4], and *Fernanda v. Ratnasami Nadar*[5],) . As the present question could not have been arisen before the Constitution came into force, the matter is bare of authority.

We are not disposed to agree that clause (7) of Section 66 of the Income-tax Act is an insurmountable bar to the exercise of inherent power of this Court under Section 151 to stay the collection of revenue. It is true that where there is a special provision relating to a particular matter, the power of the Court is circumscribed by the limitations specified in that provision. But we do not read Section 66 (7) as defining the scope of the power of the High Court to stay proceedings. Hence, we are inclined to agree with the contention of the petitioner that in a proper case our power under Section 151, Civil Procedure Code, could be invoked to seek an order such as is sought by the present petition.

5. In the alternative, it has been contended for the petitioner that whatever doubts may be entertained as regards the exercisability of our inherent power under Section 151, Civil Procedure Code, our jurisdiction under Article 227 clearly extends to cover a case like the present. It is now settled by the decision of the Supreme Court in *Waryan Singh v. Amarnath*[6], that the power of 'superintendence' vested in the High Courts under Article 227 of the Constitution is not merely administrative, but also judicial. The Supreme Court remarked in that case as follows :-

> "It is significant to note that Sub-Section (2) to Section 224 of the 1935 Act has been omitted from Article 227. This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1919. See the Cases Referred to in *Moti Lal v. The State*[7], (G). Our attention has not been drawn to any case which has taken a different view, and as at present advised, we see no reason to take a different view."

[2] ILR 43 Mad 94 (FB)
[3] 1938-1 Mad LJ 351 (FB)
[4] 1943-2 Mad LJ 557
[5] 1951-1 Mad LJ 425
[6] AIR 1954 SC 215
[7] AIR 1952 All 963 at p. 966

They observed :

> "This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways Limited v. Sukumar Mukherjee*[8], to be exercised most

sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors." Learned counsel, however, has relied particularly on a passage in the judgment of Rajamannar, C. J., in Pattisam, In re., ILR (1954) Mad 592 at pp. 600 and 601 : (AIR 1954 Madras 573 at p. 575) :-

"But it is not difficult to conceive of cases to which Article 226 may not be applicable, but Article 227 might be applied. Take case for instance, where the High Court feels that in the interests of justice and to avoid multiplicity of proceedings there should be a stay of a proceeding pending before a Tribunal till the disposal of a suit pending in a civil Court. Article 226, according to the Supreme Court, cannot be invoked for the sole purpose of obtaining an interlocutory order; vide The *State of Orissa v. Madan Gopal Rungta*[9], in exercise of the power of superintendence, the High Court may well direct such a stay."

The learned Advocate-General on the other hand, emphasizes the caution sounded by the Supreme Court in the passage above-cited, that the use of the powers under this Article should be most sparing and also presses upon us what he calls the limitation contemplated by the Supreme Court by the words 'in order to keep the subordinate Courts within the bounds of 'their authority'. He has also referred to the decision in 1952 SCR 28 , and asks us to read Article 227 in the light of the interpretation put by the Supreme Court on Article 226. Their Lordships in that case stated :

"In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding." The argument is that in a case like this there is no 'main relief' as such, 'available to the party on final determination of his rights in the pending proceeding'. It is said that our answer to the reference that will be made by the Tribunal may at best indirectly involve the refund of a certain amount of tax collected from the assessee, but there will be no final determination by us of any rights of the parties to the proceeding. We must acknowledge that there is considerable force in this contention of the learned Advocate-General. We, however, do not think that the Supreme Court in AIR 1954 Supreme Court 215, intended to define the scope of judicial power under Article 227. The word 'superintendence' is of very wide connotation and it would be undesirable, even if it were possible, to map out the domain within which it is to operate. It is of course to be rarely resorted to and should be invoked generally only

[8] AIR 1951 Cal 193 (SB)

[9]1952 SCR 28 . But under Article 227

where there is no other remedy available. We are not prepared to accept the broad contention that this Court can, in no case, pass such an order as is now sought.

6. After we took time for consideration of this matter, the learned Advocate-General indicated to

us that he might be allowed to raise also the objection that as the Commissioner of Income-tax having jurisdiction in the matter is at Hyderabad beyond the territories over which this Court exercises jurisdiction, we have no jurisdiction to pass any order affecting his activities. With the consent of the counsel for the petitioner, we allowed him to raise it. Now, it is true that the superintendence of this Court under Article 227 is only 'over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction' in the same manner as the power vested in the High Court under Article 226 is also only throughout such territories.

The Supreme Court has held in *Election Commission v. Venkata Rao*[10], that the High Court of Madras had no jurisdiction over the Election Commission operating from Delhi though its orders may have effect within the State of Madras. It follows that we cannot exercise our power of superintendence beyond the territory of the Andhra State. Mr. Sankara Rao for the petitioner argues however, that it is not the Commissioner of Hyderabad that is enforcing the order of collection but the Income-tax Officer functioning within the area of the Andhra State and that it would be enough if we issue the necessary directions to the Income-tax Officer. While we are not prepared to say that we may not do so in an appropriate case, we think it unnecessary to pursue the matter any further for the purpose of this case. We are, however, constrained to remark that the jurisdiction of this High Court under Articles 226 and 227 is circumscribed in some measure, by the location of Officers and authorities outside the territories of the Andhra State, though they pass orders affecting the citizens, resident in the Andhra State. It is, in our judgment, a serious anomaly that this Court should be powerless to assist citizens permanently residing within the territory over which it exercises jurisdiction to the fullest extent possible under the Constitution. For example, the Board of Revenue of the Andhra State and the heads of several departments in the Andhra State are functioning from Madras and the citizens of the Andhra State have to seek remedies in the Madras High Court against the executive action of such authorities. It is really a matter affecting the rights of the citizens of the Andhra State and requires serious and urgent consideration by the State and, in regard to such cases as the present, by the Union Government.

7. We shall now consider whether the present case calls for the exercise of such power as we have. The assessee states that it paid all the taxes for the assessment year 1947-48 totalling a sum of about Rs. 18,911-11-0 and that out of the sums of Rs. 57,932-13-0 due for the year 1946-47 all that remains due and payable is only a sum of about Rs. 16,624. It is said that a sum of Rs. 60,220 was paid in the course of the period from April 1954, up-to-date. It has also paid a tax of Rs. 53,685 from 1st January 1954, till now. It is stated, that on account of these payments, all its available liquid assets have been practically used up and that it is not in a position to pay the

[10]1953-1 Mad LJ 702

balance, on account also of the present market conditions. It offers, however, to furnish security for the balance payable. We cannot hold that mere inability to pay on the part of the assessee could be a good ground for our directing stay of collection of the tax. The circumstances are not so compelling as to call for our interference. This case does not seem to us at all to stand on a footing substantially different from that of a number of other cases, where references have been made and are pending.

8. In the result, we dismiss the petition with costs.
Petition dismissed.