Shori Lal v. Sardari Lal and another

Mahajan, J.

For the reasons given above, I allow this appeal and set aside the decision of the Court below and hold that the second arbitration agreement will govern the parties and the disputes of the parties will have to be settled by the arbitrator named in the aforesaid agreement.

The appellant would be entitled to his costs of the appeal.

R.S.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Harbans Singh, J.

SEWA SINGH GILL,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, NEW DELHI AND ANOTHER,—*Respondents*

Civil Writ No. 469-D of 1957

1962

March, 14th

Income-tax Act (XI of 1922)—Section 23(3)—Assessment order prepared by Income-tax Officer, but not signed as he wanted to obtain the approval of Inspecting Assistant Commissioner—Whether valid order of assessment—Notice under section 22(4)—Whether can be issued afresh later on.

Held, that the order of assessment passed by the Income-tax Officer was intended to be his final decision in the matter unless he was ordered to revise it by the Inspecting Assistant Commissioner. There is no provision in the Act for such a direction being given which must be held to be illegal and unwarranted. Once the Income-tax Officer had given his considered judgment on the matters which he was called on to decide, the process of submitting his order for the approval of his superior or, as the case may be, for revision carried out under his directions, was something which simply could not be done. The assessment order of the Income-tax Officer called a draft assessment by the respondents was in fact his assessment order and that therefore the issuing of fresh notices under section 22(4) of the Act to the petitioner was illegal and further proceedings on the basis of those notices must be quashed.

Petition under Articles 226 and 227 of the Constitution of India, praying that this Hon'ble Court. be pleased to issue such suitable writ or direction as may do complete justice to the petitioner in the circumstances of the case and in particular—

(a) *a writ order of direction in the nature of* mandamus *and/or prohibition directing the respondents not to take any action against the petitioner, for the assessment year 1945-46 and not to proceed against the petitioner in any manner under or in pursuance of the notices mentioned above, for the assessment year 1945-46;*

(b) *a writ order or direction in the nature of* mandamus *and/or prohibition directing the respondents not to make any assessment against the petitioner for the assessment year 1945-46 and quashing the notices issued by the respondent No. 2 on the petitioner, with respect to the assessment year 1945-46.*

(c) *a writ order or direction quashing the proceedings by the respondents No. 2 against the petitioner, with respect to the assessment year 1945-46. after February, 1954;*

(d) *a writ order or direction in the nature of* mandamus *directing the respondent to refund the sum of about Rs. 16,000, due to the petitioner as mentioned in the petition;*

(e) *costs of the Petition;*

and further praying that pending the disposal of the petition further proceedings before Respondent No. 2, for assessment year 1945-46 be stayed.

VED VYAS, S. K. KAPUR AND P. C. KHANNA, ADVOCATES, for the Petitioner.

H. HARDY, D. K. KAPUR, AND M. L. BHATIA, ADVOCATES, for the Respondent.

JUDGMENT

Falshaw, C. J.

FALSHAW, C.J.—This petition filed under Article 226 of the Constitution by Sewa Singh Gill against the Commissioner of Income-tax and an Income-tax Officer has been referred by Grover, J., to a larger Bench.

The relevant facts, some of which have emerged from files of the Income-tax Department regarding which privilege was originally claimed but which have now been placed at our disposal, are as follows. An assessment was made by the Income-tax Officer Contractors' Circle, New Delhi, on the 25th of January, 1945, for the assessment year 1944-45, but as some of the income related to a construction work which was not completed, the assessment was made on a tentative basis subject to adjustment in the year when the construction was completed. This had been done by the time the assessment was made for the assessment year 1945-46 in respect of which the Income-tax Officer made an assessment fixing the petitioner's total income at Rs. 55,403.

On the petitioner's appeal this order was quashed by the Appellate Assistant Commissioner who directed that the Income-tax Officer should make a fresh assessment after giving the petitioner a reasonable opportunity to meet the Department's case and explain his own case. In the meantime the tax found due under the assessment had been paid.

The petitioner's case is that the fresh assessment was completed in February, 1954, when his profit was found to be Rs. 5,000 which meant that he became entitled to a total refund of about Rs. 20,000 on the sum which he had paid regarding the disputed assessment, comprising about Rs. 4,000 on account of excess profit tax and Rs. 16,000 as ordinary income-tax. After the assessment the petitioner moved the Department to make the refund and on the 16th of November, 1954, he was actually given a refund of Rs. 4,049 by the Excess Profits Tax Officer. However, after

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some correspondence between the petitioner and the Department, instead of the refund of Rs. 16,000 as income-tax being made, the petitioner finally received a notice under section 22(4) of the Income-tax Act from the Income-tax Officer, who is the respondent in the petition, in September, 1956, calling on him to produce his account books for the assessment year on the 15th of October, 1956. Further correspondence followed without any relief to the petitioner and again in August, 1957, he received a second notice under section 22(4) calling on him to produce his books on the 20th of August, 1957. Finally he filed the present petition in this Court in December, 1957, challenging the jurisdiction of the Income-tax Officer to take any further proceedings on the notice under section 22(4) on the ground that the assessment had been completed in February, 1954.

On behalf of the respondents it was denied altogether that the assessment had been made in February, 1954. It was admitted that on the basis of such an order the refund had been made in respect of the Excess Profits Tax, but it was contended that this was done by mistake. It was contended that although an assessment order had been prepared by the Income-tax Officer in May, 1954, this was only a tentative assessment which had to be approved by the Inspecting Assistant Commissioner before it could be regarded as final, but in fact it was never approved and it was decided that further investigation was necessary before the assessment could be finalised.

On the facts the position appears to be that in fact the petitioner appeared before the Income-tax Officer who was deputed to carry out the assessment in February, 1954, as he alleged, and although the assessment order may not have been drafted at that time it is clear that the petitioner had some idea of the lines on which the Income-tax Officer was proposing to make the assessment. It seems clear that because he thought the matter was being unduly delayed the petitioner began writing letters to the Commissioner of Income-tax as the result of which a letter dated the 8th of May, 1954,

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was addressed by the Commissioner of Income-tax to the Income-tax Officer which reads—

> "Reference correspondence resting with the I.T.O.'s letter No. 1335, dated the 23rd of March, 1954. Will the I.T.O. please report immediately whether the pending assessment for the year 1945-46 in the above case has already been completed? If not, he should complete the same without further delay under intimation to this office. The draft assessment order may, however, be got approved by the I.A.C. before finalising the said assessment."

This was followed by a further letter dated the 26th of May, 1954, from the Inspecting Assistant Commissioner to the Income-tax Officer which reads—

> "The draft assessment order in the case noted above has not so far been received in this office for my approval. The I.T.O. is, therefore, requested to submit the same without further delay."

It was then that the assessment order was sent to the Inspecting Assistant Commissioner by the Income-tax Officer with a covering letter also dated the 26th of May, 1954, which reads—

> "I have the honour to submit herewith the draft assessment order for 1945-46 in the case of Sardar Sewa Singh Gill, for favour of approval. The order is to be approved by you as directed to the undersigned in C.I.T.'s No. K-185 (45)/52-53/2070, dated the 8th of May, 1954."

The accompanying assessment order is neither signed nor dated by the Income-tax Officer, though nowhere in the order itself is it described as merely a draft order.

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The question which arises is whether this assessment order or draft order as it is described by the respondents amounts to an assessment made by the Income-tax Officer under section 23 of the Act or whether, as was contended on behalf of the respondents, there was no assessment. The contention of the petitioner in this respect may be summed up as being that there is no legal warrant whatever in the Income-tax Act or any other Act for an assessment to be made subject to the approval of a superior officer of the officer who is to make the assessment, and that, therefore, once the Income-tax Officer had made his assessment, it at once became final and could not be changed by him even if the approval of the superior officer which was wrongly ordered in this case was withheld.

On this point reliance was placed on the decision of Batchelor and Heaton, JJ., in *Dossabhai Bejanji Motivala* v. *The Special Officer, Salsette Building Sites* (1). That case referred to the award of a Collector under the Land Acquisition Act. An area of over 1,300 acres was acquired by the Government of Bombay, under the Land Acquisition Act and the officer appointed to make the award regarding compensation for the land came to the conclusion that compensation should be awarded at the rate of Rs. 50 per acre for the so-called *khajan* land, but he concluded his order with the words "These papers will be submitted to the Collector as directed by him and in accordance with the Government Resolution No. 8397 R.D. of the 30th of August, 1906, as the compensation I propose to award exceeds Rs. 10,000." The resolution referred to was apparently one by the Revenue and Agricultural Department of the Government of India, the direction in the letter of the Government of India being that: If the officer making the award is not the Collector of the District, he might be required, before making the award, to refer to the Collector any case in which he proposes to award more than 10 per cent in excess of the original estimate, or more than Rs. 10,000 or some similar limit. The Collector should have the power of requiring

(1) I.L.R. 36 Bom. 599.

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all cases to be referred to him before the award is given; and the acquiring officer should make his final order according to the instructions received from the Collector. In that case the Collector received a direction from the Government that he should award only Rs. 4 per acre in respect of *khajan* land and, following this direction he concluded his final order with the words 'Government in their memorandum No. 10578 of the 17th of October, 1908, have directed me to award compensation at the rate of Rs. 4 per acre for *khajan*, and I, therefore, make my award accordingly.' A reference to the District Judge followed as a result of which the rate of compensation was raised to Rs. 14 per acre and in the appeal in the High Court the validity of the proceedings which led to the reduction of the Collector's estimate from Rs. 50 to Rs. 4 per acre was challenged. The matter is dealt with in the judgment of Batchelor, J., at page 602 as follows:—

> "It has been contended by Mr. Raikes for the appellant that although the appointment of a Collector under the Act rests wholly with the local Government, yet when they have once appointed that officer, he must be allowed to prosecute his enquiries under the Act up to their end, without interference from the Government in their executive capacity. It appears to me that that argument must prevail. It is I think clear on the facts which I have set out that if the view presented to us by Government is to prevail, the result is simply this: that after the enquiry laid down by the Act has been made and concluded it is open to the Government to interpose, to set those enquiries at nought, and to substitute for the Special Collector's opinion their own opinion as to what is the fair compensation for the land acquired. It appears to me that under the Act no such power as this is vested in the local Government. Reference may be made to section II of the Act which provides that

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on the day fixed for enquiry the Collector shall proceed to enquire into any objection received and into the value of the land and the respective interests of the various claimants, and then 'shall make an award, under his hand, of the compensation which, in his opinion, should be allowed for the land.'

"Section 15 lays down that the Collector in determining the amount of compensation shall be guided by the provisions of sections 23 and 24. And they in turn describe the matters which are, and which are not, to be considered in determining the compensation.

"Then in section 25 we have the provision that when the applicant has made a claim to the compensation, the amount awarded to him by the civil Court shall not be less than the amount awarded by the Collector under section 11.

"I can only say for my own part that these provisions of the Act seem to me to be too clear to admit of any doubt. In my opinion when once the Special Collector under the Act has been appointed by the local Government the Act casts upon that Collector the duty not only of initiating the enquiries, but of conducting those enquiries to their lawful end in the award of a particular sum for compensation. If the contrary view were accepted it would follow that the Government would be empowered to do what they claim in this case to have validly done, and that is to set aside, not only the Collector's opinion, but the whole antecedent procedure and enquiry, and to substitute for them an investigation of their own, which was made behind the back of the interested claimant, and which was otherwise inconsistent with the provisions of the statute.

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"Then it was suggested that the order of Mr. Waterfield's proposing to award Rs. 50 per acre was not an award, but was a mere proposal for an award. It seems to me that this argument comes with a certain want of grace from the representative of the Government, since if the order fell short of being an award, it fell short only by reason of those very executive orders of the Government whose validity is now in dispute. And if I am right in thinking that those orders are of no effect, then it follows that the award is that which Mr. Waterfield would have made had he not been restrained by these orders."

This principle was followed by me in C.W. No. 6 of 1953, *Edward Keventer (Successors) Ltd.* v. *The State of Delhi and others*, decided on the 20th of October, 1953, in which the award of a Land Acquisition Collector which had actually been approved by the Collector of Delhi and filed in the office had been withdrawn at the instance of the Chief Commissioner and an award by which the compensation was very heavily reduced was substituted. I held in that case that the award became the award of the Collector as soon as it was filed in the office and that although the approval of the Collector had in fact been obtained, this was unnecessary and unwarranted.

Apart from this there is no dearth of authorities to the effect that where under a statute it is the duty of a particular officer to decide a certain matter the matter must be decided according to the judgment of that officer and not under the directions of a superior.

In the present case the question of the submission of the assessment order of the Income-tax Officer for the approval of the Inspecting Assistant Commissioner appears to have only crept in at a late stage. In fact it does not seem to have been contemplated until about three months after the

petitioner had appeared before the Income-tax Officer and, because of complaints from the petitioner regarding the delay, the Commissioner thought fit by his letter of the 8th of May, 1954, to direct the obtaining of the approval of the Inspecting Assistant Commissioner before the order was finalised. In my opinion this direction must be held to be illegal and unwarranted.

The question which remains is whether the so-called draft assessment can in the circumstances be regarded as an assessment. The technical point has been raised on behalf of the respondents that it could not be so if only by reason of the fact that it was not signed by the Income-tax Officer. In reply to this it is pointed out on behalf of the petitioner that all that is required by the provisions of section 23(3) is that the Income-tax Officer "shall by an order in writing assess the total income of the assessee and determine the sum payable by him on the basis of such assessment," from which it is argued that the absence of the signature of the Income-tax Officer will not necessarily prevent the assessment from being a proper order of assessment. Many other statutes have been referred to by the learned counsel for the petitioner in which where it has been provided that an order shall be in writing there is also a provision that the order shall be signed by the officer making it, and it is contended that since this provision is so frequently added in such cases, its omission in this case is not merely a result of an oversight.

Technically this argument appears to me to be correct, but the case appears to depend mainly on the fact that quite evidently the order of assessment in this case is the best judgment of the Income-tax Officer on the matters before him and that this was intended to be his final decision in the matter unless he was ordered to revise it by the Inspecting Assistant Commissioner, and in my opinion once the Income-tax Officer had given his considered judgment on the matters which he was called on to decide, the process of submitting his order for the approval of his superior or, as the case may be, for revision carried out under his directions, was something which simply could not be

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done, and in my opinion the principle laid down in *Motivala's case* applies to the present case.

One argument advanced on behalf of the respondents was that under the provisions of section 29 of the Act any assessment order made by an Income-tax Officer must be followed by the service on the assessee of a notice of demand, and it is contended that the assessment order in this case could not be regarded as an assessment because it was not followed by such a notice of demand. Actually in the present case the notice which would follow from the terms of the assessment would be one intimating a refund, but whether the notice was to be for a demand or a refund is immaterial. The same argument applies as in *Motivala's case,* that the only thing which prevented the Income-tax Officer from giving effect to the terms of his assessment order without delay was the order for the obtaining of the prior approval of the Inspecting Assistant Commissioner, which is the main bone of contention in the petition and which I have already held to be illegal.

I am, therefore, of the opinion that on the facts of this case the assessment order of the Income-tax Officer called a draft assessment by the respondents was in fact his assessment order and that, therefore, the issuing of fresh notices under section 22(4) of the Act to the petitioner was illegal and further proceedings on the basis of those notices must be quashed and I would accept the present petition to the extent of ordering accordingly. I would also allow the petitioners his costs from the respondents. Counsel's fee Rs. 250.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

C. L. DAVAR,—*Appellant*

versus

AMAR NATH KAPUR,—*Respondent*

Second Appeal from Order No. 35-D of 1961

1962

March, 14th

Delhi Rent Control Act (LIX of 1958)—Section 14(1) (e)—Interpretation of—Dependant—Meaning of.