(1954) 01 CAL CK 0037

In the Calcutta High Court

Case No : Civil Revn. Case No. 2075 of 1953

Abanindra Kumar Maity — APPELLANT

Vs

A.K. Biswas — RESPONDENT

Date of Decision : 08-01-1954

Acts Referred:

- Bengal Public Demands Recovery (Amendment) Act, 1942 — Section 29
- Bengal Public Demands Recovery Act, 1913 — Section 10, 29, 38, 4, 6
- Bengal Public Demands Recovery Rules — Rule 2, 77
- Civil Procedure Code, 1908 (CPC) — Section 2(20)
- Constitution of India, 1950 — Article 227
- Income Tax Act, 1922 — Section 46(2)

Citation : AIR 1954 Cal 355 : 58 CWN 573 : (1956) 1 ILR (Cal) 430

Hon'ble Judges : Mitter, J;Lahiri, J

Bench : Division Bench

Advocate : S. Das and Manishi Kumar Das, for the Appellant;Hemendra Kumar Das and Smriti Kumar Roy Choudhury, for the Respondent

Judgement

Lahiri, J.—This is a Rule under Article 227, Constitution of India obtained by the petitioner against certain proceedings pending against him before the Certificate Officer, Midnapore. The facts giving rise to this Rule may be stated as follows :

2. In 1950 the Income Tax Officer, Midnapore, assessed the petitioner to pay an Income Tax to the extent of Rs. 6,613/- for an alleged concealed income of Rs. 28,101/- for the year 1946-47 in Income Tax Case No. 162-M of 1946-47 and against that assessment order the petitioner filed an appeal to the Appellate Assistant Commissioner of Income Tax which is still pending.

3. On 26-3-1952, at the instance of the Income Tax Officer, Midnapore, the Certificate Officer of Midnapore started a proceeding under the Public Demands Recovery Act against the petitioner which was registered and numbered as Certificate Case No. 62-P/8 of 1951 and 1952 and directed a notice u/s 7 of the said Act to be issued. On receipt of the notice u/s 7 the petitioner filed an application for staying the proceeding till the disposal of the appeal by the

Assistant Commissioner, which was rejected on 25-5-1952.

4. On failure of the petitioner to pay up his dues under the certificate, a distress warrant was issued against him on 26-6-1952, but it could not be executed.

5. On 30-8-1952, the Certificate Officer recorded an order in the order-sheet to the effect that the certificate debtor was a zemindar and an influential man of the locality and directed a notice to be issued upon him to show cause why a warrant of arrest should not be issued. On 13-19, September, 1952, the Certificate Officer received a telegram from the certificate debtor asking for time till the Jagadhatri Pujah. Upon the telegram the Certificate Officer directed the petitioner to pay up his dues by 20-10-1952, and stayed the issue of distress warrant and warrant of arrest till that date. The order sheet of this date contains an entry to the following effect; "Inform C. D. Put up on 21-10-52."

6. The petitioner states in his petition, and it is not denied by the opposite party, that although the order, dated September 13/19, 1952, was directed to be communicated to him, it was not in fact so communicated.

7. On 21-10-1952, the Certificate Officer passed the following order :

"No payment. Issue D. W. and A. W. Returnable by 21-11-52."

8. On 25-11-1952, the petitioner filed an application showing cause why the warrant of arrest should not be issued against him. In this application the petitioner stated, inter alia, that the petitioner was the owner of agricultural lands the value of which would be several lakhs of rupees and the amount of demand could be easily recovered from said agricultural lands. This application was considered by the Certificate Officer on 8-12-1952, on which date he passed the following order :

"D. W. and A. W. have already been Issued against the C. D. Await the result of execution. In the meantime send the objection petition to R. O. (which expression, we are informed, means requisitioning officer; i.e. the Income Tax Officer in the present case) for favour of report on the points recited in the objection petition and also request R. O. to report if further proceedings will be stayed against the C. D, to 6-1-53."

9. On 5-1-1953, that is to say, one day before the hearing of the petition of objection, the petitioner was arrested by the Nazir of the Sub-Divisional Officer, Contai, at a, time when he was returning from the office of the Sub-Divisional Officer and produced before the Sub-Divisional Officer who released him on a personal recognizance bond for Rs. 10,000/-.

10. On 6-1-1953, the petitioner appeared before the Certificate Officer, Midnapore to file an objection against his arrest whereupon he was required to furnish a fresh personal recognizance bond for Rs. 6,000/- which he did.

11. Then after various adjournments the Certificate Officer, Midnapore, requested the Income Tax Officer to furnish a list of the immovable properties of the

certificate debtor with a view to putting them up to auction sale in pursuance of the provisions of the Public Demands Recovery Act. On 30-5-1953, the certificate debtor prayed for time till the disposal of the appeal preferred by him to the Appellate Assistant Commissioner of Income Tax, but the Certificate Officer allowed him time till 16-6-1953, by which date he required the certificate debtor to pay up the arrears of Income Tax "failing which A. W. will be issued against the certificate debtor."

12. It is clear that the Certificate Officer evidently forgot that the certificate debtor had been arrested once before on 5-1-1953, and that he could not under the law be arrested twice for default of payment of the same arrears. However that may be a post card bearing the seal of the Certificate Officer and bearing the date 27-5-1953, was addressed to the certificate debtor asking him to pay up his dues by 16-6-1953, failing which warrant of arrest would be issued against him. Eventually, on 1-7-1953, the Certificate Officer directed a sale of the properties of the certificate debtor in accordance with the list submitted by the lawyer of the certificate debtor and he also directed the Income Tax Officer to furnish the particulars about the house properties of the certificate debtor in the town of Contai.

13. On 27-3-1953, the Certificate Officer, Midnapore, started a fresh Certificate Case, being case No. 193K/8 of 1952-53, against the petitioner in respect of penalty amounting to Rs. 661-5-0 which was imposed upon him for nonpayment of Income Tax. On receipt of the notice u/s 7, Public Demands Recovery Act, the petitioner filed an application denying his liability and the Certificate Officer fixed 1-7-1953, for the consideration of the petition of objection. On that date, however, the Certificate Officer, without deciding the petition of objection filed by the petitioner, directed a sale of the petitioner''s properties. We have thus before us two Certificate Cases, against the petitioner which are pending before the Certificate Officer, Midnapore. The first is Certificate Case No. 662F/8 of 1951-52 and the second one is Certificate Case No. 193K/8 of 1952-53.

14. The petitioner''s case is that both these certificate proceedings are entirely void and without jurisdiction and that they are also mala fide. It will be convenient for us to deal with the two cases separately.

15. First of all, we take up the Certificate Case No. 662P/8 of 1951-52. With regard to this case, Mr. Das, appearing for the petitioner, has placed before us the copy of the Certificate which was served upon the petitioner along with the notice u/s 7, Public Demands Recovery Act. The form of the Certificate contains four columns. In the first column, the name and address of the certificate holder are to be stated and in this column the name of the certificate holder has been stated to be "W. B. Government." The second column requires the amount of the public demand to be stated together with the period for which such demand is due. In this column there is an entry of the figure "Rs. 3313/- arrear income tax", but there is no mention of the period for which this tax is due.

In the third column the name and address of the certificate debtor have been correctly stated. The fourth column which requires further particulars of the public demand for which the certificate is signed is left blank. The copy of the certificate which has been produced before us by Mr. Das bears the lithographic signature of the Certificate Officer but the learned Senior Government Pleader appearing for the opposite party has invited our attention to the original Certificate which is on the record and satisfied us that the original Certificate bears the signature in the hand of the certificate Officer.

16. Learned Counsel for the petitioner has contended before us that this Certificate is invalid in law inasmuch as the name of the Certificate holder has been wrongly stated as the West Bengal Government and in the second place it has been contended that the period for which the amount is due has not been mentioned. As this is an important particular, the omission of the period also renders the Certificate invalid. In the third place, he has argued that as the fourth column requiring further particulars of the public demand has been left blank, the Certificate is void. Lastly, he has contended that the lithographic signature of the Certificate Officer on the copy of the Certificate is not valid in law.

17. With regard to the first ground upon which the validity of the Certificate has been challenged, the question is whether the description of the Certificate holder as the Government of West Bengal is correct. There can be no doubt or dispute that the liability in respect of Income Tax is a liability to the Union Government and as such the Union Government is the certificate holder. The proper description of the certificate holder should, therefore, be the Government of the Union of India, or any of its subordinate officers in the Income Tax Department. But the learned Senior Government Pleader has contended that u/s 46(2), Income Tax Act that liability is converted into a liability to the State Government. Section 46(2) runs as follows : "The Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee and the Collector on receipt of such certificate shall proceed to recover from such assessee the amounts specified therein as if it were an arrear of land revenue."

18. It is argued that since the arrear can be realised as if it were an arrear of land revenue and since land revenue is a liability to the State Government, the arrear of Income Tax is also a liability to the State Government for the purpose of Section 46(2), Income Tax Act. We are afraid we cannot accept this contention as correct. Section 46(2), Income Tax Act merely prescribes the mode in which the arrear of Income Tax can be realised. It cannot have the effect of altering the nature of that lability and convert it into a liability to the State Government. This conclusion is supported by the expression "as if it were" which occurs in that sub-section. The true import of Section 46(2) is that though arrear of Income Tax is not the same thing as arrear of land revenue, it can nevertheless be realised in the same manner as arrear of land revenue. The nature of the tax liability is not

in any way affected by Section 46(2). The result, therefore, is that the name of the certificate holder has been wrongly stated in the certificate.

19. The second ground of attack on the validity of the certificate is that it does not mention the period for which the demand is due but merely mentions the amount of the liability. The second column of the Form of the Certificate requires that it should mention not only the amount of the public demand but also "the period for which such demand is due." The omission to mention the period, therefore, amounts to a non-compliance with the requirements of the second column. The learned Senior Government Pleader argued that it was not necessary to mention the period as it was known to the assessee. We cannot accept this contention. If it was not necessary to mention the period for which the demand was due, it is difficult to realise why it should be expressly provided in the second column that the period should be mentioned. Moreover, in order to give the assessee a proper notice of the tax liability, it is, in our opinion, absolutely essential to inform him of the period for which it is due.

20. The third ground upon which the validity of the certificate has been challenged is that the fourth column has been left blank. This column requires that further particulars of the public demand for which the certificate is signed should be mentioned. The learned Senior Government Pleader has argued that as there were no further particulars about this demand nothing could be stated. This contention also appears to us to be without substance. In this particular case, further particulars were that the public demand was in respect of an assessment for an undisclosed income for the year 1946-47. It was necessary to mention that fact in the fourth column and the omission to do so was a violation of the requirements of the fourth column.

21. The fourth ground upon which the validity of the certificate has been challenged is that the copy of the certificate which was served upon the petitioner was not signed by the hand of the Certificate Officer but merely bore his lithographic signature. Sections 4 and 6, Public Demands Recovery Act require that when a Certificate Officer is satisfied about certain things, he may sign a certificate in the prescribed Form and cause the same to be filed in his office. Section 7 provides for a notice upon the certificate debtor with a copy of the certificate.

The combined effect of these sections is that the certificate which is filed in the office of the Certificate Officer should bear his signature. There is no provision that the copy which is to be served upon the certificate debtor u/s 7 should also be similarly signed. The learned Senior Government Pleader has placed before us the original certificate which was filed in the office of the Certificate Officer, and we are satisfied that it bears his signature in his own hand. This, in our opinion, is a sufficient compliance with the requirements of the law. The fourth ground of attack urged by learned Counsel for the petitioner accordingly fails.

22. The next question is whether the mis-description of the name of the

certificate holder in the first column of the certificate and non-compliance with the requirements of the second and fourth columns of the certificate render the certificate invalid. It is to be noticed that the form in question is a statutory form and both Sections 4 and 6, Public Demands Recovery Act require that the Certificate Officer shall sign the certificate in the prescribed form. The effect of any error or omission in filling the form of the certificate has been considered in a number of judicial decisions.

The leading case on the subject is the case of -- ''Baijnath Sahai v. Ramgut Singh'' 23 IA 45 (A). At the bottom of p. 53, Lord Davey in delivering the judgment of the Board pointed out that the provisions of the Public Demands Recovery Act are very stringent provisions.

"The proceeding in the first instance is apparently ex parte. The certificate is to be made by the Collector in a certain form and filed, and when the certificate is filed it is to have the effect of a decree against the persons named as debtors in the certificate so far as regards the remedies for enforcing it, and when served with it also binds their immovable property. It is unnecessary for their Lordships to point out the necessity there is, when power is given to a public officer to sell the property of any of Her Majesty''s subjects, that the forms required by the Act, which are matters of substance, should be complied with, and that if the certificate is to have the extraordinary effect of a decree against the persons named in it as debtors, and to have the effect of binding their immovable property, at least it should be in a form such as provided by the Act, which enables any person who reads it to see who the judgment creditor is, what is the sum for which the judgment is given, and that those particulars should be certified by the hand of the proper officer appointed by the Act for the purpose. If no such certificate is given the whole proceeding is gone. There is no judgment, there is nothing corresponding to a judgment or decree for payment of the amount, and there is no foundation for the sale. The authority to proceed to sale is based on the certificate which has the effect of a judgment or decree, and if no judgment or decree is given, and no certificate is filed having the force or effect of a judgment or decree, there can be no valid sale at all."

23. This decision of the Judicial Committee was followed in a large number of decisions of this Court, amongst which reference may be made to the case of -- Ali Miyan Vs. Wajaddin Sikdar and Another, , decided by Greaves and Chakravarti JJ., and also to the case of -- Sudhir Chandra Chakravarty Vs. Sudhangshu Kumar Choudhury and Others, , decided by Biswas J. The effect of these decisions is that if there is any mis-description or omission in respect of a material particular in a certificate, the entire proceeding based upon the certificate is void.

24. The learned Senior Government Pleader placed strong reliance upon a decision of another Division Bench of this Court in the case of -- Hara Prasad Gain and Others Vs. Gopal Chandra Gain and Others, , decided by Suhrawardy and Graham JJ. In this case all the columns in the tabular statement in the form

of the certificate were properly filled up, but the blanks in the certificate portion of the certificate were not written up. The certificate portion of the form which was in force at the time of the aforesaid decision was as follows :

"I hereby certify that the abovementioned sum of Rs..... is due to the above ..... from the defendants ..... I further certify that the abovementioned sum of Rs. ..... is justly recoverable and that its recovery by suit is not barred by law."

24a. in the case of ''Haraprasad Gain (D)'', these blank spaces in the certificate portion of the certificate were not filled up, but otherwise the certificate was in form. The form of the certificate which is in force now materially differs from the form which was in use at the time of the decision in -- ''Haraprasad Gain''s case, (D)''. ''The certificate portion of the present form is as follows :

"I certify that the sums mentioned overleaf are due to the certificate holder by the certificate debtor and that they are justly recoverable, the recovery by suit not being barred by law."

25. It is quite clear that there is no blank space in the certificate portion of the present form and the name of the certificate holder and the amount due and the name and address of the certificate debtor are all to be gathered from the entries in the four columns of the tabular statement. Suhrawardy and Graham JJ. held that the omission to fill up the blank space in the certificate portion of the form of the certificate did not render the certificate invalid. Having regard to the alteration made in the form of the certificate, we are of the opinion that the decision in the case of ''Haraprasad Gain (D)'', is of no assistance to the opposite party, in the present case, as I have already pointed out the name of the certificate holder has been wrongly stated in the certificate and the second and the fourth columns of the tabular statement of the certificate have not been properly filled up. In this view of the matter, we are inclined to hold that the defects complained of by the petitioner render the certificate invalid. As the certificate is the foundation of the entire proceeding, we are constrained to hold that the entire proceeding is based upon an invalid foundation and it is, therefore, liable to be quashed.

26. The second ground urged by Mr. Sisir Das appearing in support of the Rule that the notice u/s 7, Public Demands Recovery Act was not signed by the Certificate Officer in his own hand but bore this rubber stamp signature only. This defect, according to his submission, vitiated the notice. Mr. Sisir Das has relied upon the provisions of Rule 2 of the Rules framed u/s 38, Public Demands Recovery Act which provides for the mode of service of a notice u/s 7. Rule 2 runs as follows :

"Service of a notice u/s 7 ..... shall be made by delivering or tendering a copy there-''Of, signed by the Certificate Officer, or such ministerial officer as he authorises in this behalf, and sealed with the seal of the Certificate Officer."

27. In the present case, it is admitted that the notice u/s 7 was not signed by the

Certificate Officer in his own hand. The question is whether this defect renders the notice invalid. The Senior Government Pleader has invited our attention to the decision in the case of Hara Prasad Gain and Others Vs. Gopal Chandra Gain and Others, , Suhrawardy J. makes the following observations :

"The objection on behalf of the appellants rests on the informal nature of the notice. The notice bears the lithographic signature of the "Certificate Officer. It is argued that it is not signed by the Certificate Officer as required by Form No. III of the Appendix to the Act read with Section 7 of the Act. I have not been able to discover any law under which it is incumbent on the Certificate Officer to sign the notice with his own hand."

28. Then his Lordship refers to the provisions of Section 2(20), Civil P. C. where the word "signed" has been defined to include "stamped". It is clear that the attention of the Court was not drawn to the provisions of Rule 2 framed u/s 38, Public Demands Recovery Act which requires that the notice u/s 7 shall be signed by the Certificate Officer or such ministerial officer as may be authorised in this behalf and we are also not sure whether the definition of the word "signed" as used in Section 2(20), Civil P. C. could be invoked for the purpose of interpreting the word "signed" as used in Rule 2 of the Rules framed under the Public Demands Recovery Act.

In our opinion, it seems that the definition of the word "signed" as given in Section 2(20), Civil P. C., could be applied to all acts done under the CPC and could not be extended to acts which were required to be done under other special Acts like the Public Demands Recovery Act. In this view of the matter, we are inclined to hold that it was the duty of the Certificate Officer in the present case to sign the notice u/s 7 by his own hand, or by the hand of any other ministerial officer whom he might authorise in this behalf. As that has not been done in the present case, we must hold that the notice u/s 7 is also invalid.

29. We shall now proceed to deal with the chapter of events leading up to the arrest of the certificate debtor. I have already stated that the warrant of arrest was issued by the Certificate Officer on 21-10-1952. Before that he had issued a notice u/s 77(1), Public Demands Recovery Act to show cause against the issue of warrant of arrest. I have already stated that on receipt of that notice the certificate debtor sent a telegram to the Certificate Officer praying for time till the Jagadhatri Pujah, but the Certificate Officer allowed him time only upto 20-10-1952, and directed the office to inform the certificate debtor about this date. The petitioner has stated before us that this order was never communicated by the office of the Certificate Officer and this statement has not been denied. We have, therefore, to proceed on the view that the order of the Certificate Officer allowing time till 20-10-1952, was not communicated to the certificate debtor. Then all of a sudden on 21-10-1952, the warrant of arrest was issued against him.

Section 29, Public Demands Recovery Act which was placed on the Statute Book by an Amendment of the Public Demands Recovery Act (Bengal Act 1 of 1942) requires that no order for the arrest of a certificate debtor in execution of a certificate shall be made unless, after giving the certificate debtor an opportunity of showing cause why he should not be committed to civil prison, the Certificate Officer, for reasons recorded in writing, is satisfied that the certificate debtor, with the object of obstructing or delaying the execution of the certificate, is likely to abscond, or has, after the filing of the certificate in the office of the Certificate Officer, dishonestly transferred, concealed or removed any part of his property, or that the certificate debtor has or has had, since the date of the filing of the certificate, the means to pay the amount for which the certificate has been issued, or some substantial part of such amount, and refuses or neglects or has refused or neglected to pay the same.

30. It is quite clear that before the issue of warrant of arrest on 21-10-1952, the Certificate Officer did not satisfy himself about any of the above conditions and he has not also recorded any reason in writing as to the points on which he was required to satisfy himself u/s 29, Public Demands Recovery Act. The only thing that he states is that the certificate debtor has not made any payment, but that by itself does not authorise the Certificate Officer to issue any warrant of arrest u/s 29, Public Demands Recovery Act. We are, therefore, of the opinion that the order issuing the warrant of arrest was without jurisdiction,

31. The next event that happened is that the certificate debtor filed an application on 25-11-1952, showing cause why a warrant of arrest should not be issued against him and in that petition he stated that he had considerable immovable properties from which the arrears of Income Tax could be easily realised. This application was considered by the Certificate Officer on 7-12-1952, and I have already quoted an order which he passed on that date. In our opinion, this order is self-contradictory and illogical. In the first part of that order the Certificate Officer stated that he would await the result of the execution of the search warrant, but in the last portion of that order he was asking for a report from the Income Tax Officer if further proceedings in execution of the warrant of arrest should be stayed.

It is very difficult to ascertain the real meaning of the Certificate Officer. If he was asking for the opinion of the Income Tax Officer on the question whether further proceedings should be stayed, it was his duty to stay the operation of the warrant of arrest which he had already issued. But instead of that he authorised execution of the warrant of arrest by the first part of the order. Moreover he adjourned the hearing of the objection, filed by the certificate debtor, to 6-1-1953, presumably for the purpose of obtaining the report from the Income Tax Officer and before the objection filed by the certificate debtor to show cause why the warrant of arrest should not be issued against him was finally decided, the certificate debtor was actually arrested on 5-1-1953, as I have already stated.

To say the least, the Certificate Officer was acting in a manner which was in contravention of fundamental principles of justice. It was necessary that he should decide the objection filed by the certificate debtor before he could put him under arrest in execution of the warrant for arrest. In the warrant of arrest which was signed by the Certificate Officer on 28-10-1952, there is a direction that that warrant should be executed on or before 21-11-1952. There is nothing in the order sheet of the Certificate Officer to show that he extended the returnable date, but there is an endorsement on the warrant of arrest itself signed by somebody whose designation is stated to be N. D. C. to the following effect:

"Time extended till 15-1-1953, vide Collecor''s order No. 9187 R. G., dated 18-8-50 (?)"

32. This endorsement itself is dated 5-1-1953, and there is another endorsement, "Priya Babu will please execute", bearing the same date. It is difficult for us to realise how the period fixed in a warrant of arrest signed on 28-10-1952, could be extended by an order of the Collector, dated 18-8-1950, because on the date of the Collector''s order referred to in the endorsement the warrant itself had not come into existence. Moreover, the endorsement extending the time was signed on 5-1- 1953, but the warrant had already spent its force on 21-11-1052, in our opinion the warrant of arrest which had died a natural death on 22-11-1952, could not be brought back to life by an endorsement dated 5-1-1953. In these circumstances, the arrest of the certificate debtor on 5-1-1953, on the basis of a warrant of arrest which had become defunct was absolutely illegal. But the matter does not rest here.

I have already stated that after his arrest the certificate debtor was ordered to furnish a personal recognizance bond of Rs. 10,000/- before the Sub-Divisional Officer, Contai, on 5-1-1953, and a fresh personal recognizance bond for Rs. 6,000/-before the Certificate Officer, Midnapore, on 6-1-1953. In spite of that on 30-5-1953, the Certificate Officer passed an order directing the certificate debtor to pay up his dues by 16-6-1953, failing which arrest warrant would be issued against him. It is amazing that a responsible public officer occupying the position of a Certificate Officer of a District could think of putting a certificate debtor under arrest twice for the realisation of the same debt. I have already stated that a Post Card was also addressed to the certificate debtor communicating to him the substance of the order which was passed on 30-5-1953.

From the different orders which were passed by the Certificate Officer about the arrest of the petitioner before us, it seems to us that the Certificate Officer was more anxious to humiliate the petitioner by flourishing his power of putting him under arrest than to realise the amount of public demand in accordance with the procedure prescribed by law. In these circumstances, we must place on record our strong disapproval of the manner in which the Certificate Officer absued his power of putting the petitioner under arrest in a colourable exercise of his powers under the Public Demands Recovery Act .

33. These are all the points which arise for consideration with regard to Certificate Case No. 62F/8 of 1951-52.

34. We have now to turn to Certificate Case No, 193K/8 of 1952-53. In this case the certificate which was filed shows that the name of the certificate holder was described as Income Tax Officer, Midnapore, Bankura. We cannot say that this description of the Certificate Officer was wrong or incorrect. The entry in the second column showing the amount of public demand together with the period for which such demand was due shows that a sum of Rs. 661-5-0 was due as penalty on Income Tax for 1946-47. It is interesting to note that the period has been mentioned in this case though it was not mentioned in the certificate which was the basis of Certificate Case No. 62F/8 of 1951-52. The fourth column of the certificate which requires further particulars of the public demand was left blank. We are of the opinion that it was the duty of the Certificate Officer to cause this column to be filled up by inserting the reason for which the penalty was imposed upon the petitioner, There is no reason why these particulars should be withheld from the certificate debtor. The omission to fill up the fourth column in the certificate, in our opinion, renders the certificate invalid.

35. Moreover with regard to this case also the notice u/s 7, Public Demands Recovery Act was not signed by the Certificate Officer in his own hand as required by Rule 2 of the Rules framed u/s 38, Public Demands Recovery Act.

36. The third ground which arises for consideration with regard to this case is that although the certificate debtor, after receipt of notice u/s 7, Public Demands Recovery Act, filed an objection denying his liability, that objection was not considered by the Certificate Officer and without deciding that objection he ordered the sale of the certificate debtor''s property by an order, dated 1-7-1953. This procedure is not warranted by Section 10, Public Demands Recovery Act. Under that section, it is the duty of the Certificate Officer to hear and decide the objection before he takes further steps in the proceeding.

37. For the reasons given above, we are inclined to hold that the proceedings in Certificate Case No. 62F/8 of 1951-52 as well as in Certificates Case No. 193K/8 of 1952-53 are entirely without jurisdiction and are liable to be quashed if there is no bar to the exercise of our power under Article 227, Constitution of India.

38. We have now to deal with the question whether we can and should exercise our powers under Article 227, Constitution of India. That Article authorises this Court to exercise powers of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Certificate Officer is a court according to the definition given in the Public Demands Recovery Act. Therefore there can be no doubt that we have jurisdiction to exercise our power of superintendence over that court.

But the learned Senior Government Pleader has argued that it was open to the petitioner to file an appeal u/s 51, Public Demands Recovery Act and that he could have obtained his relief under that section. But it is very difficult to find out any order from the order sheet of the Certificate Officer against which the petitioner could have appealed to obtain the relief which he is asking for from us.

The order by which the warrant of arrest was issued against him on 21-10-1952, as I have already pointed out, was passed without any notice to him. On 25-11-1952, he filed his objection showing cause why the warrant of arrest should not be issued against him. But that objection was never heard and decided by the Certificate Officer. On 7-12-1952, he forwarded the objection to the Income Tax Officer for a report, but there is nothing in the order sheet to show that he at any time received that report from the Income Tax Officer or that he applied his mind to the question whether the warrant of arrest should be issued against the certificate debtor.

It is also true that the certificate debtor might Institute a suit u/s 34, Public Demands Recovery Act for cancellation of the certificate but the existence of an alternative remedy like a suit does not, in our opinion, preclude us from exercising our powers under Article 227, Constitution of India, provided that alternative remedy is not as speedy or effective as an application under Article 227. In the case of -- '' In Re: Annamalai Mudaliar, (E)'', Ramaswami, J., of the Madras High Court made an exhaustive review of all the decided cases as to the scope of Article 227 and the jurisdiction of the High Court under the Act. We respectfully agree with that decision. In that case it has been held that the extraordinary power conferred on the High Court in Article 227 enables the High Court to ensure that tribunals are kept within the bounds of their authority and that they do their duty according to law.

39. For the reasons we have given above, we have reached the conclusion that the Certificate Officer acted in excess of his jurisdiction and also acted in flagrant violation of some of the mandatory provisions of the Public Demands Recovery Act. We are clearly of the opinion that the entire proceeding before the Certificate Officer is without jurisdiction. In this view of the matter, we think we are competent to exercise our powers-under Article 227, Constitution of India and we propose to exercise that power.

40. We accordingly make this Rule absolute and direct that the certificate proceedings in Certificate Cases No. 62F/8 of 1951-52 and also 193K/8 of 1952-53 pending before the Certificate Officer, Midnapore, should be quashed. It will be open to the Income Tax Officer concerned to start fresh proceedings according to law if he is so advised. The petitioner must have the costs of this Rule. We assess the hearing-tee at five gold-mohurs. Two months'' time from the date of the decree is allowed to the opposite party to pay the costs.

Mitter, J.

41. I agree.

