

Orient Beverages Ltd. Vs. Appropriate Authority and ors.

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Court : Kolkata

Decided On : Nov-22-1996

Reported in : [1997]226ITR317(Cal)

Judge : V.K. Gupta, J.

Acts : [Income Tax Act, 1961](#) - Section 269UC and 269UC(4); ;[Constitution of India](#) - Article 226

Appeal No. : C.O. No. 11593 (W) of 1996

Appellant : Orient Beverages Ltd.

Respondent : Appropriate Authority and ors.

Advocate for Def. : J.C. Saha, Adv. for respondent Nos. 1 and 2

Advocate for Pet/Ap. : R.V. Murarka and ;V. Murarka, Adv.

Judgement :

V.K. Gupta, J.

1. The order dated December 13, 1995, purported to have been passed under Section 269UC of the Income-tax Act, 1961, by respondent No. 1, is under challenge in this petition. Under this order, the statement furnished by the petitioner in Form No. 37-I was not found valid and legal in the eyes of law by respondent No. 1 and as such it was decided that such a statement could not be

acted upon by that authority with all adverse consequences that would follow against the petitioner. Initially, there was some dispute regarding the purported exercise of the power under which the impugned order dated December 13, 1995, was passed by respondent No. 1. Initially, it was made out that such order was passed under Section 269UC(3) of the Income-tax Act, but this mistake was ultimately rectified by respondent No. 1, vide its communication dated February 7, 1996. The dispute regarding mentioning of the section under which the order was passed or its subsequent rectification is not relevant or material for the disposal of this petition.

2. It appears that the petitioner which is a company carrying on business in real estate ownership and development amongst other activities, entered into a written agreement with the persons mentioned in paragraph 3 of the petition on December 23, 1991, for developing a property comprising land and building commonly known as Anandapur House on S. P. Verma Road, P. S. Kotwali, Patna, in the State of Bihar. Various terms and conditions set out in the agreement allegedly executed on December 23, 1991, are not required to be stated because this was not relevant for our determination. What is, however, required to be stated is that on September 14, 1995, the petitioner allegedly entered into an agreement in writing with respondent No. 3 at Calcutta whereby it agreed to sell to respondent No. 3, the entire second floor of the purported building measuring about 10,050 SBA and car parking space in the said building for a total consideration of Rs. 64,35,000.

3. Under Chapter XX-C of the Income-tax act, this agreement allegedly entered into between the petitioner and respondent No. 3 was required to be filed before respondent No. 1 in the prescribed form (Form No. 37-I). It is the petitioner's case that in compliance with the requirement of law it filed Form No. 37-I to respondent No. 1. Annexure 'D' of the petition is the copy of a receipt of an acknowledgment showing that such form was received in the office of respondent No. 1. Vide a communication dated November 23, 1995, respondent No. 1 called upon the petitioner to furnish certain details on or before December 11, 1995, in order to satisfy respondent No. 1, about passing appropriate orders in terms of Section 269UC of the Act. It is not disputed by the parties that the details asked for vide the aforesaid communication were not received by respondent No. 1 before

December 11, 1995. Consequently, without receiving such details respondent No. 1 passed the order on December 13, 1995, which, as noticed at the outset, has been impugned in this petition. At the outset, the learned advocate for the respondent raised a preliminary objection regarding the jurisdiction of this court to entertain this petition. Two judgments of the Supreme Court have been referred to and relied upon apart from some other cases (which are not relevant). One is the case of State of Rajasthan v. Swaika Properties, : [1985]3SCR598 and the other is Oil and Natural Gas Commission v. Utpal Kumar Basu : (1994)4SCC711 . Incidentally, in both these judgments the orders passed by this court were challenged in the apex court on the ground of lack of jurisdiction in that court to entertain these petitions, because the cause of action had not accrued within the territorial jurisdiction of that court. In the case of Swaika Properties, : [1985]3SCR598 , the Rajasthan Urban Improvement Act, 1950, was the subject-matter of controversy because in terms of Section 52(1) of the Act a notification issued by the Government of Rajasthan was under challenge by the petitioners in the High Court. After analysing various facts, their Lordships observed that since service of notice under Section 52(2) of the Act was not an integral part of the cause of action, no part of the cause of action could be deemed to have accrued in the State of West Bengal. The following portion may be quoted with advantage (at page 1292 of AIR 1985 SC) :

' In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18B, Brabourne Road, Calcutta, i.e., within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan, i.e., within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench, The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984, issued by the State Government under Section 52(1) of the Act became effective

the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur, under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.'

4. The case of Oil and Natural Gas Commission v. Utpal Kumar Basu : (1994)4SCC711 was an example of total lack of jurisdiction in this court because in that case the only ground on which this court's jurisdiction was invoked was an averment in the petition of the petitioner that he had seen an advertisement in Times of India regarding a tender notice relating to a contract for setting up a kerosene recovery processing unit at ONGC's Hazira Complex in Gujarat. The tenders were communicated at New Delhi and scrutiny of the tenders was to be done by the tender committee at New Delhi. The final decision was also to be taken at New Delhi. Their Lordships held that merely because an advertisement was seen in a newspaper at Calcutta, the High Court of Calcutta could not be said to have got jurisdiction on that ground alone because no part of the cause of action could be considered to have accrued within the territorial jurisdiction of this High Court.

5. Applying the ratio of these two judgments of the Supreme Court in the light of the facts of the present case, I am of the opinion that a part of the cause of action has indeed accrued to the petitioner in Calcutta. The basic difference between the present case and the case of Swaika Properties, : [1985]3SCR598 , which is very near to our case is that the service of notice upon the petitioners by respondent No. 1 and the communication of the order to it impugned in this petition were both integral parts of the entire process relating to the passing of the order under

Section 269UC of the Income-tax Act. If one looks into the facts of this case carefully one finds that the statement in Form No. 37-I was submitted by the petitioner from Calcutta and the acknowledgment receipt dated October 17, 1995, issued on behalf of respondent No. 1 was also sent to the petitioner at its Calcutta office. Not only that, notice being the very basic foundation of the dispute that ultimately culminated in the passing of the impugned order was sent to and served upon the petitioner at Calcutta. It is very clear that the petitioner sent its reply to the aforesaid notice on December 11, 1995, from Calcutta even though this reply is stated not to have been received in the office of respondent No. 1 before the stipulated date. Ultimately, the order dated December 13, 1995, impugned in this petition was also communicated to the petitioner by respondent No. 1 at its Calcutta address.

6. Undoubtedly, three courts can be considered to be having concurrent jurisdiction regarding this case. The courts at Patna would have jurisdiction because the property is situated there. The courts at Lucknow would also have jurisdiction because respondent No. 1 has its office there and also because all the proceedings under the Act were initiated and taken in Lucknow, from where various notices were issued and wherein the ultimate impugned order was passed and issued to the petitioner. Undoubtedly, the courts at Patna and Lucknow have jurisdiction, because in the case of the former the property is situated and in the case of the latter the main cause of action has accrued. In so far as the court at Calcutta is concerned it also has concurrent jurisdiction along with the courts at Patna and Lucknow because a part of the cause of action has accrued in Calcutta as well and that is the service and communication of the notices upon the petitioner by respondent No. 1 prior to the passing of the impugned order and the service and communication of the impugned order itself upon the petitioner.

7. Undoubtedly, this is an important part of the cause of action because upon issuance of notice alone would depend the discharge of final order under Section 269UC of the Act. Sub-section (4) thereof reads as under :

' Where it is found that the statement referred to in Sub-section (2) is defective, the appropriate authority may intimate the defect to the parties concerned and give

them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the appropriate authority may, in its discretion allow and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Chapter, the statement shall be deemed never to have been furnished.'

8. A cursory look at Sub-section (4) of Section 269UC would reveal that if the appropriate authority finds that the statement submitted pursuant to Sub-sections (2) and (3) is defective in some manner, before an adverse order is passed based on such a defect, it is an obligation to intimate the defect to the party concerned and allow a party to rectify the same within a period of 15 days or within such extended period as it may ultimately grant and depending upon the rectification of the defect or otherwise to ultimately pass an order on its merits. Issuance of notice, therefore, is sine qua non before any order could be passed under Section 269UC(4) of the Act. In that sense, therefore, I have no hesitation in holding that with reference to notice upon the petitioner at Calcutta it was an integral part of the cause of action because undoubtedly, the cause of action in the present case has arisen whereupon the impugned order was passed on December 13, 1995. The fact that the impugned order was communicated to the petitioner at Calcutta is an added feature of integral part of the cause of action. With this reasoning, therefore, I hold that the courts at Calcutta have jurisdiction to entertain this petition.

9. Coming to the merits of the case, I find that the petitioner was not afforded adequate and effective opportunity of explaining before respondent No. 1. I refrain from giving any detailed reasons or making any further comments on the matter, because I propose to remand the case to respondent No. 1 for fresh consideration. Suffice it to say that all the points available to the petitioner were neither allowed to be urged nor taken into account before passing the impugned order. The nature of the order passed in terms of Section 269UC is also something which is required to be reconsidered by respondent No. 1 in the light of the provisions of law specially as to the application of Section 269UC and other corresponding provisions of the Income-tax Act.

10. For the foregoing reasons, therefore, this petition is partly allowed. The order dated December 13, 1995, passed by respondent No. 1 is quashed and set aside only on the ground indicated above, This judgment or any observations made herein would not be construed as any expression of opinion about the merits of the case nor shall it in any way influence respondent No. 1 in passing a fresh order upon the facts of the case and in the light of the relevant provisions of law. Respondent No. 1 is directed to pass a fresh order in accordance with law and after affording opportunity of being heard to the petitioner and considering all aspects of the matter as would be urged by the petitioner.

11. Let xerox copies of this order be delivered to the parties expeditiously after observing all the formalities.

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