

Roop Chand Vs. Uoi

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Court : Delhi

Decided On : May-25-2006

Reported in : (2006)205CTR(Del)377; [2006]155TAXMAN301(Delhi)

Appeal No. : WP(C) Nos. 402 & 403 of 1989 25 May 2006

Appellant : Roop Chand

Respondent : Uoi

Advocate for Pet/Ap. : K.R. Manjani & ; Geeta Luthra,;for the Petitioner; R.D. Jolly,;for the Respondent

Judgement :

T.S. Thakur, J.

In these petitions for a writ of mandamus, the petitioners have prayed for a direction to the respondents including the Commissioner of Income Tax-X (Delhi) and the Tax Recovery Officer to render accounts in regard to the rent collected by them from the petitioners' tenant and to refund the amount so recovered together with the amount of compensation received from the Special Land Acquisition Officer at Dehradun.

2. The petitioners' case as set out in the writ petitions is that although no arrears on account of income-tax or wealth-tax dues were outstanding against them, yet

the Tax Recovery Officer at New Delhi had got the properties of the petitioners at Dehradun attached for recovery of amounts allegedly due from the petitioners. It is further alleged that the department had even forced the Land Acquisition Officer at Dehradun to remit the amount of compensation due to the petitioners in connection with the acquisition of their properties for adjustment towards the alleged tax dues outstanding against the petitioners. The petitions go on to state that since no outstanding dues were ever payable by the petitioners, the attachment of their properties and the recovery of the compensation amount was wholly illegal and unjustified. The petitions also state that the petitioners have been running from pillar to post demanding refund of the amounts illegally recovered from them but without any fruitful result. The petitioners allege that notices sent to the Chief Secretary of the Government of Uttar Pradesh and the Special Land Acquisition Officer at Dehradun requesting them to demand back the amount remitted to the income-tax department and to pay the same to the petitioners had also remained abortive. In substance, the petitioners grievance is that even when nothing really was outstanding against them, the respondents had taken coercive steps by way of attachment of the properties owned by the petitioners and the amount of compensation payable to them and recovered and adjusted the said amounts without any authority of law. A mandamus directing the respondents to render account for the amounts received by them and to refund the said amount has, therefore, been prayed for.

3. When the writ petitions came up for hearing before us on 1-12-2005, we noticed that despite lapse of nearly 16 years, the respondents had not filed any counter-affidavit. Mr. Jolly, counsel appearing for them, however, made a prayer for grant of some more time to enable the respondents to reconstruct the record which was not available and to file a proper affidavit indicating whether recoveries had been made from the petitioners as alleged and if so, whether there was any refund due to them. Mr. Jolly was accordingly granted two months time finally to file an affidavit and to secure the relevant record failing which orders for personal appearance of the officers concerned were to be passed by this court.

4. On 17-2-2006, when the matter came up again, Mr. Jolly pointed out that despite efforts, the relevant record could not be traced out and that some more

time could be granted to file counter-affidavits. That prayer was also allowed and Mr. Jolly directed to file counter-affidavits on or before 27-3-2006 failing which the jurisdictional Commissioner of Income Tax was to remain present in person. An affidavit sworn by Mr. M.C. Joshi, Commissioner of Income Tax-X (Delhi) on 23-3-2006 has, accordingly, been filed. A reading of the said affidavit shows that the department has not been able to locate or reconstruct the original record relevant to the assessment of the petitioners or the other concerns referred to in the writ petitions. The affidavit goes on to state that there was nothing to show that compensation from Dharatwala agricultural land payable to the petitioners by the Land Acquisition Officer, Dehradun was ever remitted to the Income-tax department by the Tehsildar, Dehradun for adjustment against any demand. Similarly, there is no record according to the affidavit of the Commissioner to show that any recoveries have been made by attachment of the rent payable by the tenants of property No. 4, Darshani Gate, Dehradun. Suffice it to say that the affidavit filed by the Commissioner totally denies the recovery of any amount from the petitioners and their entitlement to any refund as claimed.

5. Mr. Manjani has filed a rejoinder to the affidavit filed by the Commissioner in which the petitioners have reiterated that the property was attached and the amount of compensation adjusted towards non-existent income-tax dues against the petitioners. The petitioners' grievance that such adjustment was wholly unjustified in the absence of any outstanding liability has been reiterated.

6. We have heard Mr. Manjani, counsel for the petitioner and Mr. Jolly, counsel appearing for the respondents. The essence of the controversy in the two petitions is that recoveries have been made by the income-tax department from the petitioners by attachment of their properties at Dehradun and also by taking over the amount of compensation payable to the petitioners from the Collector, Land Acquisition, Dehradun. The petitioners insist that these recoveries were made without any basis for there were no dues outstanding against them to justify such recoveries. There is considerable difficulty in verifying the correctness of this assertion of the petitioners. Mr. Manjani has drawn our attention to certain documents placed on record by him along with the petitions in support of his submission that the property was indeed attached and recoveries of rent made for

adjustment against non-existent tax dues. Similarly, he urged that the compensation amount had also been recovered by the income-tax department for adjustment against the tax dues. He submitted that the income-tax department's insistence that the petitioners should prove the exact amount recovered, the manner of the recovery and the date when the same was recovered is unjustified. It is, according to Mr. Manjani, for the income-tax department to reconstruct the relevant record and to verify whether, and if so, what amount was recovered from the petitioners and to refund the said amount in case no tax dues were outstanding against them. The petitioners cannot, according to Mr. Manjani, be made to run from one office to the other collecting evidence regarding making of the attachment, recovery of the amount or attachment, etc. This would put the petitioners to grave and unavoidable hardship for no fault of theirs.

7. We find considerable merit in the submission of Mr. Manjani. It is not a case where a citizen has come forward alleging that certain properties were attached and recoveries made without any basis whatsoever. The petitioners have given sufficient particulars and placed on record material which would prima facie show that the grievance is examinable. That being so, if the relevant record is not, for any reason, available with the respondent the same shall have to be reconstructed for the grant of proper redress to the petitioners. Just because 30 years or so have rolled by since the attachment and recoveries were made does not mean that the income-tax department can put the citizens to the ordeal of proving the recoveries or the method adopted for making the same.

8. Mr. Jolly, however, argued that the details given by the petitioners are sketchy and do not present a complete picture and in any case, do not show that any actual recoveries were made. We do not propose to express any opinion on that aspect for the present. All that we need say is that it is a matter that needs to be examined by the Commissioner of Income Tax after reconstructing the relevant record. If the income-tax department's record is not available for any reason, it cannot throw-up its hands. It shall have to reconstruct the same and deal with the claim made by the petitioners in the manner known to law. In the totality of these circumstances, therefore, we allow these petitions but only in part and to the following extent:

(i) The Commissioner of Income Tax-X, (Delhi) shall treat the writ petitions filed by the petitioners as applications for refund of the amounts recovered from them.

(ii) The Commissioner shall, on the basis of the record available with him or if no record is available, after the same is reconstructed, deal with the applications in accordance with law and pass appropriate orders expeditiously but not later than six months from the date a copy of this order is served upon him.

(iii) For purposes of reconstruction of the record, the petitioners shall furnish the requisite documents, that are available with them or within their control and power.

(iv) The Commissioner shall be free to summon any requisite information considered relevant from the concerned quarters in which event, the concerned shall be duty bound to co-operate and furnish such information.

(v) Depending upon the view that the Commissioner may take a final order which shall be speaking in nature shall be passed by him and communicated to the petitioners either granting or rejecting the prayer for refund.

(vi) In case, a refund is found due to the petitioners, the interest, if any, payable in accordance with law on such amount shall also be paid.

9. The petitioners shall be free to seek appropriate redress against the order of the Commissioner in accordance with law, should they have any grievance against the same.

10. No order as to costs.