

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2788 OF 2014

Vinod K.Bhagat. ... Petitioner
Vs.
1.Tax Recovery Officer & Ors. ... Respondents

Mr.Vipul Joshi with Mr.Nitesh Gandhi i/b. Mr.Abhishek Tilak, for the Petitioner.

Mr.Hriday Narain, for Respondent Nos.1 to 4.

CORAM : M.S.SANKLECHA &
G.S.KULKARNI, JJ.

DATE : 13th FEBRUARY, 2015

P.C. :

1. At the request and instance of learned Counsel appearing for the parties, this petition is being disposed of finally at the stage of admission.

2. This petition under Article 226 of Constitution of India challenges the notices dated 25.1.2012 and 6.3.2012 attaching the petitioner's property and bank accounts in respect of tax dues payable by the petitioner's late father. The petitioner has also challenged the order dated 25.9.2012 passed by the Tax Recovery Officer holding that the property belonging to the petitioner which has been attached, for the Income Tax dues payable by his late father.

3. Mr. Vipul Joshi. learned Counsel appearing for the petitioner points out that after the property and the bank accounts of the petitioner were attached,

the petitioner moved an application by letter dated 13.4.2012 to the Jurisdictional Commissioner of Income Tax making grievance regarding attachment of the petitioner's property and his bank accounts for recovery of income tax dues payable by his late father. The petitioner in the aforesaid communication did not formerly refer to his applications as appeals but set out his grievances with regard to the action of Tax Recovery Officer in attaching the petitioner's property as well as bank accounts. As there was no response, the petitioner by letter dated 7.5.2012 also made a grievance to the Chief Commissioner of Income Tax.

4. On 10.5.2012 the Chief Commissioner of Income Tax addressed a communication to the Jurisdictional Commissioner to dispose of the petitioner's grievance as contained in the letter dated 13.4.2012 and 7.5.2012, which in effect, according to the Chief Commissioner, was nothing but an appeal as contemplated in Rule 86 of II Schedule of the Income Tax Act, 1961 (the Act) against the Tax Recovery Officer's (TRO) action of recovery under II Schedule of the Act. Notwithstanding the above directions of the Chief Commissioner of Income Tax, the Jurisdictional Commissioner of Income Tax did not immediately deal with the petitioner's appeal filed in the form of grievances.

5. The petitioner by various communications dated 23.5.2012, 2.7.2012 and 29.1.2014 called upon the Jurisdictional Commissioner of Income Tax to dispose of his appeal (filed as grievances) under Rule 86 of the II Schedule to the Act.

6. In the meantime, pending the petitioner's appeal under Rule 86 of the Second Schedule to the Act, the Tax Recovery Officer passed an order dated 25.9.2012 holding that the attachment of the immovable properties belonging to the petitioner was valid. This was on the ground that the same belonged to the petitioner's late father. The petitioner has challenged the order dated 25.9.2012 as being one without jurisdiction.

7. Thereafter on 15.5.2014, the Jurisdictional Commissioner of Income Tax disposed of the petitioner's appeal (filed as grievances) under Rule 86 of the Second Schedule to the Act by holding as follows:-

- (a) The order dated 25.9.2012 of the Tax Recovery Officer having been passed under Rule 11 of Second Schedule of the Act is a conclusive order. Therefore, no appeal under Rule 86 of the Second Schedule to the Act could be entertained;
- (b) No appeal has been filed from the order dated 25.9.2012; and
- (c) In any case the appeals which were filed in the form of grievance dated 13.4.2012 and 7.5.2012, were not formal appeals filed under Rule 86 of the Second Schedule of the Act and consequently same could not be considered.

8. We find that inspite of specific directions of the Chief Commissioner of Income Tax by his letter dated 10.5.2012 to treat the petitioner's grievance letters as appeals from the orders of attachment of the petitioner's property and bank accounts, the Jurisdictional Commissioner has not entertained

the appeal for over two years. Thereafter, he relies upon the order dated 25.9.2012 passed subsequently by TRO to conclude that in view of the order passed by the TRO being a conclusive order under Rule 11(6) of the Second Schedule to the Act, no appeal against such an order is maintainable and in fact no appeal against that order has been filed.

9. We are of the view that in case the Jurisdictional Commissioner of Income Tax had acted upon the directions dated 10.5.2012 of the Chief Commissioner of Income Tax and disposed of the petitioner's appeal immediately, then the petitioner's grievance could have been considered by him on merits before the TRO passed the impugned order dated 25.9.2012. The delay in the Jurisdictional Commissioner of Income Tax taking up the petitioner's grievance which even according to the Chief Commissioner was nothing but an appeal under Rule 86 of Second Schedule to the Act and disposing it of on merits, has caused prejudice to the petitioner as his grievance that the attached property does not belong to his father, has gone unattended leading to the TRO passing order dated 25.9.2012. It is only thereafter on 15.5.2014 the Jurisdictional Commissioner disposed of the petitioner's appeals in the form of grievance dated 13.4.2012 and 7.5.2012, in effect taking the plea of fait accompli by virtue of the order dated 25.9.2012 passed by the TRO. We find that when the appeal provision is provided under Rule 86 of Second Schedule to the Act and the petitioner has filed such an appeal even according to the Chief Commissioner of Income Tax, then the Jurisdictional Commissioner should have decided such an appeal at the earliest. This not having been done in the present case, has resulted in great prejudice to

the petitioner as his grievance against the order of attachment passed by TRO is not being considered in appeal even though the Statute provide for the same. The TRO should have in all fairness awaited the disposal of the petitioner's appeal under Rule 86 to the Second Schedule of the Act pending with the Jurisdictional Commissioner of Income Tax before disposing of the attachment proceedings under Rule 11 of the Second Schedule of the Act. It is not expected of officers acting under the Act to render the provisions of the Act a dead letter by gross delay and thereafter pleading helpless in view of subsequent events by his subordinate Officer.

10. In the above view, in the peculiar facts of the case, we set aside the order dated 25.9.2012 passed by the TRO. We do not disturb the attachments of property and the bank accounts. We make it clear that the status quo as of that day would continue. The order dated 15.5.2014 of the Jurisdictional Commissioner of Income Tax though not specifically challenged in the appeal, in the peculiar facts of this case, we set aside the order dated 15.5.2014 and restore the petitioner's appeal before the Jurisdictional Commissioner for fresh disposal. The Jurisdictional Commissioner would grant a personal hearing to the petitioner and dispose of the petitioner's appeals filed as grievances dated 13.4.2012 and 7.5.2012 as expeditiously as possible preferably within a period of three months from today. In the meantime, the petitioner undertakes to maintain status quo.

11. Petition disposed of with the above directions. No order as to costs.

(G.S.KULKARNI, J.)

(M.S.SANKLECHA, J.)