

Income Tax Officer, A Ward, Hissar and another v.
Shanti Parshad Jain and others (I. S. Tiwana, J.)

of the leave under section 92 of the Code as at that stage it is the subjective satisfaction of the Court only and thus the order is an order of administrative nature.

(9) There is another reason also why no notice is necessary to the defendants prior to the granting of the leave under section 92 of the Code because that will amount to trying the suit twice—first at the time of granting the leave and secondly after the leave is granted. As a matter of fact it is the satisfaction of the Court as to whether the leave should be granted or not keeping in view the provisions of section 92 of the Code. Suppose the leave is granted, in that situation the defendants can take all available pleas in the written statement and the matter would be decided at the trial of the suit without any prejudice to them, if no notice is issued to them prior to the granting of the leave. Moreover, as observed earlier, the leave is to be granted on the allegations made in the plaint to be filed in the Court and not on seeking the averments made in the written statement. Obviously, thus the Court does not need presence of the defendants at the time of the granting of the leave and therefore, no notice to them at that stage is necessary.

(10) In this view of the matter, this petition fails and is dismissed with no order as to costs. Parties are directed to appear in the trial Court on 16th October, 1986.

D. S. Tewatia J—I agree.

R.N.R.

Before : I. S. Tiwana, J.

INCOME TAX OFFICER, A WARD, HISSAR and another,—
Petitioners.

versus

SHANTI PARSHAD JAIN and others,—*Respondents.*

Civil Revision No. 2079 of 1986

September 26, 1986

Income Tax (XLIII of 1961)—Section 293—Assessee sought to be taxed on capital gains in respect of land acquired under the Land Acquisition Act—Assessee's appeal for enhancement pending

in the High Court—Meanwhile, assessee challenging validity of acquisition proceedings in civil suit—Suit decreed by Civil Court—Appeal filed by the State against the decree pending—Assessment order passed by the competent authority against the assessee for payment of capital gains tax—Income Tax Commissioner in appeal directing competent authority not to finalise the assessment in view of the pendency of proceedings in Civil Court challenging the validity of acquisition proceedings—Income Tax Officer issuing notice to the assessee to finalise assessment proceedings—Assessee obtaining injunction from Civil Court against the notice—Revenue objecting that no injunction could be issued as jurisdiction of civil Court barred under section 293—Order aforesaid—Whether liable to be quashed as being without jurisdiction.

Held, that the merits of the assessee's case which are seriously disputed by the revenue cannot confer any jurisdiction on the Civil Court or remove the bar of jurisdiction brought in by Section 293 of the Income Tax Act, 1961. All the pleas open to the assessee have to be raised before the authorities under the Income Tax Act as Section 293 thereof bars the jurisdiction of the Civil Court and as such the order of Civil Court is liable to be quashed as being without jurisdiction.

(Para 7).

Petition under Section 115, C.P.C. for revision of the order of the Court of Shri Dhani Ram, H.C.S., Sub-Judge, Ist Class, Hissar, dated 30th May, 1986, holding that the civil Court has jurisdiction to adjudicate upon the matter and deciding the issue against the defendants.

Ashok Bhan, Senior Advocate, with Ajai Mittal, Advocate, for the *Petitioner*.

N. C. Jain, Senior Advocate, with S. K. Vij, Advocate, for the *Respondent*.

JUDGMENT

I. S. Tiwana, J. (Oral)

(1) This petition is directed against the order of Sub-Judge Ist Class, Hissar, dated May 30, 1986, whereby while holding that the Civil Court had the jurisdiction in the matter, has enjoined the Income Tax Officer, Hissar, not to "assess the plaintiff for capital gains in respect of the said compensation amount though he can do so in respect of the said income of the plaintiffs which has no concern in the said enhanced amount of compensation". In order to

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appreciate the controversy raised in this petition the following undisputed facts deserve to be noticed.

(2) Respondent-assessee's land measuring 192 kanals and 2 marlas was acquired by the State Government in pursuance of a notification published under section 4 of the Land Acquisition Act on January 30, 1973, and they were dispossessed thereof on October 5, 1973 after the pronouncement of the award under section 11 of the said Act. The assessee sought a reference under section 18 of the Act against that award and as a result of the same, the Additional District Judge, Hissar,—*vide* his judgment dated January 23, 1979, enhanced the amount of compensation to a considerable extent. The respondents have concededly received this compensation including the interest awarded thereupon. They claim to have invested this entire amount in the form of National Rural Development Bonds and this, according to their stand, absolves them from the liability to pay any capital gains tax under the Income Tax Act. Concededly the respondents as well as the acquiring authorities have preferred appeals in this Court against the award of the Additional District Judge and the same are still pending. In a nut shell, the question of fairness of the compensation allowed to the respondent-assessee is sub-judice.

(3) During the course of the above noted proceedings the respondents filed a suit (No. 757-C) impugning the entire acquisition proceedings and that suit of theirs was decreed on March 7, 1983 by the learned Senior Sub Judge, Hissar. The State's appeal against that decree is again pending in the Court of the Additional District Judge. In other words, the legality of the acquisition proceedings is also sub-judice at the moment.

(4) While the above noted proceedings were going on between the plaintiff-respondents and the State Government, one of the respondent, i.e., Satinder Kumar (plaintiff No. 4) was assessed to the payment of capital gains tax and qua others, the amount of interest received by them was also subjected to tax as their income during the relevant year. The plaintiffs filed appeals against the said assessments before the Income Tax Commissioner (Appeals), Chandigarh, who in the light of the judgment of the Senior Sub Judge dated March 7, 1983, referred to above, set those assessments aside with the direction that the Income Tax Officer should not take a

final decision in the matter till the said litigation in the civil Court was finalised.

(5) Since the Income Tax Officer, Hissar, issued notices to the plaintiffs to file their returns for the assessment years 1975-76 to 1981-82, they filed the present suit alleging in the light of the above noted facts that the said officer had no jurisdiction in the matter and he should be restrained from proceeding against them under the Income Tax Act. This stand of the plaintiff-respondents has been contested by the revenue on a number of pleas including the one that the civil Court had no jurisdiction in the matter in view of the provisions of section 293 of the Income Tax Act. The trial Court has chosen to try this latter mentioned issue as a preliminary issue and, as already indicated above, while holding that the civil Court has the jurisdiction, has enjoined the Income Tax Officer in the manner stated in the opening part of this judgment.

(6) Mr. Ashok Bhan, learned Senior Advocate for the petitioner authorities contends that the trial Court has completely misconstrued the provisions of section 293 of the Income Tax Act while recording the above noted conclusion. This section reads as follows:—

“293. Bar of suit in civil Courts.—

No suit shall be brought in any civil Court to set aside or modify any assessment order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.”

According to the learned counsel, a bare reading of this section indicates that a civil Court has no jurisdiction either to set aside or modify a completed act or an assessment order made by the competent authority under the Act or to entertain any suit or other proceedings against any officer under this Act for anything done by him in good faith or intended to be done by him. Though the matter appears to be concluded in favour of the learned counsel by two earlier judgments of this Court in *Seth Harish Chandra v. Union of India*, (1) and *Shri Sukhdev Chand, Asstt. Cir. Acquisition Range*

(1) (1962) 46 I.T.R. 442.

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v. *Shri Kashmir Singh Bhullar and others* (2) (section 67 of the Income Tax Act referred to in the earlier case is in pari materia with section 293 mentioned in the latter case) yet in order to elucidate his submission he makes a reference to a Division Bench judgment of the Patna High Court in *Raja Bahadur Kamakhya Narain Singh v. Union of India and others* (3), wherein it has been observed that the last words "or intended to be done" occurring in section 293 of the Income Tax Act "cannot apparently refer to a tortious act, because a suit for damages in respect of a tortious act must relate to a past act and not to an unknown future act". According to the learned counsel, it will be ridiculous and illogical to suggest or to hold that an assessment once completed cannot be called in question in a civil Court but proceedings may be taken in such a court to prevent assessment altogether. I see merit in this submission of the learned counsel. Otherwise also the matter, as far as this Court is concerned, to my mind, stands concluded by the two judgments referred to above.

(7) The primary submission made by Mr. N. C. Jain, learned Senior Advocate for the respondent assesseees is that in view of the findings of the civil Court to the effect that the entire acquisition proceedings were null and void and the adequacy of the compensation payable to the respondents having still not been finally determined, the proceedings under the Income Tax Act as sought to be initiated by the Income Tax Officer would amount to nothing more than a harassment as according to him the receipt of the compensation or the interest by his clients cannot be treated as income which has accrued to them. This plea, even if has to be given any weight, for the sake of argument, cannot to my mind, lift the bar of jurisdiction created by section 293 of the Income Tax Act against a civil Court. The pleas which the learned counsel for the assesseees wants to raise obviously concern the merits of the case for which he has to seek his proper remedies under the Income Tax Act and before the authorities mentioned therein. The only other submission of the learned counsel is that since the Income Tax Commissioner (Appeals) had directed the Income Tax Officer not to proceed or finalise the assessments against the respondents till the finalisation of the adjudication about the validity of the acquisition proceedings, the issuance of the present notices by him not only amounts

(2) (1984)150 I.T.R. 578.

(3) (1964)51 I.T.R. 596.

to violation of that direction but is even without jurisdiction. Again even if this plea has some merit, the same has to be raised before the competent authority under the Act and this by itself does not confer any jurisdiction on the civil Court to go into the legality or the validity of the action of the Income Tax Officer. Besides this it is apparent from the impugned order of the civil Court that the stand of the Income Tax Officer is that that direction by the Appellate Commissioner only related to the assessment years other than those to which the present notices relate. Further it is the stand of the Income Tax Officer that under the law (section 153) he is under an obligation to finalise the assessment proceedings within a period of two years from the end of the assessment year and in view of that he could not indefinitely wait for the finalisation of the above noted proceedings in the civil Court. Anyway, the fact remains that the merits of the respondents' cases which of course are seriously disputed by the petitioner authorities cannot confer any jurisdiction on the civil Court or remove the bar of jurisdiction brought in by section 293 of the Income Tax Act referred to above.

(8) In the light of the discussion above, while allowing this petition, I set aside the impugned order of the trial Court and hold that the civil Court had no jurisdiction in the matter. I make no order as to costs.

R.N.R.

Before : G. C. Mital, J.

RAJ MASIH.—Petitioner.

versus

MUNICIPAL CORPORATION, AMRITSAR AND ANOTHER.—

Respondents.

Civil Revision No. 2147 of 1986

October 29, 1986

Punjab Municipal Corporation Act (XLII of 1976)—Sections 269 and 396—Shop sought to be demolished by Municipal Corporation in possession of tenant—Order of demolition passed by the Corporation after notice and hearing to landlord—Order of demolition—Whether can be passed behind the back of the tenant—Tenant—Whether an aggrieved person in terms of Section 269—Notice to