

Om Drishian International Ltd.	}	Petitioner
Versus		
Additional Director, Directorate	}	
of Revenue Intelligence and Anr.	}	Respondents

J.V.Salunke.PS

writ petition would be maintainable if the authority issuing the notice lacks the jurisdiction. Since there is no quarrel with this proposition of law, we do not consider it necessary to refer to all such decisions.

2. It is admitted by Mr. Singh that ever since the impugned show-cause notice dated 23rd June 2014 was issued, there has neither been any infringement of any of the rights of the petitioner, protected either by the Constitution or by any relevant enactment, nor any threat of such infringement.

3. It seems to us that this writ petition is inspired because of the decision rendered by the Supreme Court in **Canon India** (supra). Law is well settled that the Court exercising jurisdiction under Article 226 of the Constitution of India would step-in to assist a party who finds either his constitutional rights, fundamental or non-fundamental, and/or other legal rights to have been infringed by any authority answering the definition of 'State' in Article 12 of the Constitution of India, or even if there be a threat of such infringement, ~ the threat being real, and not illusory ~ and injury to be suffered is imminent. No doubt, law is further well settled that the party may invoke the writ jurisdiction of the High Court challenging a notice to show-cause, if the authority issuing such notice lacks inherent jurisdiction to so issue or if the jurisdictional fact for issuing the notice to investigate facts is non-existent. If the High Court is satisfied that the show-cause notice is totally *non est* in the eyes of law for absolute want of jurisdiction of the authority to even investigate into facts, in the judicious exercise of its discretion, the court may

entertain the petition and pass appropriate orders. However, law is also well settled that writ petitions challenging show-cause notices ought not to be entertained for the mere asking and as a matter of routine. In an appropriate case, the writ petitioner can invariably be directed to respond to the show-cause notice and raise all points that are highlighted in the writ petition. Whether the show-cause notice is founded on any legal premise is a jurisdictional issue, which can even be urged by the recipient of the notice and such issues can also be adjudicated by the authority issuing the very notice initially, before the aggrieved party could approach the Court. If any authority is required, we may profitably refer to the decision of the Supreme Court reported in (2004) 3 SCC 440 [**Special Director and Anr. vs. Mohd. Ghulam Ghouse and Anr.**].

4. Bound by such decision as well as the other decisions that have been placed before us, we now proceed to consider whether interference, on facts and circumstances, would be justified.

5. There is no explanation in the writ petition as to what triggered it, in the first place, and what made the petitioner apprehend that adverse action is in the offing. That after issuance of the impugned show-cause notice the respondents have not acted in any manner to infringe the rights of the petitioner [it has been 7 (years) since], is an important circumstance that needs to be borne in mind. Also, there being no real threat of infringement of any of its rights, the petitioner does not have the cause of action even for moving

this Court at this stage. Without a 'cause of action', the 'right of action' is meaningless. This is not, in our considered opinion, a fit case to even examine as to whether the show-cause notice is *non est* in the eyes of law.

6. Not too long ago, we were seized of a writ petition [WP No.2582/2021] where a show-cause notice was challenged on the same ground that the respondent no. 2 lacked the jurisdiction to issue it in view of the decision in **Canon India** (supra). Noticing that a notice for hearing had been issued to such writ petitioner, we had disposed of the writ petition by an order dated 8th July 2021. Since the final order on the proceedings was yet to be passed, we observed that interest of justice would be sufficiently served if the petitioner were granted the liberty to file an application before the respondent no. 2 to urge before such respondent that in view of the ratio of the decision in **Canon India** (supra), the proceedings cannot be carried further; and upon such an application being made, the respondent no. 2 was directed to proceed in accordance with law by passing either a preliminary order or a final order, as the case may be, in the proceedings.

7. In such view of the matter, we feel that here too interest of justice would be sufficiently served if the petitioner responds to the notice and urges the point that the authority issuing the show-cause notice lacks the jurisdiction to do so based on the authority of **Canon India** (supra). Once the response of the petitioner is received, the concerned authority may proceed to pass an appropriate order on the basis of his appreciation of the law laid down in **Canon India** (supra).

8. If the petitioner so chooses, it may reply to the show-cause notice within 4 (four) weeks, whereafter appropriate orders may be passed in accordance with law.

9. With the aforesaid directions, this writ petition stands disposed of. There shall be no order as to costs.

10. All contentions on merits are left open.

SALUNKE
J V

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by SALUNKE J V
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(G. S. KULKARNI, J.)

(CHIEF JUSTICE)