
(1963) 10 AHC CK 0014
In the Allahabad High Court
Case No : Writ Petition No. 283 of 1960

Azmat Azim Khan

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 10-10-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 19(1), 226
Uttar Pradesh Encumbered Estates Act, 1934 — Section 23A, 35, 46(2), 7(2)
Uttar Pradesh Encumbered Estates Rules — Rule 6
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 70
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 77

Citation : AIR 1964 All 203

Hon'ble Judges : N.U. Beg, J

Bench : Single Bench

Advocate : S. Rahman, for the Appellant; Akhtar Hussain and S.P. Bhalla for Opposite Party No. 3 and Standing Counsel for Opposite Party Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

N.U. Beg, J.—This is a writ petition filed by Azmat Azim Khan under Article 226 of the Constitution of India. The petitioner's allegations in the writ petition are that his father Sardar Mujibul Rahman Khan was a grantee zamindar of a number of villages in district Kheri and had applied u/s 4 of the U. P. Encumbered Estates Act (Act XXXV of 1934) for the liquidation of his debts. Opposite party No. 3 Raja Shatranjai was a creditor of his father on the basis of a mortgage deed. Opposite party No. 3 obtained a decree for Rs. 1,31,040/1/- plus Rs. 1931/1/- as costs in the Encumbered Estates Act proceedings. This decree is dated 28th September, 1939. It was transferred to the Collector for liquidation.

During the pendency of these proceedings the father of the petitioner died leaving the petitioner and his brother Hikmat Hakim Khan as his heirs. When these proceedings were pending the U. P. Zamindari Abolition and Land Reforms

Act (Act No. 1 of 1951) came into force, with the result that the proprietary rights of the intermediaries vested in the State Government and the intermediaries became entitled to receive compensation in lien thereof. Under Rule 77 framed under the U. P. Zamindari Abolition and Land Reforms Act a notice is issued to the intermediaries directing them to take delivery of the bonds or receive payment in cash on specified dates. The petitioner, accordingly took delivery of the compensation bonds of the value of Rs. 42,750/- from the Compensation Officer, Lakhimpur while bonds of the value of Rs. 21,250/- were received by his brother Hikmat Hakim Khan. The total of the amount of bonds received by the petitioner and his brother thus came to Rs. 64,000/-.

On the 14th of April, 1959 opposite party No. 3 Raja Shatranjai moved an application in the Court of Collector, Kheri praying that the petitioner and his brother be ordered to return the aforesaid bonds which they had received from the Compensation Officer failing which their moveable and Immovable properties to the extent of these bonds be attached for liquidation of their debts. This application was opposed by the petitioner and was rejected by the Collector on the 17th of August, 1959. Opposite party No. 3 filed an appeal against the aforesaid order of the Collector. This appeal was dismissed by the Additional Commissioner Lucknow Division on the 17th of February, 1960. In revision proceedings, however, taken by the opposite party No. 3 before the Board of Revenue, an order was passed by a Member of the Board on 30th of August, 1960 allowing the revision. Another Member concurred with the said order on the 6th of September, 1960. The Board was of the view that the order of the lower Court holding that the Collector had no jurisdiction to take action in the matter was wrong. The Board further held that the Collector had power to take action u/s 151 of the CPC and suggested to the Collector to take one or the other of the following steps:

- (i) To stop payment of money of installment of the bonds by treasuries.
- (ii) To direct the Compensation Officer to hand over bonds of the face value of Rs. 32,000/- reported to be remaining with him for liquidation of debts.
- (iii) To attach moveable and Immovable properties belonging to the petitioner and his brother for liquidation of debts.

Thereafter the petitioner filed the present writ petition questioning the authority of the Board to give instructions Nos. (i) and (iii) in their order. The case of the petitioner as set out in the writ petition is that Section 151 of the CPC had no application to the circumstances of the present case and, in any case, the order of the Board in so far as it suggested that the Collector should stop payment of money of installments of bonds by the treasuries and attach moveable and Immovable properties belonging to the petitioner and his brother was illegal. The prayer in the writ petition was that the order of the Board dated the 30th August, 1960/6th September, 1960 "be quashed by issuing a writ in the nature of certiorari or any other writ, order or direction.

2. The contention of the learned counsel for the petitioner before me was that the impugned order of the Board was illegal and in excess of its jurisdiction. In this connection, he invited my attention to the fact that opposite party No. 3 obtained a decree for Rs. 1,31,040/- and odd on the 28th of September, 1939. The Zamindari Abolition and Land Reforms Act came into force on the 1st of July 1952. Section 70 of the U. P. Zamindari Abolition and Land Reforms Act provides as follows:

"Where before any Court or authority any suit or proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the compensation determined under Chapter III, the Court or authority may require the Compensation Officer to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such Court or authority."

Under this provision of law an application should have been made by the creditor before the Collector praying that the Compensation Officer should place at his disposal the amount of money payable under the bonds. No such application was made by opposite party No. 3. The U.P. Encumbered Estates Act of 1934 was itself amended in 1954 and a new section, Section 23-A was introduced by Section 14 of the Amendment Act (Act XIII of 1954). Section 23-A runs as follows:

"The Collector shall require the Compensation Officer and Rehabilitation Grants Officer as may be necessary to place at his disposal in pursuance of Section 70 of the U. P. Zamindari Abolition and Land Reforms Act, 1960, the amount of compensation money and rehabilitation grant payable to the landlord in respect of his proprietary rights in land reported to be liable to attachment or sale under the provisions of Sub-section (2) of Section 19."

Under this provision of law also it was open to the creditor to move the Collector to issue the necessary directions to the Compensation Officer. It was also open to the Collector to act suo motu in the matter. No such step, however, was taken. The petitioner received a notice to take delivery of the bonds. There is no provision in the Encumbered Estates Act prohibiting him from doing so. He, accordingly, took delivery of the bonds to the extent of Rs. 42,750/-.

For the first time, the creditor (opposite party No. 3) made the application as late as 14th of April, 1959 praying that steps might be taken to recover the bonds from him by attaching his properties and stopping payments of the installment monies due to him under the bonds. The file of the case was summoned in this Court and it showed that the application itself did not cite any provision of law under which it was given. There is no provision in the U. P. Encumbered Estates Act, 1934 under which this application could possibly have been given. The learned counsel for the petitioner has argued that in the absence of any provision in the U. P. Encumbered Estates Act such an application was, on the face of it, not maintainable and should have been dismissed. Apart from that he has argued

that the provisions of Section 151 of the CPC could not have been invoked by the Board for the purpose of giving directions to the Collector which were unwarranted by any law and which amount to an infringement of his fundamental rights under Article 19(f) of the Constitution of India.

3. Having heard the learned counsel for the parties I am of the view that there is force in the contention advanced on behalf of the petitioner. While allowing the revision petition and passing the impugned order the Board of Revenue was acting under the provisions of Section 46(2) of the U. P. Encumbered Estates Act, 1934 which lays down as follows:

"The Board of Revenue may, on an application filed by any person concerned on any of the grounds mentioned in Sub-section (i) of Section 100 of the Civil Procedure Code, 1908, or at any time on its own motion for any sufficient reason, call for the record of proceedings of any case under this Act which is pending in the Court of, or has been decided by, a Collector, a settlement officer or a Commissioner and after giving notice to the parties concerned pass such order thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final."

The Concluding portion of the above provision of law indicates that while dealing with the revision petition the Board can only pass such orders as are consistent with the provisions of the U. P. Encumbered Estates Act. The Board has not cited any provision of the U. P. Encumbered Estates Act which could be invoked to justify the legality of the impugned order. Reliance on behalf of the opposite parties can, however, be placed on Rule 6 framed under the U.P. Encumbered Estates Act which provides as follows:

"Proceedings under this Act shall be governed by the provisions of the CPC of 1908, for the time being in force, so far as they are applicable and not inconsistent with the provisions of the Act and of these rules, except that in proceedings under Chapter V of the Act when a debtor or creditor who was a party to the execution proceeding dies, the Collector shall have the power to determine his legal representative and join him as party to the proceeding in place of the deceased."

The above rule also indicates that the provisions of the CPC are applicable to the proceedings under the U.P. Encumbered Estates Act only in so far as they are not inconsistent with the provisions of the Act. The Act itself does not lay down any method by which the bonds already received by a judgment debtor can be recovered from him nor does it lay down any method whereby a party taking delivery of the bonds can be penalized.

4. The question, therefore, that arises in the present case is whether the order passed by the Board can be justified by the provisions of Section 151 of the Code of Civil Procedure. In *Janki Sahu Trust Vs. Ram Palat*, , it was held that where a party has been guilty at laches or has been negligent in prosecuting his remedy, a Court of law would be most reluctant to exercise its inherent powers in his

favour. In the present case, as already observed, the U. P. Zamindari Abolition and Land Reforms Act came into force on the 1st of July, 1952. Section 70 which enables the creditor to move an application praying that the bonds may be placed at the disposal of the Collector was not availed of by the creditor. By the Act XIII of 1954 Section 23-A was introduced in the Encumbered Estates Act giving a power to the Collector to have the bonds placed at his disposal. No such action was taken by the Collector. The creditor also did not move any application before the Collector. For the first time, the present application was given in the year 1959 without mentioning any section, and suggesting certain coercive steps which might be taken against the petitioner for the purpose of recovering the bonds from his custody. There is no doubt that there was delay as well as negligence in the present case both on behalf of the opposite party No. 3 as well as on behalf of the Collector. The Board itself has in its order made the following significant observation:

"The Compensation Officer allowed the opposite party to receive Z. A. Bonds for Rs. 64,000/-. The Compensation Officer acted within his rights as he had received no intimation from the D.C. u/s 23-A or Section 70 of the U. P. Zamindari Abolition and Land Reforms Act."

5. Further it may be noticed that the Collector himself had refused to take any action u/s 151 of the Code of Civil Procedure. The order of the Collector was affirmed by the Commissioner. The Board as the higher authority directed the Collector in the present case to take action u/s 151 of the Code of Civil Procedure. In a Division Bench decision in Lala Atma Ram Vs. Beni Prasad and Others such a procedure was considered to be beyond the scope of Section 151 of the Code of Civil Procedure. Sulaiman, C. J. delivering the judgment in the above case observed as follows:

"We are also not prepared to hold that there is an inherent jurisdiction in the High Court to direct Courts subordinate to it to proceed in a particular manner. Section 151, Civil Procedure Code, does not confer any jurisdiction on the Court which did not already exist. It merely preserves the inherent power of the Court which it may possess. Varieties of inherent jurisdiction are well recognized, and new categories cannot be invented. Ordinarily such a power would be limited to its jurisdiction to deal with proceedings pending before it and would not include a wide jurisdiction over inferior Courts, otherwise it would be conferring power on the High Court even in excess of that conferred by Section 115 of the Code of Civil Procedure."

6. Similarly, in a Full Bench decision of this Court reported in Mukand Lal Vs. Gaya Prasad and Others, Sulaiman, C. J. observed that a superior Court cannot in the exercise of its inherent power dictate to a subordinate Court how to decide a particular point arising in a case. The inherent power has to be exercised by the Court itself in relation to the proceedings that take place in that very Court. The power referred to in Section 151 of the CPC would not include a power similar to the power given u/s 115 of the Code. Further it was observed in the

same judgment as follows:

"Section 151, Civil Procedure Code, does not in terms confer any inherent jurisdiction on the Courts, but merely preserves the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Ordinarily as pointed out by the learned Judge who referred the case first, the preservation of the inherent power would not enable Courts to extend the scope of powers specifically conferred upon them by other provisions of the Civil Procedure Code, and that Section 151 should not be utilised so as to make it supplementary to Section 115, Civil Procedure Code. The inherent powers, which can be exercised by a superior Court, are ordinarily such powers as are necessary to exercise in relation to proceedings pending before it."

The present case is a worse one. In the present case the Board had directed the inferior Court viz., the Collector to exercise power in respect of an act which had occurred not even in the Court of the Collector. The act complained of was actually committed in a third Court viz., the Court of the Compensation Officer. In the present case, therefore, the higher Court had asked the lower Court to exercise its power in relation to an act which was not even done in that Court, but which was done in another Court.

7. On behalf of the petitioner the learned counsel also invited my attention to a decision of this Court in *Mt. India and Others Vs. Lachmi Narain and Another*. The relevant passage runs as follows:

"Learned counsel for the appellant claimed that his client was entitled in equity to a refund; but the only section to which he could refer was the general Section 151 of the Code of Civil Procedure. Recourse should not be had to a general section of that nature for a remedy which does not come under some positive rule of law."

8. On behalf of the opposite parties, the learned counsel argued that it was open to the Board to pass the aforesaid order u/s 35 of the U.P. Encumbered Estates Act. Section 35 of the U.P. Encumbered Estates Act runs as follows.

"If at any time after the decrees granted by the special Judge have been sent to the Collector under the provisions of Section 19 any person entitled to possession of any property under the provisions of this Act applies to the Collector to be put in possession of such property the Collector shall deliver possession of such property to him."

9. In my opinion, section 35 of the U.P. Encumbered Estates Act, 1934 is clearly inapplicable to the present case. It merely authorises the Collector to put persons who have become entitled to the possession of the property in possession of the same. In order to interpret Section 35 correctly, it is to be read in the light of the preceding sections. u/s 18 of the U.P. Encumbered Estates Act, 1934 the effect of a decree of the Special Judge under Sub-section (7) of Section 14 is to extinguish all previously existing rights of the claimant together with all

rights, if any, of mortgage or lien by which the property is secured and to substitute therefore a money decree. Section 24 relates to the realisation of the value of the debtor's property and the application of its proceeds for liquidation of debts. Section 25 of the old Act related to the liquidation of debt by grant of a mortgage. Section 28 of the old Act related to the transfer of proprietary rights and order for payment in installments where debts exceeded proprietary value in land. Section 24 of the old Act related to the sale at the instance of the creditor by public auction of the share of proprietary rights of the debtor in land already transferred to him i.e., the creditor. Thereafter, followed Section 35.

It is obvious that Section 35 related to the persons referred to in the preceding sections. It would not, in my opinion, cover bonds which are moveable property and have already come into the hands of the debtor. If the argument of the learned counsel for the opposite parties is accepted that it would mean that even if the bonds are transferred by the debtor, it would be open to the Collector u/s 35 of the U.P. Encumbered Estates Act, to follow the bonds in the hands of a third party and to recover the same. In any case, the direction for stopping the payment of installments of bonds and attachment of the moveable and Immovable property of the debtor cannot be justified even by the application of the provisions of Section 35.

10. The next argument of the learned counsel for the opposite parties was that u/s 7(2) of the U. P. Encumbered Estates Act, the debtor is barred from taking delivery of compensation bonds. I am unable to accept this contention. Section 7(2) of the Encumbered Estates Act only lays down that after the passing of an order u/s 6 by the Collector, the landlord shall not be competent without the sanction of the Collector to make any exchange or gift of, or to sell, mortgage or lease, his proprietary rights or any portion of them. The compensation bonds do not fall within the ambit of the properties referred to therein. Further this is not a case of exchange, gift, sale, mortgage or lease of any property. This provision of law has, therefore, no application to the present case.

11. Learned counsel for the opposite parties further relied on the provisions of Section 144 of the CPC under which an application for restitution can be made in cases where a decree of the Court of first instance is varied by a higher Court. I fail to see how this provision of law is applicable to the circumstances of the present case. It is not the case of the opposite parties that they are entitled to recover the bonds -because the decree passed by the Special Judge was varied by the higher Court.

12. In the alternative, the learned counsel for the opposite parties argued that a writ can only issue where the legal right of a party is infringed. In this connection, he referred to cases reported in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and *Sri Durga Gita Vidyalaya Association Vs. State of U.P. and Others*, . It cannot be denied that the bonds in the present case were the property of the debtor. By stopping the payment of the same as well as by attaching his other moveable and Immovable

property, the legal rights of the petitioner are being infringed. In fact the argument of the learned counsel for the petitioner was that this amounted to an invasion of his fundamental right to hold and possess property under Article 19(f) of the Constitution of India.

13. In this connection, another argument advanced by the learned counsel for the opposite parties was that the grant of relief by way of writ by the High Court was a discretionary one. The conduct of the petitioner in the present case was blame-worthy. On the other hand, on behalf of the petitioner it was argued that there is nothing in the U.P. Encumbered Estates Act prohibiting the debtor from taking delivery of the compensation bonds. It was the imperative duty of the creditor and of the Collector to apply before the Compensation Officer that the said bonds be placed at the disposal of the Collector. The creditor as well as the Collector were negligent in performing their own duties. The U.P. Encumbered Estates Act did not prohibit the debtor from taking delivery of the bonds. On the other hand, Rule 77 framed under the Act called upon the debtor to take delivery of the bonds within the specified period. No prohibitory order was issued by any Court, and, in the absence of any application by the Collector or by the creditor, his action was not against law. No such finding was given by any of the lower Courts or even by the Board. Even though the conduct of the petitioner in this regard might be improper it cannot be said to be against law. In any case, that cannot justify illegal action by the authorities.

14. In this connection, the learned counsel for the parties referred to a case of this Court reported in *Azizun Nisa and Others Vs. Asst. Custodian and Others*, . In this case the relief by way of writ to the petitioner was refused on the ground that the petitioner was guilty of laches. I do not see how this case is helpful to the opposite parties. On the other hand, it is a case against the creditor in so far as the party guilty of laches is not the debtor but the creditor.

15. Learned counsel for the opposite parties then relied on a case reported in *Niranjan Prasad Vs. State and Others*, for the proposition that a party guilty of suppressing facts is disentitled from obtaining relief by way of writ. In this case the reference to suppression of facts related to the facts recited in the writ petition itself. In the present case, there is no grievance that the petitioner suppressed any facts in the writ petition.

16. In the end the learned counsel for the petitioner referred to *Raghubir Singh v. Deputy Director (Consolidation) 1960 R. D. 323*. In this case it was held that the High Court could not interfere on mere technicalities unless there was substantial miscarriage of justice. In the present case the grievance on behalf of the petitioner is that the action sought to be taken against him is beyond the jurisdiction of the Court and infringes his fundamental rights. It is further argued that he was not under any legal obligation to give any information to the Compensation Officer or to disclose any facts to him. On the other hand, it was the duty of the opposite party No. 3 or the Collector to take the necessary action and to ask for the relief provided under the law. They having failed to take

advantage of a course which the law had laid down for obtaining a certain relief cannot now invoke the jurisdiction of the Court u/s 151 of the CPC for the purposes of inventing novel relief's for which there is no sanction in law. Particularly, the fundamental rights possessed by a citizen cannot be invaded without the authority of law. Such authority of the law should be clear, definite and specific. If the argument advanced on behalf of the opposite parties is accepted then the Collector u/s 151 of the CPC could also order the arrest of the petitioner for failure to deposit the compensation bonds. In fact, it was stated on behalf of the opposite parties that this could be done. I am unable to accept this contention. Resort cannot be had to the inherent powers of the Court u/s 151 of the CPC for the purposes of resorting to measures which affect the fundamental rights of a citizen in the absence of express provisions of law in that respect.

17. For the above reasons, I am of opinion that there is force in the contention advanced on behalf of the petitioner. I, accordingly, allow this writ petition and quash the order of the Board dated the 30th of August, 1960/6th September, 1960 in so far as it relates to directions Nos. (i) and (iii) mentioned above. The petitioner will be entitled to his costs.