

Deputy Director Of Inspection ... vs Vinod Kumar Didwania And Anr. on 17 December, 1984

Equivalent citations: [1986]160ITR969(SC)

Bench: P.N. Bhagwati, Sabyasachi Mukharji

Order

1. (1984, December 17): This is one of those rare cases where we find that the process of law has been completely abused for the purpose of gaining undeserved advantage. Three prohibitory orders under Section 132(3) of the Income-tax Act, 1961, were issued to the first respondent with respect to goods in the following three godowns :

(a) No. 1, Krishnan Koil Street, Madras-600 001,

(b) No. 143, Mannarswamy Koil Street, Royapuram,

(c) Old No. 9/143, Mount Road, Guindy, Madras, by the income-tax authorities. The first respondent thereupon filed a writ petition in the Calcutta High Court -challenging the validity of these three prohibitory orders and obtained an exparte interim injunction prohibiting the petitioners and each of them and their servants and agents from-interfering with the operation of the said godowns of the respondent and from interfering with the removal of and/or parting with and/or handling with and/or disposal of the materials stored in the said godowns situated at (1) No. 1, Krishnan Koil Street, Madras, and (2) No. 143, Mannarswamy Koil Street, Royapuram, Madras, and the stocks lying in the open yard godown belonging to Sri Baijnath Gupta at Guindy, Madras, in any manner whatsoever, and also restraining the petitioners from giving effect to any of the said three prohibitory orders. This exparte order of injunction was passed by the single judge of the Calcutta High Court on April 12, 1984, and on the strength of this exparte order of injunction, the first respondent removed the goods lying in the aforesaid three godowns. The purpose of filing the writ petition having been accomplished by the removal of the goods from the aforesaid three godowns, the first respondent withdrew the writ petition in the Calcutta High Court. But, before that, the Deputy Director of Inspection, Madras, filed a petition in this Court for special leave to appeal against the exparte order of injunction which enabled the first respondent to remove the goods from the three godowns. It is this special leave petition which has come up for hearing before us today.

2. It is obvious from the above narration of facts that the strategy of obtaining an exparte order of injunction from the court and thereafter removing the goods from the three godowns on the strength of this exparte order of injunction and then withdrawing the writ petition was adopted by

the first respondent with a view to defeating the prohibitory orders issued against the first respondent and taking the goods out of the reach of the income-tax authorities. We are not concerned whether the prohibitory orders issued by the income-tax department were valid or not. It is enough that the prohibitory orders were there and by using this stratagem, the goods were removed from the three godowns and the prohibitory orders were set at naught.

3. The learned Attorney-General appearing on behalf of the Deputy Director of Inspection submitted before us that the amount representing the value of the goods removed from the three godowns should be restituted by the first respondent since the goods were removed by him under an exparte order of injunction obtained from the High Court of Calcutta in the writ petition filed by him and the nefarious purpose of filing the writ petition having been accomplished by removal of the goods, the writ petition was withdrawn. There is great force in this submission of the learned Attorney-General. There is no doubt that the first respondent has abused the process of the court for securing removal of the goods from the three godowns and he cannot be allowed to retain that advantage. However, before we make any order in this respect, it would have to be ascertained as to what was the value of the goods which were removed from the three godowns. The Deputy Director of Inspection, Madras, has filed an affidavit stating what according to him were the goods removed by the first respondent from the three godowns and what was the value of these goods. This is, however, a matter which will have to be enquired into and we would, therefore, direct that an inquiry be held for determining the value of the goods removed by the first respondent from the three godowns after obtaining an exparte order of injunction from the Calcutta-High Court. Such inquiry shall be held by an Inspecting Assistant Commissioner to be nominated by the Chairman of the Central Board of Direct Taxes and the Inspecting Assistant Commissioner so nominated will hold an enquiry after giving notice to the first respondent as also to the concerned Income-tax Officer and submit his report to this Court on or before February 25, 1985. The first respondent is directed to place before the Inquiry Officer whatever material is there to show what were the goods removed by him from the three godowns and the concerned Income-tax Officer will also be given an opportunity of placing the necessary material before the Inquiry Officer. The Inquiry Officer will not entertain any application for adjournment of the inquiry proceedings and complete the inquiry as early as possible so that he is able to make his report on or before February 25, 1985. As soon as the report is received, copies thereof shall be supplied immediately to the learned advocates appearing on behalf of the parties.

4. The case will stand adjourned to February 28, 1985. The text of this order shall be communicated immediately to the Chairman of the Central Board of Direct Taxes. ;

[The matter came before the court again on April 15, 1985.] K. Parasaran, Attorney-General for India (Miss A. Subhashni, Advocate, with him) for the petitioners.

Vineet Kumar and A.V. Rangam, Advocates, for the respondents.

5. (1985, April 15):Pursuant the order made by us on December 17, 1984, the Inspecting Assistant Commissioner of Income-tax nominated by the Chairman of the Central Board of Direct Taxes after holding an inquiry submitted his report to the court stating on the basis of the material produced before him as to what was the quantity of. stock removed by the first respondent from the three

godowns mentioned in our order dated December 17, 1984, and what was the value of such quantity of stock so removed. The report of the Inspecting Assistant Commissioner on an analysis of the material which was placed before him, has determined the quantity of stock removed from the three godowns at 235 metric tonnes and the value thereof at Rs. 14 lakhs. We would, therefore, direct the first respondent to pay to the petitioner a sum of Rs. 14 lakhs within six weeks from today by way of restitution for the quantity of the goods removed from the three godowns so that the position as it obtained prior to the removal of the goods from the three godowns is restored as far as practicable. We may, however, make it clear that it would be open to the first respondent to contend in the assessment proceedings or in the course of any other proceedings before the tax authority that the value of the goods removed by him from the three godowns taking advantage of the exparte order of injunction obtained by him was less than Rs. 14 lakhs but the burden of proving so will be on the first respondent.

6. The special leave petition will stand disposed of in these terms.