

(1974) 08 KL CK 0008

In the High Court Of Kerala

Case No : Original Petition No. 2459 of 1973

Dat Pethe and Another

APPELLANT

Vs

District Collector, Ernakulam and Others

RESPONDENT

Date of Decision : 20-08-1974

Acts Referred:

Constitution of India, 1950 — Article 12
Goa, Daman and Diu Industrial Development Act, 1965 — Section 38
Revenue Recovery Act, 1890 — Section 3

Citation : AIR 1976 Ker 37

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : V. Sivaraman Nair, T.V. Ramakrishnan and K. Raveendran, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Bhaskaran, J.—On inducement of incentive to industrial entrepreneurs, who were willing to start industries in the Corlim Industrial Estate established by the 4th respondent, Industrial Development Corporation, Goa, (for short the Corporation), the 1st petitioner, an industrialist in Cochin, ventured to start an industrial unit by name "Datta Metal Works" by taking five sheds belonging to the Corporation between 14-12-1968 and 5-2-1970; but had to close it down on 18-12-1970 having realised that it was impossible for him to continue it as an economically viable unit.

2. The facts leading to the filing of this writ petition can be summed up as follows:-- Having known that incentive was being offered by the Corporation to enterpreneurs for starting industrial units in the Corlim Industrial Estate, the 1st petitioner took on rent shed Nos. 16 and 19 on 14-12-1968. No. 17 on 23-6-1969, No. 23 on 18-9-1989 and No. 22 on 5-2-1970. While this concern belonging to the first petitioner was functioning there arose difficulties for the first petitioner in carrying on the working of the undertaking due to various

difficulties primarily that of financial stringency and labour trouble. Matters moved to a crisis, and after giving due notice to the Corpora-boil, the first petitioner bad to close down the industry altogether and leave Goa, selling the machineries there itself. He had for the period of his occupation of the five sheds, paid a sum of Rs. 16,357,01 towards rent due. besides having made a deposit of Rupees 7000/-. His case is that at the time when he undertook to start the industry he was told by the Chief Executive Officer of the Corporation that a subsidy of rent to the tune of 50% would be given for the first five years. The rent calculated at the full rate would come to Rs. 39,250.01. After having adjusted the payments, the Corporation found that a sum of Rs. 16,952.17, inclusive of a sum of Rs. 396/- towards the repair charges of the office room in shed No. C-23, was due from the petitioners, and sought to recover the same by resorting to Revenue Recovery proceedings. The contention of the petitioners on the correctness of the amount claimed is that after crediting the amounts paid towards the rent and adjusting the amount in deposit, a sum of Rs. 3750/-would be due to the first petitioner from the Corporation on the basis that he was entitled to subsidy at the rate of 50% as promised at the time of the starting of the industry.

Apart from challenging the correctness of this amount sought to be recovered, the petitioners have raised mainly three contentions: (1) the proceedings initiated for recovery of the amount has no legal basis inasmuch as neither Section 3 nor Section 5 of the Revenue Recovery Act, 1890, for short the Act, has application to the case; (2) the certificate not having been issued in the name of the defaulter, namely the first petitioner, the respondents cannot proceed against him for want of certificate; nor could the 2nd petitioner be proceeded against as he was not a defaulter, even assuming that the first petitioner was a defaulter; and (3) the first petitioner is entitled to raise the plea of equitable estoppel in view of the promise of subsidy to the extent of 50% of the rent for the first five years made by the Corporation at the time of his undertaking to Start the industry.

3. Section 3 of the Act reads as follows:--

"3 Recovery of public demands by enforcement of process in other districts than those in which they become payable.-- (1) 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.

(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 matters 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."

We may also notice the definitions of "Collector" and "defaulter" given in Sub-sections (2) and (3) of Section 2 of the Act.

"(2) "Collector" means the chief officer in charge of the land-revenue administration of a district; and

(3) "defaulter" means a person from whom an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum .

Sri V. Sivaraman Nair, the counsel for the petitioners, contends that the amount alleged to be due to the Corporation cannot be equated to an amount due either to the Collector of the District or to the Government, and in that view on the basis of the certificate alleged to have been issued by the 5th respondent (Collector of Goa), respondents 1 to 3 cannot legally proceed against the petitioners for collecting the amount by coercive methods under the provisions of the Act. Sri N. Dharmadan, the Government Pleader appearing for respondents 1 to 5, submits that the amount due to the Corporation virtually is due to the Government and in that way the Collector of Goa, on intimation from the Chief Executive Officer of the Corporation, is entitled to seek recovery through the machinery provided under the Act. It has to be noted in this context that the certificate issued by the Collector of Goa, the 3th respondent, is stated to be u/s 3 of the Act. In the counter-affidavit on behalf of respondents 4 and 5 it has been stated that the proceedings are initiated u/s 3 of the Act. The last sentence in paragraph 9 of the counter-affidavit reads as follows:

"..... But the liability in this case is a statutory liability covering within the purview of Section 38 of the Act referred to above and this respondent can make the use of Section 3 of the Indian Revenue Recovery Act 1890 for recovering the amount as arrears of land revenue".

Counsel for the respondents has also no case that the matter would fail within Section 5 of the Act. His argument is confined to the application of Section 3 of the Act, though at certain stages he has also attempted to submit that on information having been received from the Corporation, the 5th respondent Collector was competent to issue the certificate against the defaulter under Section 5 also. The decision in this writ petition depends on the decision of the question whether the amount could be considered to be one due to the Government, as evidently it is not shown to be due to the Collector. This naturally involves a consideration of the question whether what is due to the

Corporation is equal to what is due to the Government. Sri Dharmadan has drawn my attention to the Constitution of the Corporation, and the various provisions governing its working, and in particular to Section 38 of the Goa, Daman and Diu Industrial Development Act, 1965, which reads as follows:--

"38. Recovery of sums due to the Corporation as arrears of land revenue.-- All sums payable by any person to the Corporation or recoverable by it by or under this Act and all charges or expenses incurred in connection therewith shall, without prejudice to any other mode of recovery, be recoverable as arrears of land revenue on the application of the Corporation." The other provisions in the Act to which my attention was drawn by the Government Pleader during the course of his argument, are Sections 3, 12, 16, 24 (4), 25 (4), 36, 44 and 45. Section 3 of the above Act lays down-

"3. Establishment and incorporation.--(1) For the purposes of securing and assisting in the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the Goa, Daman and Diu, there shall be established by the State Government by notification in the official Gazette a Corporation by the name of the Goa, Daman and Diu Industrial Development Corporation.

(2) The said Corporation shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire, hold and dispose of property both movable and immovable, and to contract, and do all things necessary for the purposes of this Act"

Section 12, inter alia, provides that the State Government shall appoint a Chief Executive Officer, and a Chief Accounts Officer of the Corporation, Section 16 is to the effect that the State Government may issue to the Corporation such general or special directions as to policy as it may think necessary or expedient for the purpose of carrying out the purposes of the said Act, and the Corporation shall be bound to follow and act upon such directions. Sub-section (4) of Section 24 and Sub-section (4) of Section 25 read as follows:--

Section 24 (4): "A copy each of the annual financial statement and the programme of work and the supplementary financial statement, if any, shall be placed before the Legislative Assembly as soon as may be after their receipt by the State Government".

Section 25 (4): "The State Government shall cause the accounts of the Corporation together with the audit report thereon forwarded to it under Sub-section (3) to be laid annually before the Legislative Assembly." Section 36 vests in the State Government the authority to nominate any officer of the Corporation to be a controller or licensing authority under any law for the time being in force relating to the procurement or distribution of any commodity in respect of the industrial undertakings established or to be established in the industrial estates or industrial areas entrusted to or developed by the Corporation and no such

nomination shall be called into question merely on the ground that such officer is not an officer of the State Government. Section 44 reads as follows:--

"44. Default in performance of duty.--(1) If the State Government is satisfied that the Corporation has made a default in performing of any duty or obligation imposed or cast on it by or under this Act, the State Government may fix a period for the performance of that duty or obligation and give notice to the Corporation, accordingly.

(2) If in the opinion of the State Government, the Corporation fails or neglects to perform such duty or obligation within the period so fixed for its performance, it shall be lawful for the State Government to supersede and reconstitute the Corporation, as it deems fit.

(3) After the supersession of the Corporation and until it is reconstituted in the manner laid down in chapter II, the powers, duties and functions of the Corporation under this Act shall be carried on by the State Government or by such officer or officers or body of officers as the State Government may appoint for this purpose from time-to time.

(4) All property vested in the Corporation shall, during the period of supersession, vest in the State Government". Sub-section (2) of Section 45 is to the following effect:

"(2) From the said date-- (from the date of dissolution)

(a) all properties, funds and dues which are vested in, or realisable by the Corporation shall vest in, or be realisable by, the State Government;

(b) all liabilities which are enforceable against the Corporation shall be enforceable against the Government".

Along with the above provisions counsel for the respondents has also brought to my notice the following condition incorporated in the lease deed executed by the first petitioner while taking the sheds:

"Any dues of the Lessor in respect of the shed shall without prejudice to any other rights, remedies of the Lessors be recoverable from the Lessee as arrears of land revenue".

The contention of the counsel for the respondents is that in view of the above provisions which clothe the Corporation practically with all the powers of a Government the amount due to the 4th respondent should be deemed to be amount due to the Government. In support of his argument he relies on the decision of the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, wherein in paragraph 6 it has been held that the Electricity Board would fall within "other authorities" in Article 12 of the Constitution, The decisions in Bulu Rani Seal Vs. Member, Board of Revenue and Others, and Manohar Lal v. State (AIR 1956 Pepsu 14) are also relied on by the counsel for the respondents in this behalf. The other decisions cited are K.L.

Mathew and Another Vs. Union of India (UOI) and Another, and George v. Coffee Board 0972 Ker LT 367 = 1972 Lab IC 921. The above decisions are relied on for the proposition that because the establishments or organisations considered in those cases were found to have public functions, as enjoined by the statute, to be discharged, they fall within the ambit of Article 12 of the Constitution, the 4th respondent having almost identical characteristics should be deemed to have the status of Government for the purpose of the application of the provisions of the Act.

Besides the above decisions, one other decision strongly relied upon on behalf of the respondents is the one reported in K.N. Gupta v. Collector of Dehradun 1959 All LJ 789 pointing out that that case has dealt with a question of revenue recovery u/s 3 of the Central Act 1890 and that that has direct bearing to the question involved in this case.

4. Sri Sivaraman Nair on the other hand would contend that all the powers conferred on the Rajasthan Electricity Board by statute are not vested in the Corporation, and that other decisions of the Supreme Court have practically set at rest the question, laying down that the Corporations registered under the Companies Act, or which are the creations of some statutory provisions, though may have the semblance of governmental departments, lack in the inherent characteristics and status of the State, and are distinct from Government, looked at from a legal angle, Decisions relied on by counsel for the petitioner are; Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, ; Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another, State Trading Corporation of India Ltd. v. Commercial Tax Officer 1964 2 SCA 201 ;= AIR 1963 SC 1811 ; Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., ; and Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , Apart from these decisions of the Supreme Court, my attention has been drawn to the decisions in Tamlin v. Hannaford 1950 1 KB 18 ; Prafulla Kumar Sen Vs. Calcutta State Transport Corporation and Others, S.K. Mukherjee Vs. Chemicals and Allied Products, Export Promotion Council, R.D. Singh Vs. The Secretary, Bihar State Small Industries Corporation and Another, . The dictum laid down by the Supreme Court in all the decisions appears to be this: It may be that the investment in the Corporation is that of the Government, either of the Central or the State. The Government may have voice in the management, and even control, both administrative and financial, over the affairs of the companies or corporations; it may have the power to nominate members to the governing body and also depute officers for the day-to-day working of the concern, In spite of all these controls, a corporation cannot be considered to be a department of the Government or agent of Government; nor are their employees Government servants in the absence of any statutory provisions conferring such status on them. That a Minister appoints the members or directors of the Corporation and that he is entitled to call for information, to give directions which are binding on the directors, and to supervise the conduct of the business of the Corporation,

are certain characteristics relied on by the Government Pleader in support of his contention that the Corporation has the status of an agent of Government. I find this contention untenable.

5. In Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another, the Supreme Court has laid down as follows:--

"A trading activity carried on by the corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf because according to statute the Corporation has a personality of its own and this personality is distinct from that of the State or other share-holders."

In Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, after having considered whether the contribution made by the Bombay State Transport Corporation would amount to contribution out of public revenue, the Supreme Court held as follows:--

"the funds of the State Transport Corporation could not be regarded as Public revenue, and that the Corporation itself was not a department of Government but a separate legal entity;

that the State Transport Corporation was not a "local authority" as defined by Section 3(31) of the General Clauses Act, 1897;

that the acquisition impugned in the present case having been made for the benefit of a Corporation, though for a public purpose, was bad because no part of the compensation was to come out of public revenues and the provisions of part VII of the Land Acquisition Act, 1894, had not been complied with".

As the legal status of the Corporation in contrast with the Government has been clearly drawn by the Supreme Court in these two cases, I do not think it necessary to examine in detail the other decisions cited by the counsel for the petitioner.

6. In the Allahabad case cited by the counsel for the respondents (K. N. Gupta v. Collector of Dehradun 1959 All LJ 789) we are at a loss to know as to what the constitution of the Rehabilitation Finance Administration was; and we find that the question whether the amounts due to the Administration was or was not, amounts due to the Government did not come for consideration in that case. At any rate, in view of the decision of the Supreme Court it will not be necessary to consider that decision at great length. There could be little doubt that an amount due to the Corporation, incorporated under the provisions of a statute, as a body corporate with perpetual succession and a common seal with right to sue, and liability to be sued in its corporate name, could not be treated as an amount due to the Government for the purpose of invoking the provision of Section 3 of the Act. All that Section 38 of the Goa, Daman and Diu Industrial Development Act, 1965, lays down is that all sums payable by any person to the Corporation shall be recoverable as arrears of land revenue on the application of the Corporation.

The amount referred to is what is due to the "Corporation" as distinct From what was due to Government or the Collector. As the amount is not due to the Collector or to the Government the 5th respondent does not derive jurisdiction to issue the certificate for recovery of the amount as arrears of land revenue. All that the Section contemplates is that the amount is recoverable as arrears of land revenue; and that is possible only by adhering to the procedure prescribed in the Act.

7. Counsel for the petitioner sub-mits that u/s 71 of the Kerala Revenue Recovery Act, 1968, the Government has power by notification in the gazette to declare if they are satisfied that it is necessary to do so in public interest, that the provisions of the said Act shall be applicable to the recovery of amounts due from any person or class or classes of institutions, and thereupon all the provisions of that Act shall be applicable to such recovery, and that there is no case for respondents 1 to 5 that there had been any such notification as far as the 4th respondent is concerned either under the Kerala Act or, if there is an Act in Goa similar to the Kerala Act, under that Act.

8. The next point raised is with respect to the liability of the first petitioner. On this point the pleadings are clear. As soon as the petitioners came to know that proceedings were initiated for recovery of the amount under the Revenue Recovery Act, the second petitioner informed the Deputy Tahsildar by Ex, P-8 letter that he was not a defaulter and the certificate issued treating him as the defaulter would not be available for proceeding against the proprietor of a concern with which he had no legal right. This aspect of the matter has been rebutted by the first petitioner also in Ext. P-9. What the counsel for the respondents would point out is that the second petitioner had been signing many of the correspondence sent to the Corporation; he has been signing as per pro proprietor of the Metal Works-It is also contended in the counter-affidavit that the second petitioner was clandestinely acting as an agent of the 1st petitioner and therefore he is precluded from contending that he is not liable for the amount claimed on the ground that he is not a defaulter u/s 2(3) of the Revenue Recovery Act, 1890; Counsel further contends that where there is a proceeding under the Act against a person, that person may if he denies his liabilities to pay the amount or any part thereof, and pays the same under protest made in writing at the time of payment, the proper course open to that person is to institute a suit for the repayment of the amount so paid. I am afraid, these contentions raised by the counsel for the respondents are matters which cannot stand scrutiny even though that question need not be decided in this case, because the reliefs sought ip this petition do not include the quashing of the certificate alleged to have been issued by the Collector of Goa, the 5th respondent. The two main reliefs sought in this petition are: (1) to restrain the respondents from proceeding on the basis of the certificate issued in the name of the second petitioner against the petitioners; and (2) to restrain by an injunction the proceeding against the petitioners on the basis or the certificate issued. Other questions raised incidentally could be left to be decided by the 5th

respondent or the 4th respondent if and when representations stating their grievances are made by the petitioners.

9. The other point which remains to be disposed of is with respect to the plea of equitable estoppel. Various decisions including that of the Supreme Court in *Union of India v. Afghan Agencies* (AIR 1968 SC 718), *Century Spinning and Manufacturing Company v. Ulhasnagar Municipal Council* (AIR 1971 SC 1021); *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, ; *Achuthan Pillai and Others Vs. State of Kerala and Others*, ; *Ernakulam Mills Ltd. v. State of Kerala* 1971 Ker LT 318 ; *The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., Birlakootam Mavoor, Kozhikode, Kerala and Others Vs. The State of Kerala, Indian Aluminum Co. Ltd. and Others Vs. Kerala State Electricity Board and Others*, *R. Subrahman-yam v. District Collector, Kakkinada* (AIR 1974 Andh Pra 55); and *Uma Shanker Misra Vs. Board of High School and Intermediate Education, U.P., Allahabad and Others*, have been cited by the counsel for the petitioners in support of his contention. The counsel for the respondents has invited my attention to various decisions including *Dhiyan Singh and Another Vs. Jugal Kishore and Another*, : *Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta*, and has submitted that as no specific representation has been made by the petitioners, they cannot be heard to say that the respondents are estopped by the principles of quasi estoppel or promissory estoppel. It is submitted by the counsel for the petitioners that had for assurance of subsidy the first petitioner would not have plunged himself into the venture. The facts show that it was for reasons beyond the control of the petitioners that they had to close down the industry, giving due notice to the 4th respondent, and leave Goa in July 1971 after disposing the machinery practically in Goa itself. Whatever that be. I do not think that I should pronounce anything on this aspect of the matter except express my view that the petitioners appear to have a strong case in support of their contention that the first petitioner started his industrial undertaking at Goa on the promise of subsidy made by the Chief Executive Officer of the Corporation, and that in doing so they acted to their detriment and prejudice, and the 4th respondent cannot go back on the promise given by its Chief Executive Officer. This question is also left open to be decided by the 4th respondent or the Central Government if the petitioners made representation in that behalf. The restricted reliefs sought for in this petition are granted, to the extent of restraining respondents 1 to 3 from proceeding with the steps for recovering the amount on the strength of the certificate stated to have been granted by the Collector of Goa, the 5th respondent.

10. Before parting with this judgment I should like to record my appreciation for the rare sense of detachment displayed throughout the course of argument by Sri V. Sivaraman Nair, the counsel for the petitioners, and Sri N. Dharmadan, the Government Pleader appearing for the respondents. They have also taken considerable pains to enlighten the court on the different aspects of the issues involved in the case.

The writ petition Is allowed as above; there will be no order as to costs.