

(1976) 07 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 1335 of 1975

Babulal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-07-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) WLN 221

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajindar Sachar, J.—This is a petition under Article 226 challenging the action of the respondents in seeking to realise Rs. 25,684/- from the petitioner by resorting to Section 256 of the Rajasthan Land Revenue Act (herein after called as "the Act").

2. The Government of Rajasthan invited tenders for the transportation of food grains during the famine year 1968-69, but no tender was received for Shergarh Tehsil. The petitioner's case is that he was asked by Mr, J. P. Chandnani, the then Additional Collector, to do the work of transportation at the old rate and he thereupon agreed to do so. The respondents however state that no such request was made to him, rather the petitioner himself applied as per his letter the 17th September, 1968 (Ex. 1) in which he offered to transport the food grains to Shergarh Tehsil at the old rate of 1967 during which period he had also worked. For the present controversy it is really net material under what circumstances the petitioner happened to transport b cause the fact remains that he did agree to carry on this transportation work to Shergarh Tehsil The petitioner's case further is that he was only willing to do so because he was assured orally by the Additional Collector that he would be paid separately loading and unloading charges 10 paisa each The respondents deny that there was any such agreement by the Additional Collector and maintained that the petitioner agreed to do the

work only on the rates of 1937. The petitioner completed his work. It is common ground (hat he was paid the amount of transportation including the said loading and unloading charges, an amount of Rs. 25,684/- was paid to the petitioner by receipts F.V.C. No. 88, 89 and 90 of 25 3.71 as loading and un-loading charges Three years later namely, on 30-11-74 the petitioner was addressed a letter in which he was informed that the Accountant General had observed that the said payment of Rs. 25,684/- was unauthorized and a writ of demand was issued to him u/s 229 of the Act. The petitioner thereafter took up the matter with the Collector and pointed out that he had been paid this amount in pursuance of the oral agreement and that there was no jurisdiction to recover this amount from the petitioner. Apparently the petitioners request did not hold any result and the respondents having insisted on recovering the said amount as arrears of land revenue the petitioner moved this Court by this petition.

3. The sole point argued by the counsel for the petitioner is that if respective of the merits of the amount being due or not there is no jurisdiction in the respondents to recover the said amount as arrears of land revenue because Section 256 of the Act which deals with the various moneys which may be recovered under the Act in the manner as an arrear of land revenue does not cover the present payment. Reference to Section 256 does bear out the contention of the counsel for the petitioner because broadly the sums of money which can be recovered are those like fee, rates, cusses, premium and such other similar dues under the Act. The counsel for the respondents has not been able to point out any of the subclasses under which the said payment could be recovered as an arrear of land revenue. The petition therefore to the extent that it seeks to restrain the respondents from recovering this amount as arrears of land revenue has to be allowed and the writ of demand created on the petitioner is hereby quashed.

4. I may however make it clear that I am not deciding whether the contention of the petitioner that an agreement was made with him to pay the loading and unloading charges is correct or whether the respondents stand that there was no such agreement is the correct position, nor does the present decision in any way prevent the State from seeking to recover any amount which it feels is due from the petitioner in a manner permitted by law. The present writ petition is only concerned with striking down the mode of recovery which was followed by the respondents and which is not permitted by the statute.

5. With these observations the petition is allowed as above but there will be no order as to costs.

6. The counsel for the petitioner informed me that in pursuance of the writ of demand the house of the petitioner was sold at a public auction on 20.4.76 but that the same had not been confirmed. The petitioner may inform the authorities concerned and take appropriate steps in the light of this judgment.