

Madras High Court

S.T. Ramalingam vs Agricultural Income Tax Officer, ... on 11 September, 1998

Equivalent citations: 1999 (1) CTC 366

Bench: C Shivappa

ORDER

1. The petitioner being common in both the writ petitions, they are taken up together and the following common order is passed.

2. The petitioner herein has sought for quashing the proceedings on the file of respondent No.1, dated 10.8.1987 and 17.11.1988, and on the file of respondent No.2, dated 22.8.1989, and also for a consequential direction to the respondents, forbearing them from levying, assessing and demanding or compounding Agricultural Income Tax in respect of total extent of 31 -90 acres of land, in both the writ petitions.

3. The petitioner was served with a notice (printed in Tamil in the Post Card and filled up with particulars) dated 25.9.1987, informing that he was in arrears of tax to the tune of Rs. 257.50 for the year 1987-88 and that if the same is not paid on or before 30.9.1987, proceedings will be initiated to recover the same as arrears of land revenue under the Revenue Recovery Act. The petitioner by his letter dated 8.10.1987 addressed to respondent No.1 herein, sought for furnishing him with the details of the same and till such time, not to treat him as a defaulter. The particulars were served on the petitioner thereafter, and a reply was given by the petitioner on 27.10.1987 contesting that the demand raised without any opportunity or prior intimation, is without the authority of law. The petitioner was served with another compounding order, dated 17.11.1988 for the year 1988-1989, fixing the tax liability at Rs.159.20. He filed a revision petition on 7.4.11989 before the respondent No.2, explaining all the details, contending that determination was the one without jurisdiction, and the revision petition was rejected by an order dated 22.8.1989 despatched on 14.9.1989. The respondent No.2 confirmed the order of respondent No.1, in his proceedings R.P.Nos.33 and 34 of 1989 dated 22.8.1989. The total extent of 31.90 acres of land are situated in three villages, viz., 12.83 acres at Panappakkam Village; 6.25 acres at Poigainallur Village and 12.82 acres at Aathur Village, Arakonam Taluk, North Arcot District.

4. It was stated by the learned counsel for the petitioner that the petitioner in both the writ petitions, died in the year 1994. No steps have been taken so far to bring the legal representatives on record.

5. An otherwise a simple case to be dismissed as abated, but for stance of the learned counsel for the petitioner, inter alia contending that the High Court which exercises its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot be said to be the Court of Civil Jurisdiction and technical rules of the Code of Civil Procedure are not applicable in view of the amendment to Section 141 of the Code of Civil Procedure, has called for this detailed order. The learned counsel invited my attention to a decision in Hemraj v. Income- Tax Recovery Officer, Jodhpur, , and also another decision in The Press Trust of India and another v. Union of India and others .

6. The Amendment Act, 1976, with an explanation to Section 141 of the Code of Civil Procedure contemplates that the expression "Proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution. But, this explanation does not run counter to the High Court exercising its jurisdiction under Article 226 of the Constitution. As far as possible, the object being that this special jurisdiction of a High Court aims at securing a very speedy and efficacious remedy and if all the elaborate and technical rules of the Code of Civil Procedure were to be imported into the writ proceedings, the very purpose is likely to be defeated by proceedings being delayed. But where the writ proceeding Rules which lays down that in matters not specifically dealt with by the Rules and to the extent they are necessary, the provisions of the Code of Civil Procedure will be applicable. For the purpose of exercise of jurisdiction under Article 226 of the Constitution, the High Court does not depend upon the provisions of the Code of Civil Procedure. The Procedure prescribed by the Code of Civil Procedure is followed in the writ proceedings not because of any legal compulsion to do so, but because that procedure complies with the rules of natural justice. I need not refer to the explanation attached to Section 141, C.P.C because as held in *Messrs. Bharat Board Mills v. Regional Provident Fund Commissioner* and *Hans Raj Sood v. State of Himachal Pradesh and others*, AIR 1978 H.P 63, the jurisdiction which the High Court exercises under Article 226 of the Constitution is a special and limited jurisdiction. It is not a revisional jurisdiction nor is it an appellate jurisdiction. The High Court also does not exercise any jurisdiction or superintendence under Article 226 as it does under Article 227 of the Constitution. In such a situation, Section 141 of the Code of Civil Procedure does not apply literally to proceedings under Article 226 of the Constitution. When it has no application, the explanation under Section 141 of the Code of Civil Procedure need not be countenanced from this angle.

7. A writ petition under Article 226 of the Constitution is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. (see *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and others*, . Even in *Management of Rain Bow Dyeing Factory, Salem and others v. Industrial Tribunal*, , the same view was taken and it was stated that the provisions of the Code of Civil Procedure cannot be applied to writ proceedings on the strength of the rule laid down by Section 141 of that Code inasmuch as a writ proceeding cannot be held to be in the nature of a civil suit.

8. The Full Bench of Punjab and Haryana High Court, in *Teja Singh v. Union Territory, Chandigarh*, held that in the matters which have not been specifically dealt with by the writ jurisdiction (Punjab and Haryana) Rules 1976, the provisions of the Code of Civil Procedure so far as they can be made applicable, would apply to the proceedings under Article 226 of the Constitution. The Explanation added to Section 141 of the Code of Civil Procedure by the 1976 C.P.C. (Amendment) Act, does not in any way nullify the effect of Rule 32 of the Writ Rules.

9. With these decisions, the conclusion that emerges is that wherever the Writ Rules framed by the High Court are silent on procedure, the procedure, contemplated in the Code of Civil Procedure in order to meet natural justice can be availed of under inherent jurisdiction while dealing with a petition under Article 226 of the Constitution.

10. Even if it is held that Order 22 of the Code is not applicable to writ proceedings, it does not mean that the petitioner in such writ petition can ignore the death of the party if the right to pursue the remedy even after the death survives. It is incumbent on the legal representatives of the party to substitute themselves within a reasonable time. What is reasonable time depends on the facts and circumstances of each case. The High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased. But, in case, an application is filed either within the reasonable time or beyond certain time, while condoning the delay in filing the application for substitution of the legal representatives, the Court has to exercise the discretion on well-settled principles. That does not mean that it should rely on the technical rules of limitation or the procedure contemplated under the Code of Civil Procedure. Such applications may be dealt with under the inherent jurisdiction under Article 226 of the Constitution. But just because, an unlimited power is there under Article 226 of the Constitution, that does not mean that it is an unguided power, Such discretion also to be exercised judiciously to meet the ends of justice.

11. In the instant case, though the petitioner died in the year 1995 as per the submissions of the learned counsel for the petitioner, no application till date has been filed. The question of going into the technicalities of considering the substitution of the legal representatives does not arise. In such an event, the application of the explanation attached to Section 141, C.P.C. or the technical rules of the Code of Civil Procedure also does not arise. It is not right on the part of the Court to allow a petition to lie for an indefinite period in the absence of heirs or legal representatives being substituted. The word "abate" means 'to throw down, to beat down, to suspend, cessation or to do away with'. In that sense, when no steps have been taken, the Court is justified in dismissing the petition as abated, which does not mean invoking the provisions of the Code of Civil Procedure, but under the inherent jurisdiction.

12. In *Puran Singh v. State of Punjab*, a similar question was considered and it was held that it is incumbent on the part of the party to substitute the legal heirs by filing an application, and on the ground of non-filing an application, for a considerable time, the petition does not abate automatically. This statement implies pendency of an application. That does not mean that when no application has been filed, the petition should survive on the file just for statistic purpose, that too, when no claim can be adjudicated.

13. *The Press Trust of India v. Union of India*, was a case where one shareholder since expired, the other shareholder being brought on record can continue. In such a situation, the Apex Court held that the petition will not abate. But that case has no application to the fact situation of this case. The other case cited by the learned counsel, viz., *Hemraj v. Income-Tax Recovery Officer* has also no application to the instant case, since I have taken the view that the explanation to Section 141 of the Code of Civil Procedure, need not be considered.

14. For reasons aforesaid, both the writ petitions are liable to be dismissed for the lapse in not impleading the legal representatives though the petitioner died in the year 1994 and the Court has no option except to dismiss these writ petitions as abated, and accordingly, the same are dismissed. Parties to bear their own costs.