
(2005) 05 KAR CK 0003
In the Karnataka High Court
Case No : Writ Appeal No. 1225 of 2001

Canara Bank

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-05-2005

Acts Referred:

Income Tax Act, 1922 — Section 46 (2)
Karnataka Land Revenue Act, 1964 — Section 158, 158 (1), 190

Citation : (2005) 6 KarLJ 246

Hon'ble Judges : V. Jagannathan, J;S.R. Nayak, J

Bench : Division Bench

Advocate : Padubidri Raghavendra Rao, for the Appellant; Deshraj, Government Advocate for Respondent Nos. 1 to 3, Ganesh Bhat Y.H. and U.P. Muliya, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The appellant is Canara Bank and it has preferred this writ appeal against the order of the learned Single Judge dated 16-1-2001 passed in Writ Petition No. 29644 of 1994.

2. The facts leading to the filing of the writ petition be noted briefly in the first instance and they are as follows.--

Respondent 5 herein, viz., M/s. Azad Industries, situated in Mangalore was an industry established in the year 1961. It was engaged in the activity of manufacturing biscuits and other confectionery items. Respondent 5 was closed down in the year 1966, it is stated, due to a dispute between the partners of the firm. It transpires that respondent 5 was due in a huge sum of amount to the State Government towards sales tax. It was also due in a sum of Rs. 1,00,000/- and more to the Corporation of the City of Mangalore as Corporation Tax. It appears that, it has committed serious lapses and defaults in the payment of gratuity, provident fund, bonus, wages, E.S.I. contribution, etc., legitimately due to its employees. In the circumstances, the employees of respondent 5 raised an

industrial dispute in the year 1988 regarding non-payment of wages, bonus, gratuity, E.S.I. contribution and other statutory dues due to them, before the Labour Court, Mangalore. The Labour Court passed an award directing respondent 5 to pay a sum of Rs. 30,17,081.91 ps. as wages and bonus etc., to its employees. The award of the Labour Court was gazetted. Nevertheless, respondent 5 did not honour the award. When the matter was brought to the notice of the Government of Karnataka by the Labour Department, the matter was referred to the Deputy Commissioner, Dakshina Kannada District, Mangalore, for recovery of the amount under the provisions of the Karnataka Land Revenue Act, 1964 (for short, "the Act"). Notwithstanding the issuance of notice by respondent 3, who was authorised to recover the money, respondent 5 did not satisfy the award. It appears, in the meanwhile, the Canara Bank filed a suit in O.S. No. 125 of 1986 on the file of the Civil Judge, Mangalore, against respondent 5 and its partners for recovery of Rs. 23,69,732.20 ps. with costs and interest not only personally from the defendants therein, but also by sale of the plant and machinery and mortgaged properties and that the suit was decreed on 23-6-1986.

3. Since respondent 5 refused to satisfy the demand raised by respondent 3, respondent 3 took steps for sale of the properties to satisfy the said claim estimated at Rs. 59,14,688.15 ps. The said sum includes the amount due to the State Government as sales tax, the amount due to the Mangalore City Corporation as Corporation Tax, and the amounts due to the employees of respondent 5 pursuant to the award passed by the Labour Court, Mangalore, and certain other statutory dues. At this stage, respondent 5 as well as the Bank approached this Court by filing Writ Petition Nos. 4977 and 4715 of 1994 respectively. Ultimately, by virtue of the interim order and directions issued by this Court in those proceedings, auction was held on 28-9-1994 and the bid of respondent 4 herein for Rs. 65,00,000/- was accepted by respondent 3. At this stage, the present Writ Petition No. 29644 of 1994 was filed seeking intervention of this Court. This Court, in the writ petition, passed an interim order staying confirmation of the auction sale held on 28-9-1994.

4. In the writ petition, the appellant-petitioner has prayed for the following reliefs.--

"(1) Issue a writ of mandamus or any other appropriate writ, order or direction declaring the auction sale of the immovable properties, plant and machinery and other properties in factory and office building bearing Nos. . . , dated 24-10-1568, which are covered by the mortgage decree dated 23-6-1986 obtained by the petitioner in O.S. No. 125 of 1986 on the file of the Court of the Civil Judge, Mangalore, and held by the 3rd respondent on 28-9-1994 in favour of the 4th respondent as illegal and void and restraining respondents 1 to 3 from taking any steps to confirm the sale in favour of the 4th respondent in derogation of the rights of the petitioner-Bank or in the alternative.

(2) Issue a writ of mandamus or any other appropriate writ, order or direction

restraining respondents 1 to 3 from appropriating any amount received by them on account of the auction sale held on 28-9-1994 to any amount said to be due to them without first disclosing the claim of the petitioner-Bank under the mortgage decree in O.S. No. 125 of 1986.

(3) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 1 to 3 to pay all the moneys received by them in respect of the auction sale held on 28-9-1994 with the petitioner-Bank towards the satisfaction of the mortgage decree dated 23-6-1986 in O.S. No. 125 of 1986 on the file of the Court of the Civil Judge, Mangalore.

(4) To issue such other writ, order or direction which this Hon''ble Court deems fit in order to protect, preserve and enforce the rights of the petitioner-Bank as holder of the mortgage decree in the circumstances of the case and in the interest of justice; and

(5) Allow this writ petition with costs".

5. The writ petition was opposed by respondents 1 to 3 on one hand and respondent 4 on the other by filing detailed statements of objections. In the statement of objections filed by respondents 1 to 3, it was contended that, to the extent of satisfying the dues due to the State, they have precedence over the claims of others in terms of Section 158 read with Section 190 of the Act. The learned Single Judge having heard the learned Counsels for the parties and having considered the judgment of the Constitution Bench in the case of Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, and also the judgment of the Supreme Court in the case of Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, , did not find any flaw in the impugned action of respondents 1 to 3. Consequently, the learned Single Judge dismissed the writ petition upholding the claim of respondents 1 to 3-State authorities. Hence, this writ appeal by the aggrieved writ petitioner.

6. We have heard the learned Counsels for the parties.

7. Sri Padubidri Raghavendra Rao, learned Senior Counsel, with his usual persuasiveness and vehemence, would contend that the learned Single Judge applied the ratio of Dena Bank to wrong facts. In other words, according to Sri Padubidri Raghavendra Rao, the ratio decidendi of the judgment in Dena Bank's case has no application to the facts of this case. However, Sri Rao would submit that to the extent of recovery of sales tax due to the State Government, the State Government was well-within its power in invoking the provisions of Section 158(1) read with Section 190 of the Act. Sri Rao submits that the provisions of Section 158(1) and Section 190 would not lend any support to respondents 1 to 3 to contend that the money due to the State Government towards the tax payable to the Corporation of the City of Mangalore or the dues due to the employees of respondent 5 have precedence over the other claims, such as the claim of the appellant-Bank.

8. On the other hand, the learned Counsel for the contesting respondents and the learned Government Advocate would support the judgment of the learned Single Judge.

9. Having heard the learned Counsels for the parties, the short question that arises for our consideration and decision is whether the opinion of the learned Single Judge, in the facts and circumstances of the case, could be faulted. We do not think so. It is trite that all the monies, which are sought to be recovered by the Tahsildar on behalf of the State Government by invoking the provisions of Section 158 read with Section 190 of the Act, are the monies which can undeniably be recovered as arrears of land revenue. It is not and it cannot be the case of the appellant-petitioner that the monies sought to be recovered by coercive acts could not be recovered as arrears of land revenue under Chapter XIV of the Act, to be precise, u/s 158 read with Section 190 of the Act. If this position could not be disputed, the settled law is totally against the appellant. Their Lordships of the Supreme Court, in the case of Dena Bank, in paragraph 15 opined thus:

"15. We have seen that the common law doctrine of priority of crown debts would not extend to providing preference to crown debts over secured private debts. It was submitted by the learned Counsel for the appellant that under the Karnataka Land Revenue Act as also under the Karnataka Sales Tax Act, 1957, the arrears of sales tax do not become arrears of land revenue; they have been declared merely to be recoverable as arrears of land revenue. Relying on the observations of this Court in Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, , vide para 28, the learned Counsel for the appellant submitted that the appellant being a secured creditor the arrears of sales tax could not have preference over the rights of the appellant. It is true that the Constitution Bench has in Builders Supply Corporation case, observed by reference to Section 46(2) of the Income Tax Act, 1922 that provision does not deal with the doctrine of the priority of crown debts at all; it merely provides for the recovery of the arrears of tax due from an assessee as if it were an arrears of land revenue which provision cannot be said to convert arrears of tax into arrears of land revenue either. The submission so made by the learned Counsel omits to take into consideration the impact of Section 158(1) of the Karnataka Land Revenue Act, which specifically provides that the claim of the State Government to any moneys recoverable under the provisions of Chapter XIV shall have precedence over any other debts, demand or claim whatsoever including in respect of mortgage. Section 158 of the Karnataka Land Revenue Act not only gives a statutory recognition to the doctrine of State's priority for recovery of debts but also extends its applicability over private debts forming subject-matter of mortgage, judgment-decree, execution or attachment and the like. In Collector of Aurangabad and Another Vs. Central Bank of India and Another, , the provisions of Hyderabad Land Revenue Act, 1317-F and Hyderabad General Sales Tax Act, 1950 had come up for consideration of this Court. This Court had refused to grant primacy to the

dues on account of sales tax over secured debt in favor of the Bank. A perusal of the relevant statutory provisions quoted in the judgment goes to show that any provision pari materia with the one contained in Section 158 of the Karnataka Land Revenue Act was not to be found in any of the local acts under consideration of this Court in Collector of Aurangabad's case. The effect of Section 190 is to make the procedure for recovery of arrears of land revenue applicable for recovery of sales tax arrears. The effect of Section 158 is to accord a primacy to all the moneys recoverable under Chapter XIV, which will include sales tax arrears".

(emphasis supplied)

The underlined observations of the Supreme Court clearly clinch the issue debated before us. Perhaps realising that an argument could not be put forward against recovery of arrears of sales tax, Sri Rao, would make a concession that the judgment in Dena Bank's case would entitle the State Government to claim precedence over the other claims with regard to sales tax due to it in terms of Section 158 of the Act, without realising that concession has the effect of his main argument. We say this, because, the liability to pay sales tax does not arise under the provisions of Chapter XIV of Karnataka Land Revenue Act, but arises under the Karnataka Sales Tax Act. Since in Dena Bank's case the question was whether the authorities under the Act could invoke the provisions of Chapter XIV to recover the arrears of sales tax treating it as arrears of land revenue and since the Supreme Court in unmistakable terms has held that the arrears of sales tax could be recovered by invoking the provisions of Chapter XIV, the same analogy and reasoning would reply the argument now advanced by the learned Senior Counsel. Therefore, with respect, we reject the argument of the learned Senior Counsel. We do not find any flaw in the reasoning and the conclusion reached by the learned Single Judge.

10. The writ appeal is devoid of merit and it is accordingly dismissed.