(1970) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 120 of 1968

Ali Mohd. Mir — APPELLANT

Vs

The Divisional Commr. Kashmir and another — RESPONDENT

Date of Decision : 23-07-1970

Acts Referred:
Land Revenue Act — Section 57(3), 91

Citation : AIR 1971 J&K 45

Hon'ble Judges : Syed Murtaza Fazl Ali, C.J

Bench : Single Bench

Advocate : J.L. Chowdhury, for the Appellant;

Judgement

S. Murtaza Fazl Ali, C.J.—This is an application against an order of the Divisional Commissioner directing the realization of the extent of the

land revenue from the petitioner by sale and attachment of his agricultural properties. This order purports to have been passed under Sec. 91 of the

Land Revenue Act (hereinafter to be referred to as the Act). The petitioner is an agriculturist and was a Numberdar of Village Janwara. It was

alleged that he had realized land revenue from the land owners of the village, but had not deposited the amount into the Government treasury. This

allegation is however, denied by the petitioner in his petition.

2. It appears that in accordance with the rules framed by the Government land revenue is assigned to the Numberdars of the villages who are paid

some percentage of the commission and are required to collect land revenue from the land owners. In other words, the Numberdars are assignees

of the land revenue. The petitioner in the first place denied that he had collected any land revenue and defaulted in depositing the same in the

Government treasury. Secondly the petitioner averred that even if he was liable to pay, the respondents could have recovered the amount by the

specific procedure laid down, u/s 57(3) of the Act and not u/s 91. In my opinion the contention raised by the learned counsel for the petitioner is

well founded and must prevail. Section 57 runs thus:-

The Government may make rules consistent with this Act to regulate the collection, remission and suspension of land revenue and may by those

rules determine the circumstances and terms in and on which assigned land revenue may be collected by the assignee.

(2) Where land revenue due to an assignee is collected by a Revenue Officer, there shall be deducted from the sum collected an amount of two per

cent of such sum on account of the cost of collection.

Provided that land revenue payable in kind to an assignee shall not be collected by a Revenue Officer.

(3) A suit for an arrear of assigned land revenue shall not be entertained unless there is annexed to the plaint at the time of the presentation thereof

a document under the hand of the Collector specially authorizing the institution of the suit.

It would be seen from a perusal of this section that sub-clause (3) lays down a specific procedure for filing a suit for arrear of assigned land

revenue. There can therefore be no doubt that where an assigned land revenue is in arrears, then the respondents should adopt the procedure laid

down in sub-clause (3) of Section 57 by filing a suit against the petitioner after duly authorizing its institution by the Collector. Reliance was,

however, placed by the Dy. Advocate General on Section 91(a) of the Act which runs thus:-

In addition to any sums recoverable as arrears of land revenue under this Act or any other enactment for the time being in force the following sums

may be so recovered, namely:-

fees, fines, costs and other charges, including rates and cesses, payable under this Act.

It was submitted that an arrear of assigned land revenue would amount to charges payable under the Act and therefore could be recoverable by

the summary procedure laid down in Section 91 (supra). I am however unable to agree with this contention. In view of the specific provisions of

Section 57(3) Section 91 cannot be read in isolation but has to be interpreted in harmony with the provisions of Section 57(3). A harmonious

construction of these two provisions would lead to the inescapable conclusion that even though assigned land revenue may be a charge payable

under the Act, the Act so far as this class of revenue is concerned, lays down a separate procedure for recovery of the arrears by filing a suit with

the authorization of the Collector. It is well settled that unless the intention to take away the jurisdiction of the civil court is expressly or by

necessary intendment implied in the statute, no such presumption can be drawn against the jurisdiction of civil court to entertain a suit.

3. In the present case not only the jurisdiction of the civil court has not been taken away, by section 57(3), but such a jurisdiction has very much

been conferred by sub-clause (3) of Sec. 57 and this is the only mode which has been prescribed for recovering arrear of assigned land revenue.

In other words, the legal possession (position?) seems to me to be that whereas all other charges payable under the Act may be recovered under

the harsh and summary procedure prescribed by Section 91 of the Act, an arrear of assigned land revenue has been put under a separate category

and can be realized only in accordance with the mode laid down by the statute in sub-clause (3) of Section 57 of the Act.

4. For the reasons given above, it is manifest that the respondents are not entitled to realise the amount as arrear of land revenue u/s 91 of the Act.

The writ therefore succeeds and the order of the Divisional Commissioner dated 29-6-68 seeking to realize the amount in question by sale and

attachment of the properties of the petitioner is hereby quashed and the Divisional Commissioner is restrained from realizing this amount u/s 91 of

the Act. It will, however, be open to the Divisional Commissioner to file a suit as prescribed u/s 57(3) if he thinks that the petitioner is liable. The

petitioner will be entitled to costs of Rs. 100/- from the respondents.