
(1968) 07 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 399 of 1967

Bhagwan Dass

APPELLANT

Vs

The Estate Officer, Capital Project and Another

RESPONDENT

Date of Decision : 25-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 36
Constitution of India, 1950 — Article 226
Punjab Land Revenue Act, 1887 — Section 3(1), 3(3), 3(6), 3(7), 3(8)

Citation : (1969) 2 ILR (P&H) 281

Hon'ble Judges : S.S. Sandhawalia, J; R.S. Narula, J

Bench : Division Bench

Advocate : R.N. Mittal, for the Appellant; Anand Sarup, General, J.C. Verma and H.S. Gujral, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—In this appeal under Clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court dismissing the Appellant's writ petition under Article 226 of the Constitution, the ultimate question that has to be answered will depend on the interpretation of Sub-section (2) of Section 99 of the Punjab Land Revenue Act, 1887 (Act 17 of 1887), hereinafter referred to as the Act.

2. Shorn of unnecessary details, the facts relevant for the decision of this appeal are that one Nand Singh purchased shop-cum-flat plot No. 18 in Sector 21-C. Chandigarh, from the Punjab, Government. For raising the requisite construction on the plot Nand Singh obtained a loan from the Punjab Government, in pursuance of certain Government-sponsored housing scheme, which was repayable by instalments. Nand Singh utilised the loan and put up a building on the plot in question. He, however, committed default in payment of the instalments of the loan; and the entire, property, i.e., the land with its superstructure, was sold by public auction to Jiwa Singh, Respondent No. 2, on

August 25, 1966. Before the property was auctioned, Nand Singh had already put in Bhagwan Bass Appellant as a tenant in the shop portion thereof. The sale in favour of Jiwa Singh Respondent was confirmed with effect from October 5, 1966. On October 13, in that year the Appellant received a notice from the Estate Officer, Capital Project, Chandigarh, asking the Appellant to vacate the shop within seven days and to hand over vacant possession of the same to the Estate Officer, failing which he would be evicted therefrom forcibly without any further notice to him. He was told in the notice that he was liable to eviction because the property had been sold u/s 75 of the Act for the recovery of the arrears of the loan which was due from Nand Singh. The Petitioner claims that the execution of this order for eviction was stayed for one month by the order of Chief Commissioner, Chandigarh Administration, dated October 18, 1966. Ultimately on November 18, 1966, the Estate Officer ordered forcible eviction of the Appellant from the shop in question. It was in the above said circumstances that the Appellant came to this Court under Article 226 of the Constitution on November 15, 1966, with a prayer for the issue of an appropriate writ or order directing the Estate Officer, who was exercising the powers of Collector, to forbear from taking any action to eject the Appellant from the premises in question and also to quash the order contained in the abovementioned notice of eviction. The writ petition was contested on behalf of the Estate Officer as well as on behalf of Jiwa Singh. By the judgment under appeal the learned Single Judge dismissed the writ petition on November 15, 1967. He found that the property had been sold u/s 75, of the Act for recovery of the outstanding amount of loan due from Nand Singh as arrears of land revenue in exercise of the powers conferred on the first Respondent, who was admittedly acting as Collector, u/s 98(dd) of the Act. The learned Single Judge further found that the Government was entitled to recover the outstanding amount of the loan not only from the plot of land but also from any other property of Nand Singh defaulter, including the superstructure on the plot in question, because of the provisions of Section 67(h) of the Act read with Section 77 thereof. The learned Single Judge then relied on Section 76 of the Act, which is related to a sale u/s 75 of the Act, in accordance with which all contracts made by any person other than the purchasers in respect of the land prior to the sale become void as against the purchaser at the sale. It was held that under Rule 43 of the Land Revenue Rules the tenant of the property had to be evicted therefrom in the manner provided by Rule 35 of Order 21 of the Code of Civil Procedure. As already stated, the writ Petitioner has become up in appeal as he is not satisfied with the judgment of the learned Single Judge.

3. Mr. R.N. Mittal, the learned Counsel for the Appellant, has not contested before us the fact that the entire property in question was liable to sale for the recovery of the amount which was due from Nand Singh. Nor has he questioned the fact that consequent on the sale, possession of the entire property, including the shop in dispute, had to be delivered to the auction-purchaser, i.e., Respondent No. 2. The learned Counsel confined his arguments to only three

aspects of the case. Broadly speaking he has firstly contended that the sale in question could in the circumstances of this case be conducted only u/s 77 of the Act and not u/s 75, the result of which situation is that Section 76 of the Act would not be applicable to the sale and the Appellant who was a tenant in the property would not be liable to be actually ejected from the shop as his contract with Nand Singh would not be void as against Jiwa Singh, Respondent No. 2. His second submission really flows from the first. This is to the effect that in exercise of the powers conferred on the Collector by Rule 43 of the aforesaid rules, possession has to be delivered by the Appellant to Respondent No. 2 under Rule 36 of Order 21 and not under Rule 35 of that Order of the Code of Civil Procedure, i.e., only symbolical possession and not actual physical possession of the shop is required to be delivered to Jiwa Singh. The last argument of Mr. Mittal is that even if the sale is deemed to have been conducted u/s 75, the contract of tenancy which was entered into by the Appellant with Nand Singh is not nullified by Section 76(1) of the Act, a proposition for which support is sought from a Division Bench judgment of the Madras High Court to which reference will be made hereinafter.

4. In order to appreciate the main argument of Mr. Mittal, it is necessary to take notice of certain provisions in the Act and of Rule 43 of the aforesaid rules. Section 3(1) defines "estate" as any area for which a separate record-of-right has been made, or any area which has been separately assessed to land-revenue, etc., or which the State Government may by general rule or special order declare to be an estate. It is the common case of the parties before us that the property which has been sold out in this case does not fall within the definition of "estate" referred to above and the State Government has not made any general rule or special order declaring any such properties within Chandigarh to be estates. "Holding" has been defined in Sub-section (3) of Section 3 to mean "a share or portion of an estate held by one land-owner or jointly by two or more landowners." The property in question not being an estate or a portion thereof, it cannot possibly be argued that it comprises a holding within the meaning of Section 3(3) of the Act. Sub-section (6) of Section 3 defines "land-revenue and Sub-section (7) states that "arrear of land-revenue" means land-revenue which remains unpaid after the date on which it becomes payable." Once again it may be made clear that the property in this case was not sold for recovery of any actual arrears of land-revenue as such. "Defaulter" has been defined in Sub-section (8) of Section 3 to mean "a person liable for an arrear of land-revenue, and includes a person who is responsible as surety for the payment of the arrear." It is conceded that Nand Singh was a defaulter inasmuch as the amount in question was recoverable from him as an arrear of land-revenue, though in fact it was not an arrear of land-revenue itself.

5. The provisions relating to recovery are contained in Chapters VI and VII of the Act. Chapter VI starts with Section 61 and ends with Section 96. Sub-section (1) of Section 61 provides that "in the case of every estate, the entire estate and the land-owner or, if there are more than one, the land-owners jointly and severally,

shall be liable for the land-revenue for the time being assessed on the estate." There are certain provisos to the above provision and there is a second sub-section to that section with which we are not concerned. Section 67 in Chapter VI then states that subject to the other provisions of the Act, an arrear of land-revenue may be recovered by any one or more of the eight methods mentioned therein. The first process referred to in Clause (a) of that section is by service of writ of demand for which specific provision is made in Section 68. Clause (b) authorises recovery being made by arrest and detention of the defaulter for which detailed procedure is laid down in Section 69. Clause (c) relates to recovery by distress and sale of the movable property and uncut or ungathered crops of the defaulter for which detailed provisions are contained in Section 70. Under Clause (d) of Section 67 recovery can be made by transfer of the holding of the defaulter in respect of which the arrear is due and for this manner of recovery procedure is laid down in Section 71. Section 72 of the Act is related to Clause (e) of Section 67 and provides the method by which an arrear of land-revenue can be recovered by attachment of the estate or holding in respect of which the arrear is due. Clause (f) of Section 67, for which detailed provision is contained in Section 73, refers to recovery by annulment of the assessment of the State or holding. Clause (g) provides the process of recovery by sale of estate or holding and the procedure for recovery by that method is described in the following words in the purview of Section 75:

When an arrear of land-revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector, with the previous sanction of the Commissioner, may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due.

Section 76(1) then reads--

Land sold under the last foregoing section shall be sold free of all incumbrance; and all grants and contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale.

Sub-section (2) of that section is not relevant for our purposes. Clause (h) of Section 67 provides the last process of recovery "by proceedings against other immovable property of the defaulter." The circumstances in which resort can be had to proceedings against the other immovable property of the defaulter and the manner in which such proceedings may be taken are provided in Sub-section (1) of Section 77 which reads--

If the arrear cannot be recovered by any of the processes hereinbefore provided, or if the Commissioner considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding, or any other immovable property, proceed under, the provisions of this Act against that property as if it were the land in respect of which the arrear is

due:

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

Sub-section (2) to (5) of Section 77 do not concern us for the decision of this appeal.

6. As already stated, Section 96 is the last provision in Chapter VI of the Act. Chapter VII starts with Section 97. Section 98, which is the second section in Chapter VII, provides that in addition to any sums recoverable as arrears of land-revenue under the Act or any other enactment for the time being in force, the sums specified in Clauses (a) to (e) of that section may also be recovered as arrears of land-revenue. Clause (dd) of Section 98 provides that a loan advanced by the State Government towards the cost of a house or site under a Government sponsored housing scheme together with interest chargeable thereon and costs, if any, incurred in making or recovering the same may be recovered as arrears of land-revenue. This takes us to Section 99 which is the last provision in Chapter VII. The whole of this section has to be quoted in order to appreciate the rival contentions of the learned Counsel for the parties:

99(1) The provisions of Chapter VI shall, with respect to any sum mentioned or referred to in this Chapter, apply, so far as they can be made applicable as if the sum were an arrear of land-revenue and the person from whom, either as principal or as surety, it is due were a defaulter in respect of such an arrear.

(2) Unless any such sum is declared by any enactment for the time being in force to be recoverable as if it were an arrear of land-revenue due in respect of the land charged therewith, the provisions of Section 77 shall apply under Sub-section (1) to the recovery thereof.

7. It is the common case of both sides that Sub-section (1) of Section 99 makes the provisions of Chapter VI of the Act, including Sections 75, 76 and 77, applicable with respect to any sum recoverable under Chapter VII, i.e., any sum referred to in Section 98, but that Sub-section (2) of Section 99 is an exception to the said provision. It is also quite clear that the exception carved out by the Sub-section. (2) of Section 99 is to the applicability of the whole of Chapter VI of the Act to proceedings for recovery of amounts referred to in Section 98 in relation to Section 77 only. According to the construction which Mr. Mittal seeks to place on Sub-section (2) property cannot be sold out u/s 75 of the Act for recovery of any amount due as arrears of land-revenue which is referred to in Section 98. In other words his contention is that for recovery of amounts other than land-revenue itself and other than those for which a specific declaration referred to in Sub-section (2) of Section 99 has been made to the effect that the amount in question would be recoverable as if it were an arrear of land-revenue, the property of the defaulter can be sold only under the provisions of Section 77

and not under the provisions of Section 75 of the Act. On the other hand, the learned Advocate-General for the State of Haryana, who has appeared in this case for the Estate Officer, Chandigarh, as well as Mr. H.S. Gujral, who represents Jiwa Singh, Respondent 2, contend that the plain meaning of Sub-section (2) of Section 99 is that the provisions of Section 77 of the Act shall apply to the recovery of the amounts referred to in Chapter VII, unless by specific declaration referred to in Sub-section (2) exception is made in the relevant enactment. In other words, the Respondents contend that resort can be had by the revenue officers to all the provisions of Chapter VI as well as Chapter VII, i.e., by sale u/s 75 or, in the circumstances referred to in Section 77, by sale under that provision, unless any enactment which provides for the recovery of an amount due to the Government as arrears of land-revenue does specifically declare that the amount in question would be "recoverable as if it were an arrear of land-revenue due in respect of the land charged therewith," in which case resort cannot be had to Section 77.

8. The learned Advocate-General contended that Sub-section (2) of Section 99 provides for machinery for the exclusion of the application of Section 77 by making of the requisite declaration in a given enactment and not for making Section 77 applicable to a specified case only. Besides the patent difference between sales u/s 75 on the one hand and Section 77 on the other to the effect that it is only the property in respect of which the arrears are due that is put to sale u/s 75 on the one hand, the other property of the defaulter can also be sold for the recovery of the amount u/s 77 on the other, the second distinction which is directly relevant in this case is that Section 76, which annuls the pre-sale contracts in respect of the property, applies to sales u/s 75 only and not to sales u/s 77. To be more specific, whereas a contract of tenancy entered into by the defaulter is void against the auction-purchaser in case of a sale u/s 75, such a contract is specifically saved by the proviso to Section 77 in case of a sale under the purview of that provision.

9. To support his contention Mr. Mittal emphasised that Section 75 provides for the sale of only the estate or holding in respect of which the arrear is due. His argument is that inasmuch as no estate or holding is involved in the instant case, no question of recovery of any amount due in respect thereof can arise and that, therefore, Section 75 can have no possible application to this case. This submission appears to us to be somewhat misconceived. There is no doubt that Section 75 would not by itself have applied to the sale in question unless relevant provision had been made in Section 98(dd) for the recovery of an amount which is not due in respect of any estate or holding as arrears of land-revenue. This argument really takes us back to the construction to be placed on Section 99(2) on which the fate of the main contention of Mr. Mittal depends. After carefully considering the matter and giving due weight to all the submissions made by the learned Counsel for the parties on both sides, we are inclined to agree with the learned Counsel for the Respondents that Sub-section (2) of Section 99 is intended to provide machinery for excluding the availability of the other property

of a defaulter for sale u/s 77 in certain circumstances. The scheme of Chapters VI and VII appears to be that whenever arrears of land-revenue have to be recovered, all the processes available under Sections 68 to 76 must first be exhausted, and if it is not possible to recover the entire amount by those processes or those processes are considered to be inexpedient, resort may be had to Section 77 for putting the other property of the defaulter to sale. This is obvious from the opening words of Section 77, which make the exhausting of the processes provided before Section 77, a condition precedent for availing that provision in normal cases. Coming to amounts other than genuine arrears of land-revenue, which may nevertheless be recoverable as such arrears because of the provisions of Section 98, it is provided in Section 99(1) that the provisions of Chapter VI would apply thereto, i.e., recovery of such arrears may be made by any of the processes given in the provisions resting, with Section 77 including Section 75. An exception to that rule is then carved out by Sub-section (2) of Section 99 which provides that a declaration may be made by any enactment that the amount made recoverable as arrears of land-revenue by that enactment would be recoverable as if it were an arrear of land-revenue "due in respect of the land charged therewith" and that in such a contingency the provisions of Section 77 would not be applicable to the recovery of such arrears. Mr. Mittal helped us a good deal in construing Sub-section (2) of Section 99 by stating that if the two parts of the sub-section are put upside down, it is very easy to understand its true meaning. So put, the sub-section reads--

The provisions of Section 77 shall apply under Sub-section (1) to the recovery thereof (the arrears of land-revenue), unless any such sum is declared by any enactment for the time being in force to be recoverable as if it were an arrear of land-revenue due in respect of the land charged therewith.

10. We, therefore, hold that the general rule is that Section 77 will apply for the recovery of any amount described as arrears of land-revenue in any enactment for the time being in force unless the operation and application of Section 77 is specifically excluded in a given enactment by making the declaration referred to in Sub-section (2) of Section 99.

11. The result of our so construing Sub-section (2) of Section 99 is that the amount in question due under Clause (dd) of Section 98 of the Act could be lawfully recovered by the first Respondent in this case by selling the property itself u/s 75 and that the authority of the Estate Officer, as Collector, to sell the property of the defaulter was not restricted to a sale u/s 77 only. After exhausting the remedy u/s 75, the Collector could sell the other property of the defaulter u/s 77 as the application of that section of the Act has not been excluded by any enactment. No question of invoking Section 77 could have arisen till the processes provided by the prior provisions resting with Section 75 had been exhausted. In this case the amount due from Nand Singh was recovered by proceeding against the very property against which loan was taken and the sale was, therefore, rightly conducted u/s 75 of the Act. That being so,

Section 76 of the Act, which applies to land sold u/s 75 only, was clearly applicable to this case and, inasmuch as Sub-section (1) of Section 76 provides inter alia that all contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale, it is clear that the contract of tenancy which was entered into by the Appellant with Nand Singh in regard to the shop portion became void as against Jiwa Singh, Respondent No. 2. This of course is subject to the other contention of Mr. Mittal with which we are shortly going to deal.

12. The applicability of Rule 35 on the one hand and Rule 36 of Order 21 of the CPC on the other is really dependent on the construction of Section 99(2). If the contract of tenancy stood annulled u/s 70(1) in case of sale u/s 75, the tenant would have no such right which would entitle him to give only symbolical possession under Rule 36 of Order 21. If, on the other hand, the contract of tenancy survived in case of sale u/s 77, Rule 35 of Order 21 would have no application to the case and the tenant will not be forcibly ejected from the shop and he would merely attorn to the auction-purchaser by operation of law and be liable to give only symbolical possession under Rule 36. As we have found that the sale was u/s 75 and as the contract of tenancy was annulled by Sub-section (1) of Section 76 of the Act, the Petitioner is liable to be ejected from the shop in the manner provided in Rule 35 of Order 21 in contradistinction to the method provided in Rule 36 of that Order of the Code. It may be mentioned here for the sake of clarity that the provisions of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), are not applicable to the properties situate in Chandigarh", and the question as to what would be the effect of the relevant provisions of that Act in respect of some property to which the Act may apply is not being decided by us.

13. The last contention of Mr. Mittal is based on the judgment of the Madras High Court in Naivarani Matathil Ayya Pattar v. Krishnan and Ors. AIR 1938 Madras 835. While dealing with the provisions of Sections 40 and 42 of the Madras Revenue Recovery Act (2 of 1864), a Division Bench of the Madras High Court observed that tenants holding under kanamdar of a property claiming a right to be paid the value of improvements made by them cannot be held to have an encumbrance over the property within the meaning of Section 42, and that since the purchaser has no protection the tenants of the kanamdar cannot be evicted in proceedings following the sale of the property of the owner for recovery of arrears of the Government revenue under the said Madras Act. We have seen the Madras Act, but have not been able to find in it any provision relating to the matter in dispute which corresponds to the provisions of Sub-section (1) of Section 76 of the Act. That being so, the judgment of the Madras Court is not relevant to the issue before us. In fairness to the learned Advocate-General for the State of Haryana, it may be noticed that he raised an objection before that the main point had not at all been argued before the learned Single Judge in the manner in which it has been argued now. In view of the importance of the question involved in the relevant submission of Mr. Mittal, we allowed this point

to be urged and have dealt with it.

14. No other argument having been advanced before us, this appeal fails and is dismissed. In the circumstances of the case, however, we direct that the costs shall be borne by the parties as incurred by them.