(1970) 07 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 120 of 1968

Ali Mohd.Mir — APPELLANT

Vs

Divisional Commissioner Kashmir and another — RESPONDENT

Date of Decision : 23-07-1970

Acts Referred:
Jammu and Kashmir Land Revenue Act, 1996 — Section 57(3), 91

Citation : AIR 1971 J&K 45 : AIR 1970 J&K 45 : (1971) JKLR 303 : (1970) KashLJ 326

Hon'ble Judges : S.M.F.Ali, C.J

Bench : Single Bench

Advocate : J.L.Choudhary, Advocates appearing for the Parties

Judgement

(1) 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 S. 91 of the Land Revenue Act

(hereinafter to be referred to &s the Act). The petitioner is an agriculturist and was a Numberdar of Village Janwara. It was alleged that he had

realised 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 Numberdar of the villages who are paid

some percentage of the commission and are required to collect land revenue from the land owned 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 respondent could have recovered the amount by

specific procedure laid down, under S. 57(3) of the Act and not under 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 the 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 the Revenue officer, there shall be deducted from the sum collected an amount of two

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

(3) Provided that land revenue payable in kind, to an assignee shall not be collected by a Revenue officer.

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

thereof a document under the hand of the Collector specially authorising the institution of the suit''

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

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

down in subcl. (3) of S. 57 by filing a suit against the petitioner after duly authorising it's insituation by the Collector. Reliance was, however,

placed by the Dy. Advocate General on S 91 (a) of the Act which runs thus :

In addition to any sum 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 :

(a) Fees, fines, costs and other charges, including rates and cases, payable under this Act.

(5) 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 S. 91 (Supra) lam however unable to agree with this contention. In view of the specific provision of S. 5

S. 91 cannot be read in isolation but has to be interpreted in harmony with the provisions of S. 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 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 wellsettled 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.

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

conferred by subclause (3) of section 57 and this is the only mode which has been prescribed for recovering arrear of assigned land revenue. In

other words (the legal possession seems to me to be that whereas all other charges payable under the Act may be recovered under harsh and

summary procedure prescribed by section 91 of the Act, an arrears of assigned land revenue has been put under a separate category and can be

realised only in accordance with the mode laid down by the statute in subclause (3) of Section 57 of the Act.

(7) For the reasons given above, it is manifest that the respondents are not entitled to realise the amount as arrears of land revenue under Section

91 of the Act. The writ therefore succeeds and the order of the Divisional Commissioner dated 2966S seeking to realise the amount in question by

sale and attachment of the properties of the petitioner is hereby quashed and the Divisional Commissioner is restrained from realising this amount

under Section 91 of the Act It will, however, be open to the Divisional Commissioner to file a suit as prescribed under Section 57(3) if he thinks

that the petitioner is liable. The petitioner will be entitled to cost of Rs. 100/ from the respondents.