

(1939) 03 PAT CK 0004

In the Patna High Court

Bharath Bhushan Prasad Singh

APPELLANT

Vs

Secretary of State and Others

RESPONDENT

Date of Decision : 15-03-1939

Acts Referred:

Northern India Ferries Act, 1878 — Section 7A
Revenue Recovery Act, 1890 — Section 4(2)

Citation : AIR 1939 Patna 517

Hon'ble Judges : James, J; Fazl Ali, J

Bench : Full Bench

Judgement

Fazl Ali, J.—The only question to be decided in this appeal is whether Section 4, Clause (2) Revenue Recovery Act, Act 1 of 1890, is applicable to the facts of the present case; or in other words, whether the present suit should have been instituted in the Civil Court at Mirzapore in the United Provinces, or in the Civil Court at Chapra in this province. It appears that on 30th May 1935, the Collector of Mirzapore issued a certificate for a sum of Rs. 14,399-9-0 and sent it to the Collector of Saran with a request to recover it from the appellant under the provisions of the Revenue Recovery Act and remit it to his office at Mirzapore. The sum mentioned above was said to be recoverable on account of the rent of a public ferry settled by the District Board of Mirzapore with the father of the appellant. On receipt of the certificate, the Collector of Saran sold certain properties of the appellant and on 31st October 1936, the appellant paid under protest the entire sum for which the certificate had been issued to save his properties. On 6th November 1937, he instituted the present suit in the Court of the Subordinate Judge of Saran at Chapra for recovery of the amount paid by him, on the ground that he was not liable to pay that amount or any part thereof. The suit was resisted by the Secretary of State and the District Board (who were defendants 1 and 2), on various grounds. One of them was that the suit was not tradable by the Subordinate Judge of Saran and should have been instituted in the Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate was situate. This last contention has been

accepted by the learned Subordinate Judge of Saran who has directed the plaint to be returned for presentation to the proper Court. Hence this appeal. Section 7-A, Northern India Ferries Act (Act 17 of 1878), provides that:

The Provincial Government may direct that any public ferry, wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the Province be managed by that Council or Board, and thereupon that ferry shall be managed accordingly.

2. As in the present case the ferry was settled by the District Board, it may be presumed that the District Board, had been authorized by the Provincial Government to manage it. Section 9 of the same Act provides that:

All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the District in which such ferry is situate as if they were arrears of land revenue.

Section 3(I), Revenue Recovery Act (Act 1 of 1890) provides that:

Where an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating:

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

Sub-sections (2) and (3) of Section 3 run as follows:

(2) The certificate shall be signed by the Collector making it (or by any officer to whom such Collector may, by order in writing, delegate this duty), and, save as otherwise provided by this Act, shall be conclusive proof of the matter therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.

3. Now it is not disputed that if the present certificate can be held to be issued under this Section the suit should have been instituted not at Chapra but at Mirzapore in view of what is provided in Section 4. This Section reads thus:

(1) When proceedings are taken against a person under the last foregoing Section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the re-payment of the amount or the part thereof so paid.

(2) A suit under Sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

4. Now what is contended on behalf of the appellant is that even though the sum for which the certificate was issued may be assumed to have been recoverable as an arrear of land revenue by virtue of Section 9, Northern India Ferries Act, this sum was payable to the District Board of Mirzapore, and not to the Collector, and therefore the case does not fall u/s 3, Revenue Recovery Act. For the purpose however of deciding whether the present case falls under Sub-section (2) of Section 4 of the Act, we cannot overlook the provisions of Section 5 of the Act which are to the following effect:

Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

5. According to this Section the sum for which the certificate has been issued in the present case was recoverable by the Collector as an arrear of Government revenue as if the sum was payable to himself. In other words for the recovery of the sum the Collector had to follow the procedure laid down in Section 3 of the Act in spite of the fact that the ferry had been settled by the District Board. This brings the case directly within Section 4, because all that the Section requires is that the

proceedings are taken against a person under the last foregoing Section for the recovery of an amount stated in a certificate.

6. If we read Sections 3 and 5 together, it follows that whether the amount stated in a certificate is recoverable as payable to the Collector or as payable to any public officer or any local authority other than the Collector, the proceedings taken against the defaulter must be the proceedings referred to in Section 3 of the Act. Thus, I have no doubt in my mind that Sub-section (2) of Section 4 is fully applicable to the present case and the suit should have been instituted in the Civil Court at Mirzapore and not at Chapra. The appeal therefore fails and the order of the Court below must be upheld.

7. The District Board of Mirzapore, defendant 2 in the suit, has filed a cross-objection on the ground that the sum of Rupees 59 awarded as costs to the defendant by the Court below is inadequate; but as there is no error of principle in the order passed by the Court below, I am not prepared to interfere with that order. I would dismiss the cross objection also. The Secretary of State and the

District Board are entitled to their costs in this Court. Hearing fee in each case will be two gold mohurs.

James J.

I agree.