

Aiysha Bibi Vs. Commissioner of Income-tax, Madras, and Another.

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Court : Chennai

Decided On : Mar-02-1956

Reported in : AIR1956Mad687; [1956]30ITR81(Mad)

Appellant : Aiysha Bibi

Respondent : Commissioner of Income-tax, Madras, and Another.

Judgement :

ORDER

The Order of the Court was Delivered by

RAJAGOPALAN, J. - The petitioner was assessed to income-tax for the year 1951 - 52. The petitioner was not permitted to challenge the validity of that assessment in these proceedings. The assessed tax was in arrears. On the issue of a certificate by the Income-tax Officer under section 46 (2) of the Income-tax Act, the Collector of Madras issued a notice of demand to the assessee on 17th July, 1954, which purported to be under the provisions of the Revenue recovery Act (II of 1864). The assessee is a resident of Vepery in the City of Madras. The assessee challenged the validity of the notice of demand and the further proceedings for recovery of income-tax taken thereunder and she filed this application under article 226 of the Constitution for the issue of a writ of prohibition.

The two grounds on which the jurisdiction of the Collector to issue the notice, dated 17th July, 1954, was questioned were : (1) section 64 of Act II of 1864 excluded the operation of the provisions of that Act in the case of the petitioner, who was a resident of Madras; and (2) the proceedings for the recovery of arrears of income-tax Act. Since, in our opinion, the first contention is well founded, it may not be necessary to examine the correctness or otherwise of the second of the contentions.

Under section 46 (2), the Collector 'on receipt of such a certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.' Madras Act II of 1864 provides primarily for recovery of arrears of land revenue. Section 64 of Act II of 1864 runs :

'Nothing in this Act shall apply to the collection of land revenue within the limits of the town of Madras as defined by section 12 of regulation Ii of 1802, of the Madras Code.'

No doubt, regulation II of 1802 has been repealed but that in no way affects the operation of section 64 of Act Ii of 1864; it is as if the definition of the Town of Madras] embodied in section 12 of Regulation Ii necessary to define now how much of

the present City of Madras comes within the scope of section 12 of regulation II of 1802. It is enough to record that Vepery, where the petitioner lives, does come within this area defined by section 12 of Regulation II of 1802. The legislative sanction to recover arrears of land revenue in the area

excluded by section 64 of Act II of 1864 from the operation of that act is to be found in the Madras City Land Revenue Act (XII of 1851) as amended by Madras Act VI of 1867. It was not any statutory power under Act XII of 1851 that the Collector exercised when he issued the notice dated 17th July, 1954. It was the statutory power in him under the provisions of Madras Act II of 1864 that he invoked.

It was not really disputed that, had it been a case of arrear of land revenue itself that was due from the petitioner, section 64 of Act II of 1864, would have barred recourse to that Act. Learned counsel for the respondent pointed out that what was demanded was only an arrear of income-tax which could be lawfully recovered 'as if it were an arrear of land revenue'. Learned counsel further urged that recovery of such amounts, which could be recovered 'as if they were arrears of land revenue', did not come within the scope of the ban imposed by section 64 of Act II of 1864. He referred further to section 52 of that Act. Apart from other factors, section 52 would not validate the demand issued by the Collector on 17th July, 1954. It is true that under section 46 (2) of the Income-tax Act and under section 3 (1) of the Revenue Recovery Act (I of 1890), an arrear of income-tax could be collected 'as if it were in terms apply only to sums due to the State Government. The arrear of income-tax is due to the Central Government. So, it is independent of section 52 of Act II of 1864 that we have now to consider the question at issue.

The fiction enacted by section 46 (2) of the Income-tax Act and section 3 (1) of Act I of 1890 was that an arrear of income-tax could be deemed to be an arrear of land revenue for purposes of recovery. The procedure in Act II of 1864 was for the recovery of land revenue itself, except within the city of Madras. The same procedure would apply to the recovery of an arrear of income-tax because of the legal fiction referred to above, that an arrear of income-tax could be recovered 'as if it were an arrear of land revenue.' If land revenue itself could not be recovered from the petitioner under the provisions of Madras Act II of 1864, because of the ban of section 64 thereof, anything which could be recovered 'as if it were an arrear of land revenue' could not be recovered under the provisions of that Act. The fiction only creates a liability leaving the procedure to enforce that liability the same both for arrear of land revenue and an arrear which could be recovered 'as if it were an arrear of land revenue.'

Section 64 of Act II of 1864 provides, therefore, a complete answer to the demand issued by the Collector under the provisions of Act II of 1864.

The rule is made absolute. The petition is allowed with costs. A writ of prohibition will issue restraining the Collector from enforcing the notice of demand he issued on 17th July, 1954. Counsels fee Rs. 250.

Petition allowed.