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Court : Rajasthan

Decided On : May-08-1951

Reported in : AIR1951Raj150a; [1952]21ITR33(Raj)

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : Constitution of India - Article 226; Income Tax Act, 1922 - Sections 22(4)

Appeal No. : Civil Misc. Appln. No. 17 of 1951

Appellant : Pratap Mal

Respondent : The Income Tax Officer, Jodhpur Division

Advocate for Def. : S.M. Sikri, Adv. Assisted by; Mansha Ram, Govt. Adv.

Advocate for Pet/Ap. : Hari Prasad Gupta, Adv.

Judgement :

Wanchoo, C.J.

1. An application has been made by Pratap Mal under Article 226 of the Constitution of India for issue of a writ or direction to the Income-Tax Officer of Jodhpur Division. In this application a prayer was made for issue of a temporary injunction restraining the Income Tax Officer from making any assessment of income-tax on the income for the year 1949-50 on any resident of Jodhpur Division, including the applicant. An 'ad interim' injunction was issued to the

opposite party restraining him from proceeding to assess income-tax on the applicant, & a notice was also issued of this 'ad interim' injunction. A further notice was issued to the opposite party asking him to show cause why an 'ad interim' injunction be not issued to him restraining him from proceeding with the assessment of Income-tax on all the residents of Jodhpur Division.

2. The opposite party has appeared in answer to the notices issued to him, & opposes the issue of an 'ad interim' injunction restraining him from assessing income-tax on all the residents of Jodhpur Division. Further, the opposite party also prays that the 'ad interim' injunction issued restraining him from proceeding to assess income-tax on the applicant be suitably modified, & he should be allowed to proceed with the examination of the account books of the applicant for the year 1949- 50, though it is said on his behalf that he would not assess the income-tax for that year.

3. This application has been made on the basis of a decision of this Court in 'Madan Gopal v. The Union of India, (1951 RLW 56), We have heard learned counsel at length on the question whether an 'ad interim' injunction can be & should be issued restraining the opposite party from proceeding to assess income-tax on all the residents of Jodhpur Division. This raises a question of great general importance inasmuch as the applicant wants the injunction to be issued not only in his favour but also in favour of all other residents of Jodhpur Division, who have not come up to this Court. In effect, therefore, the applicant, who is a stranger to others, wants that on his application; such an injunction should be issued in favour of other strangers.

4. The contention of the learned counsel for the applicant is that he is entitled to ask for such an injunction even in favour of strangers. On the other hand, the learned counsel for the opposite party contends that such an injunction on the motion of a stranger cannot &, at any rate, should not be issued by this Court.

5. Reliance has been placed on behalf of the applicant on a number of English cases dealing, with the writ of prohibition. The earliest of these cases is 'Worthington v. Jeffries (1874-75) 10 CP 379). That was a case in which a stranger moved for a writ of prohibition in connection with a suit pending in the Mayor's

Court of the City of London. It was held in this case that

'Where a superior Court is clearly of opinion, both with reference to the facts & the law, that an inferior court is exceeding its jurisdiction, it is bound to grant a writ of prohibition; whether the applicant for the prohibition is the deft, below or a stranger.'

6. The next case relied upon is the 'Queen v. The Local Government Board, (1883) 10 QBD 309 In this case a writ of prohibition was refused, but, Brett L.J., who delivered the judgment in 'Worthington v. Jeffries', cited above, made the following observations at p. 321, on which learned counsel for the applicant strongly relies.

'I think I am entitled to say this, that my view of the power of prohibition at the present day is that the Court should not be chary of exercising it, & that wherever the legislature entrusts to any body of persons other than to the superior Courts; the power of imposing an obligation upon individuals, the Courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament.'

7. The 'argument' is that this Court should exercise the power conferred upon it by the Constitution of India, and stop the opposite party from assessing income-tax for the year 1949-50 on all the residents of Jodhpur in view of the case of 'Madan Gopal v. Union of India, cited above, even though those persons have not come up to this Court.

8. The third case relied upon on behalf of the applicant is 'Farquharson v. Morgan (1894) 1 QB 552. That was not a case of a stranger, but reliance has been placed on the following observations of Lord Halsbury at page 556

'It has been long settled that, where an objection to the jurisdiction of an inferior Court appears on the face of the proceedings, it is immaterial by what means and by whom the Court is informed of such objection - I find no authority justifying the withholding of a writ of prohibition in such a case.'

9. The last case referred to by learned counsel for the applicant is 'Chambers v. Green', (1875) 20 EQ 552. This case strikes a slightly different note & has dealt with the case of 'Worthington v. Jeffries', mentioned above. The question that was considered was whether a writ of prohibition must issue on the application of a stranger to the suit. Sir G. Jessel, M. R., at p. 554 observed as follows:

'The law is well settled that when a stranger comes to a superior court for a writ of prohibition, he must show that the inferior ct. is exceeding its jurisdiction both in fact & law, & that it is a matter of discretion whether or not the superior Court shall set it aside.'

Taking this view, it was held that it was within the discretion of the superior Ct, to grant a writ of: prohibition on the application of a stranger or to withhold it, & in that particular case the discretion was exercised by withholding the writ.

10. A consideration of these cases shows that in England some Judges, at any rate, have held the view that the granting of writ of prohibition on the application of stranger is discretionary. The matter was considered by the Court of Appeal in 'Broad v. Perkins', (1888) 21 QBD 533, upon which learned counsel for the opposite party relies. That was not a case of a stranger, but of a party. But the application for a writ was made after the judgment of the inferior Ct. had been delivered & before execution proceedings. It was then held, even in the case of an application by party, that 'the granting of a writ of prohibition to an inferior Ct. that has exceeded its jurisdiction is discretionary'. Dealing with this aspect of the matter, Messrs. Short & Mellor observe in their book 'The Practice of the Crown Office', Ed. 2 (1908), at p. 264, as follows:

'Applications by strangers have not been encourged in recent times, & since the decision of the Court of Appeal in 'Broad v. Perkins' it is submitted that they would have to make out a very strong case indeed in order to obtain the writ.' Learned counsel for the opposite party urges that there has been no case in England in the last 40 years or so in which a writ of prohibition was granted on the application of a stranger. Learned counsel for the applicant admits that there has been no such case in recent times, but his argument is that it does not follow from this that the old cases have been overruled. Be that as it may, there is no doubt that the trend

of authorities now is that a writ of prohibition should not generally be granted on the application of strangers, except, perhaps, in the strongest possible cases. We do not think that the present case belongs to that exceptional class of cases, & there is, therefore, no reason to grant an 'ad interim' injunction of the nature desired by the applicants. If even the writ should not generally be granted on the application of a stranger, there is much less reason for granting an 'ad interim' injunction on such an application. Learned counsel for the opposite party also referred to Indian cases in support of his contention that such an 'ad interim' injunction should not be granted on the application of a stranger.

11. The first of these cases is 'Indian Sugar Mills Association v. Secy, to Government, Uttar Pradesh Labour Department', A.I.R. (38) 1951 All 1 (FB). That is a decision of a Pull Bench, & it was held that

'Though Article 226 makes no mention as to who shall apply for an appropriate order under the Art., other writs, directions or orders cannot be placed on the same footing on the writ of habeas corpus and only those persons whose interests are directly affected by a statute or an order can apply for redress under the Art.'

12. The next case is a decision of the Supreme Court, 'Charanjit Lal v. The Union of India A.I.R. (38) 1951 S. C. 41. It was held by three of the learned Judges that

'The rights that could be enforced under Art 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights & approaches the Ct. for relief.'

13. Article 226 is the counter-part of Article 32, so far as the H. Cs. are concerned, & the trend of authorities in India also is that generally speaking it is only the person whose fundamental right has been infringed who can approach the Court for relief. There is a well-known exception in the case of the writ of 'habeas corpus', & it may be that a similar exception might be made in the case of a writ of 'quo warranto'. But so far as the writs of mandamus, prohibition, & certiorari are concerned, the authorities seem to lay down that only the person affected can approach the Ct. for relief. We are, therefore, of opinion that the applicant as a stranger cannot ask us to issue an 'ad interim' injunction restraining the opposite

party from assessing income-tax for the year 1949-50 on all the residents of Jodhpur Division.

14. We may finally point out that even in those English cases where a writ of prohibition has been issued on the application of a stranger, the order in each case was in connection with a single suit or matter pending before an inferior Ct. or quasi judicial body. There is not a single case where a general order in favour of strangers of the nature desired by the applicant has been passed. We, therefore, refuse to grant an 'ad interim' injunction against the opposite party restraining him from assessing income-tax on all the residents of Jodhpur Division.

15. We now turn to the case of applicant himself. The main contention of the learned counsel of the opposite party in this connection is based on Section 22(4), Income-Tax Act, which deals with the return of income, & reads as follows:

'The Income-tax Officer may serve on any person who has made a return under Sub-section (1) or upon whom a notice has been served under Sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-Tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.'

Learned counsel contends that as a notice has been issued already to all the residents of Jodhpur Division to file their returns of income for the previous year, i. e., 1950-51, the Income-tax Officer can require those who submit a return to produce their account books of three years previous to 1950-51. As such this Ct. should not now pass an 'ad interim' injunction restraining the Income-tax Officer from demanding the account books for the year 1949-50, because that would be going against the provisions of Section 22(4) & would, therefore, be an ineffective order. We are of opinion that there is great force in this contention, & this Ct. should not now prohibit the Income-tax Officer from demanding production of the account books for the year 1949-50, as that would be interfering with the legitimate powers of the Income-tax Officer under Section 22(4). Interest of justice would, in our opinion, be sufficiently served if we restrain the Income-tax Officer from

actually assessing income-tax on the income of the year 1949-50 under Section 23 of the Income-tax Act. We, therefore, modify the 'ad interim' injunction already issued to the opposite party, & order him not to assess income-tax on the petitioner on the income of the year 1949-50, pending disposal of this application.

16. Taking all the circumstances of the case into consideration, we pass no order as to costs of this interim matter.

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