

Madras High Court

G. Gopalakrishnan And Anr. vs Deputy Commissioner Of ... on 15 September, 1987

Equivalent citations: 1988 70 STC 293 Mad

Author: M Chandurkar

Bench: M Chandurkar, Srinivasan

JUDGMENT M.N. Chandurkar, C.J.

1. These appeals are admitted.

2. These appeals are against the interim orders vacating the injunction earlier issued with a further observation by the learned Judge that in the event of the petitioners-appellants apprehending that they are likely to be arrested, it is open to them to move the appropriate authorities to show that they are not liable to be arrested.

3. The relief sought in the two writ petitions was that respondents 1 to 3 should be restrained by a writ of mandamus from causing the arrest and detention of the petitioners-appellants in a civil person for default in payment of sales tax. The apprehension appears to be that the authorities are taking action to arrest the two petitioners-appellants without following the prescribed procedure.

4. The writ petitions themselves can be disposed of in view of the fair attitude taken by the Additional Government Pleader (Taxes). He is not in a position to dispute that before an order of arrest is made, the provisions under section 48 of the Revenue Recovery Act will have to be followed. Section 48 prescribes certain pre-conditions before an order of arrest and imprisonment of the defaulter can be made. The pre-condition is that the arrears due from the defaulter cannot be liquidated by the sale of the property of the defaulter, or of his surety and further that the Collector shall have reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment. Unless these ingredients are established, the drastic power of arrest under section 48 cannot be exercised. It is implicit in the provisions of section 48 that the defaulter must have an opportunity to show that he is not wilfully withholding payment of the arrears or that he is not guilty of fraudulent conduct in order to evade payment. In order to ascertain the truth or otherwise of these pleas which the defaulter is entitled to take, it is necessary for the Collector to make necessary enquiries after issuing notice to the defaulter. Unless the procedure which is implicit in the provisions of section 48 of the Revenue Recovery Act is followed, the jurisdiction to make an order of arrest and imprisonment of the defaulter cannot be exercised. Accordingly, the order impugned in both these appeals is set aside.

5. The writ petitions themselves have been take up for hearing with the consent of the parties. There will be an injunction against the respondents restraining them from making any order of arrest and detention of the petitioners-appellants in civil prison except in accordance with the provisions of section 48 of the Revenue Recovery Act and in the light of the observations made earlier in the judgment.

6. The appeals are thus allowed. The writ petitions are also allowed. However, there will be no order as to costs.

7. Writ appeals and writ petitions allowed.