

(1981) 01 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 919 of 1974

Danmal	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 08-01-1981

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 257A
Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 82

Citation : (1981) WLN 397

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The petitioner by this writ petition seeks to quash the order of the Tehsildar dated February 14, 1974 (Ex. 6) whereby the petitioner's objections dated February 5, 1974 raised against the demand vide Exhibit-7 dated January 14, 1974, were dismissed.

2. The facts giving rise to the present writ petition may briefly be stated as under: The petitioner Danmal (since deceased) was a Khatedar tenant. The non-petitioner No. 2, Panchayat Samiti, Jaisalmer (hereinafter referred to as the "Samiti") started giving loans in the year 1965-66 under the irrigation scheme for digging wells to the Agriculturists. It appears that the petitioner Danmal applied for advancement of loan to him for digging well In connection with that loan, an agreement dated March 29, 1966 was executed by him in favour of the Samiti for advancement of a sum of Rs. 9 CCO/- for construction of well. The petitioner was paid a sum of Rs. 6,000/- on March 29, 1966 and Rs. 3,000/- were paid to him on August 18, 1969. The petitioner undertook the digging and construction of the well at the place approved by the Samiti but unfortunately after the completion of the work in 1969, it was found that the water was not fit for irrigation as the same was salty and was of inferior quality which fact was brought to the notice of the Samiti and the Tehsildar Jaisalmer. As the petitioner

did not make payment of the instalments, so the Vikas Adhikari sent a demand note for the realisation of Rs. 2,800/- as principal amount and Rs. 3,969.32 as interest total 6,769.32 to the Tehsil, Jaisalmer. Upon receipt of this demand note, the Tehsildar Jaisalmer started recovery proceedings against the petitioner. Writ of demand; Exhibit-7 was served on the petitioner by the Tehsildar. Thereupon objections, Exhibit-5 were filed by the petitioner Danmal. Thereafter on 14th February, 1974 the Tehsildar, Jaisalmer, Respondent No. 3, dismissed the petitioner's objections and ordered for attachment of the movable property of the petitioner. Aggrieved with the order of recovery of the Tehsildar, the petitioner has filed the present writ petition. The petitioner challenged the recovery proceedings on the following grounds:

(1) That the Panchayat Samiti is a Body Corporate and as such has a right to sue or be sued and the only remedy available to the Panchayat Samiti is to institute a suit in the ordinary Civil Court for recovery of the amount of loan and it is not entitled to effect the recovery of the amount of loan by sending a demand note to the Tehsil and realising the amount of loan as arrears of land revenue.

(2) That the procedure prescribed u/s 257A of the Rajasthan Land Revenue Act has not been followed and no application what so ever was sent by the Samiti for recovery of the amount of loan to the Collector. Section 257A provides that an Officer or authority to whom any sum of money referred to in Section 256 or Section 257 is due and payable shall make to the Collector an application in writing in the prescribed form, containing particulars mentioned in the provisions (a) to (g) for recovery of money as Land Revenue, referred to in Section 256 and 257. It is mandatory that the application ought to have been made by the Samiti u/s 257A. Non-compliance of this mandatory provisions according to the petitioner vitiates the recovery proceedings initiated against the petitioner.

(3) The third ground on which the recovery is challenged is that the recovery is barred by limitation. The money was obtained as loan in the year 1966 and 1969 and after a lapse of more than three years the recovery of the amount is barred.

3. The respondents submitted reply to the writ petition wherein it is stated that the petitioner moved an application on February 1, 1966 for the grant of loan amounting to Rs. 30,000/- for the construction of a well and after consideration of the petitioner's application, a loan of Rs. 9,000/- was granted, to be payable in the instalments. The petitioner obtained a sum of Rs. 8,000/- as stated by him. It was denied that the petitioner spent a sum of Rs. 4,000/- from his pocket and it was also stated that the petitioner submitted an account showing expenditure of Rs. 7,820/- in the construction of the well.

4. With regard to the quality of water, the petitioner's averment was not admitted and it was stated that the water in the well is neither of inferior quality nor salty.

5. As regards the petitioner's averment for claiming remission, it is stated that the petitioner did not mention any rule where-under he is entitled to remission.

6. The non-petitioners further stated that u/s 82 of the Rajasthan Panchayat Samitis and Zila Parishads Act (hereinafter referred to as the Panchayat Samitis Act) loan granted by it, is recoverable as arrears of land revenue and under Rule 11 of the Rajasthan Panchayat Samiti (Loan) Rules, 1966, (hereinafter referred to as the "Loan Rules") the demand note could be sent to the Tehsil for recovery. As the amount of demand note was recoverable from the petitioner and the objections raised regarding the validity of the recovery were untenable, so the same were rightly rejected by the Tehsildar, Jaisalmer.

7. The contentions and grounds raised by the petitioner against the recovery of loan were refuted. In the end it was prayed that the petition be dismissed with costs.

8. I have heard Mr. I.C. Maloo learned Counsel for the petitioner and Shri N.M. Lodha learned counsel for the non-petitioners.

9. Shri Maloo's first two grounds have to be considered in the light of the provisions contained in the Panchayat Samitis Act. The first contention of Shri Maloo is that the Panchayat Samiti can only avail the remedy by way of a suit for recovery of loan like all other individuals. And his second contention is that even when loan is to be recovered as arrears of Land Revenue still an application ought to have been submitted u/s 257A of the Rajasthan Land Revenue Act. Both these contentions have to be dealt-with in the light of the provisions of the Panchayat Samiti's Act. As stated above, loans granted by the Panchayat Samiti are recoverable as arrears of Land Revenue u/s 82 of the Panchayat Samiti Act. The Loan Rules further lay-down the procedure for effecting recovery of loans. Rule 11 of the Loan Rules provide that loan will be recovered in accordance with the procedure prescribed under Schedule 3. Clause (1) of Schedule 3 lays down that the Vikas Adhikari shall prepare a demand statement and shall send the same for recovery to Tehsil. It may be mentioned that the Loan Rules provide a special procedure as to how the demand statement is to be sent and to whom it is to be sent for effecting recovery of the amount of loan from the grantees of loan. It is true that for proceedings under the Rajasthan Land Revenue Act the Officers or Authorities to whom the amount is payable, have to make an application in the prescribed form u/s 257A but in my opinion, the provisions contained in Section 257A is a general provision where as in connection with the Panchayat Samitis loans, special provisions are made in Rule 11. Thus, it was not necessary for the Vikas Adhikari to have acted and complied with 257A Land Revenue Act and he was perfectly justified in sending the demand statement under Rule-11 to the Tehsil for making recovery. After receipt of the demand statement the actual recovery is certainly required to be made in accordance with the procedure for the recovery of arrears of Land Revenue. When a special procedure is provided for effecting recovery of loan granted by the Samiti, then it cannot be said that it was essential for the Samiti to have availed the remedy by way of a suit. The Loan Rules lay-down detailed provisions, how and for what purposes the loans can be advanced and what would be the period of limitation

for the recovery and the Loan Rules further provide how and in what manner the loans are to be realised. Thus under the statutory provisions and the Rules it was not necessary for the Panchayat Samiti to have resorted to the ordinary remedy of suit. The remedy availed of by the Samiti is a statutory remedy and such a remedy cannot be denied to the Samiti. Thus, I do not find any force in the first two contentions put forward by Shri Maloo.

10. Shri Maloo's next contention with regard to the "period of limitation as well, is devoid of complete merit. Rule 5 of the Loan Rules provides three categories of loans i.e. Long Term Loan, Mid-Term Loan and Short Term Loan and different periods of limitations have been prescribed for the recovery of three different categories of loans. Under Clause (k) of Rule 5 for loan being advanced under different projects, different periods of limitations have been provided. The petitioner's case falls in the project, Agricultural Deptt. as stated in Schedule-K and the period of limitation prescribed for loan advanced for construction of pakka wells falls under the first category of loan i.e. Long Term Loan and the period prescribed is 18 years. The ordinary period of limitation will not apply with regard to the loan advanced to the petitioner as Rule 6 is a special provision prescribing a different period of limitation. Thus this contention as well of Shri Maloo fails.

11. Shri Maloo in the end submitted that the petitioner has moved an application to the Panchayat Samiti for remission of the amount in accordance with the circular issued by the Government as the petitioner dug the well at the place given by the Panchayat Samiti, the water found on construction of the well is of inferior quality and salty so the petitioner is entitled to remission under the Government circular. In this connection suffice it to say that the concerned authorities may look into the matter and if it is found that the petitioner's case is covered by any circular of the Government under which the petitioner is entitled to remission, then the petitioner may also be dealt with under the circular as other persons similarly situated have been dealt with, giving the benefit of the circular.

12. No other point has been pressed before me. As all the contentions advanced by Shri Maloo are devoid of merit so the writ petition is liable to be dismissed.

13. Consequently, with the above consideration and observations, the writ petition is hereby dismissed. The parties are left to bear their own costs.