(1973) 03 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeals No's. 4 and 35 of 1970

Divisional Commr, Srinagar APPELLANT

Vs

Ali Mohamad Meer RESPONDENT

Date of Decision : 15-03-1973

Acts Referred:

Citation : AIR 1973 J&K 81

Hon'ble Judges : Mufti, J;Jaswant Singh, J

Bench : Division Bench

Advocate : A. K. Malik, A.A.G, for the Appellant; J. L. Choudhary and P. L. Handoo, for the Respondent

Final Decision : Allowed

Judgement

Jaswant Singh, J.—These two Letters Patent Appeals Nos. 4 and 35 of 1970 which are directed against the judgment and order dated July

23, 1970, passed by the Hon'ble Chief Justice in Writ Petition No. 120 of 1968 and against the judgment and order dated August 26, 1970

passed by Mian Jalal-u-Din J in Writ Petition No. 1 of 1969. respectively, shall be disposed of by this judgment as they raise common questions of

law.

2. For a proper appreciation of the points involved it is necessary to give a resume of the facts leading to these appeals. From 2007-2008

(Samyat) to 1966-67 (A. D.) Shri Ali Mohamad Mir. respondent in Appeal No. 4 of 1970, is alleged to have collected in his capacity as

Lambardar of village Janwara, Tehsil Sopore land revenue and Abiana totalling Rs. 51843.56 from the land owners under his Lambardari. On

receipt of complaints that the said Lambardar had not remitted the entire amount realized by him to the Government Treasury but had

misappropriated a huge amount therefrom, the Tehsildar, Sopore, held an enquiry into the matter which revealed that the Lambardar had not

deposited by due dates in the Government Treasury an aggregate amount of Rs. 23203.81. Consequently the Lambardar was put under

suspension and proceedings for recovery of the said amount as arrears of land revenue were initiated against him by the Tehsildar, Sopore. On

default of the Lambardar to pay up the amount despite several opportunities afforded to him the Sub-Divisional Officer, Sopore, vide his No.

89/800 dated May 31, 1968. recommended to his superiors that the immovable property belonging to the Lambardar be attached and put to

auction as provided by Section 61 of the Land Revenue Act. hereinafter referred to as. ""the Act."" On the matter eventually coming up before him,

the Divisional Commissioner, Kashmir vide his No. 612-14 LRA dated June 29, 1967 accorded sanction to the attachment and sale to the extent

of the arrears of agricultural land measuring 38 kanals & 18 marlas comprised in Khasra Nos. 287, 391, 522, 274, 928, 548/1 and 291 and a one

storeyed house situate in village Janwara belonging to the Lambardar. On receipt of the sanction the Sub-Divisional Officer attached the aforesaid

property of the respondent and issued a proclamation fixing the date for sale by public auction of the said property. Aggrieved by this order the

Lambardar filed before the original (writ) side of this court a petition, being Writ Petition No. 120 of 1970, praying that an appropriate writ or

order quashing the aforesaid order No. 612-14/LRA of the Divisional Commissioner, Kashmir, respondent No. 1 herein, be issued. It was

averred by the Lambardar that due to drought and floods in the area within his Lambardari the land owners could not pay to him the land revenue

due from them which accordingly remained in arrears and that whatever little could be realized by him as a result of his entreaties and persuasion

was paid into the Government treasury. It was further pleaded by the Lambardar that the impugned order regarding the attachment and sale of his

aforesaid property was illegal and unconstitutional inasmuch as it violated the provisions of Section 69-A of the Act and the alleged arrears were

not due from his holding which was being put to sale. It was also contended by the Lambardar that the amount in question was assigned land revenue which could not be recovered from him as arrears of land revenue under Chapter VII of the Act.

3. The petition was resisted by the appellants who averred inter alia that the Lambardar's assertion that the land-holders had not paid up the land

revenue due from them to him due to drought or floods was wrong and was belied by the different stands taken by him in his applications dated

November 30, 1963. and February 18, 1964. that the land revenue remitted or suspended in view of the floods had not been included in the

amount shown to be outstanding against the Lambardar and that the petition was not tenable as an alternative remedy under the provisions of the

Act was available to the Lambardar which he had not availed of.

4. On the matter coming up before the Hon'ble Chief Justice the contention put forth on behalf of the Lambardar that the amount sought to be

realized from him could not be recovered as arrears of land revenue as it was assigned land revenue found favour with his Lordship, who quashed

the aforesaid order of appellant No. 1. holding that according to the rules framed by the Government land revenue is assigned to the Lambardar

who are paid some percentage thereof as commission and are required to collect the land revenue from the land holders. The contention advanced

on behalf of the appellants that the amount in question was in the nature of a charge under the Act and was recoverable in a summary manner

provided by Section 91 of the Act was repelled by the Hon'ble Chief Justice who held that the procedure laid down in Section 57 (3) of the Land

Revenue Act should be followed by the appellants where a Lambardar collects land revenue but fails to deposit the same in the Government

treasury.

5. The facts giving rise to Letters Patent Appeal No. 35 of 1970, may now be briefly stated:

As a Lambardar of village Koil, Tehsil Pulwamma, Shri Ghulam Mohamad Bhat, respondent in this appeal, is alleged to have collected land

revenue to the tune of Rs. 35,236,.09 between 1954 and 1964 (A. D) and to have failed to remit the same by due dates to the Government

treasury. On demand being made from him he deposited Rs. 26,547/- in the treasury leaying a balance of Rs. 8097.79. As a sequel to his failure to

deposit the balance proceedings for recovery thereof as arrears of land revenue were initiated against him and he was put under suspension. He

thereupon made a representation contending that the land holders had not paid to him the land revenue due from them and he had not at all

misappropriated any amount. On failure, however, of the respondent to settle up the matter and finding that the amount could not be recovered

from him in the ordinary manner, the Tehsildar, Pulwamma, recommended to his superiors that the immovable property owned by the respondent

be attached and put to auction. On the matter being placed before him, the Divisional Commissioner, Kashmir, appellant No 1. herein, accorded

sanction to the attachment and sale u/s 66 of the Act of agricultural land comprising Khasra Nos. 2302/44 Min, 503 Min, 527 Min, 2762/328

Min, 1733 Min. 1443. 2113 Min. 2149 Min. 2150, 2165, 2185, 2138 measuring 50 kanals and six Marias situate in Koil, belonging to the

respondent vide his No. 3782-83-LRA dated February 25, 1969. Aggrieved by this order, the respondent filed on the original (Writ) side of this

court a petition, being writ petition No. 1 of 1969, contending inter alia that the procedure followed in collecting the amount in question as arrears

of land revenue was contrary to Chapter VII of the Act and the amount could be recovered not as a land revenue but by means of a regular suit in

a court of competent jurisdiction. The petition was contested by the appellants herein who denied and controverted the allegations and contentions

raised on behalf of the respondent. It was also pleaded by the appellants that while the respondent was functioning as a Lambardar he never

complained to the revenue authorities that the concerned land holders had not paid the land revenue to him. Following the aforesaid judgment of

the Hon'ble Chief Justice, in writ petition No, 20 of 1968. Mian Jalaluddin J. passed the aforesaid judgment and order on August 26, 1970

quashing the impugned order seeking to realize the amount in question by attachment and sale of the respondent's properties and restraining the

appellants from realizing the said amount under Sec. 91 of the Land Revenue Act. The learned Judge, however observed that his order would not

cover the case where the respondent was personally liable to Pay the arrears of land revenue in respect of his own holding for which he had

remained a defaulter.

6. Appearing on behalf of the appellants, it has been vehemently contended by

Mr. Malik, that the amount in question did not represent the

assigned land revenue and the respondents in these appeals could not be treated as assignees of the land revenue. He has urged that the

Lambardar collects revenue by virtue of Section 20 of the Act read with the Rules framed thereunder. He has further contended that there is a

sharp distinction between a Lambardar and an assignee which is clearly discernible from a perusal of the various provisions of the Act and the

Lambardari Rules. He has also pleaded that Sections 63 (5) and 61 of the Act clearly indicate that the land revenue realized by a Lambardar can

be recovered from him as arrears of land revenue.

7. Mr. P. L. Handoo has, on the other hand, urged that the provisions contained in Chapter VII of the Act which deals with the recovery of land

revenue are confined in their applicability to the land holders from whom land revenue is actually due and cannot be pressed into service against a

Lambardar even though he may have recovered the land revenue from the land holders. He has further urged that the land revenue retains its

original character so long as the same is not paid to a landholder, but the moment it is realized by the Lambardar on behalf of the State, it loses its

character and ceases to be land revenue to which alone Chapter VIII of the Act applies. He has further urged that the scheme of the Act as

evident from its various provisions supports his contention. In this connection he has drawn our attention to Sections 61, 63, 64 65 and 66 of the

Act and has stressed that it is only the holding against which an arrear of land revenue is due, that can be proceeded against in the summary manner

provided by the Land Revenue Act. He has also contended that if a lambardar does not deposit the land revenue he can only be proceeded

against under Rule 12 of the Lambardari Rules of 2005. He has lastly contended that the amounts in question cannot be realized under Chapter

VII of the Act as they are more than eight years old.

8. We have given our careful consideration to the submissions made by the learned counsel for the Parties.

The principal question that falls for consideration in this case is whether a Lambardar is an assignee of Land Revenue.

9. The term 'assignee' has got a definite connotation and special significance. It means a person to whom an assignment has been made. In

Wharton's Law Lexicon. 14th Edition, the word assignment has been given the following meaning:

A transfer of an estate or interest in property. The usual operative verb is ""assign"" but any other word indicating an intention to make a complete

transfer, e. g. ""convey"", will amount to an assignment.

According to Bouvier's Law Dictionary (Third Revision), the word 'assignment' means ""A transfer or making over to another of the whole of any

property, real or personal in possession or in action, or of any estate or right therein"".

In Venkataramiya's Law Lexicon, 1971 Edition, the word assignee has been interpreteted as under:-

The word ""assignee"" ordinarily means ""one to whom a right or property is legally transferred or made over."" It and its analogue ""assign"" may also

mean ""the person substituted for another by an act of some kind or other. Per Parke. B. in Doe Dee Lewis v. Lewis. (1842) 9 M and W 662 at p.

664.

Thus it is abundantly clear that, the word ""assignee""' means and implies a transferee of a complete transfer, a person whom the transferor by some

act substitutes in his own place.

10. A reference to the provisions of the Act and the rules made thereunder would make it clear that there is no assignment or transfer of the land

revenue in favour of a Lambardar Section 20 of the Act empowers the Government to make Rules to regulate the appointment, duties, emoluments

etc. of Lambardars. In exercise of the power conferred by the said Section the Government appears to have made rules called ""The Lambardari

Rules, 2005"". Rule 9 of these rules in so far as it is relevant for the purpose of these appeals runs thus:-

Duties of headmen:- In addition to the duties imposed upon headmen by law for any purpose, a headman shall-

(i) Collect by due date all land revenue and all sums recoverable as land revenue from the estate, or sub-division of an estate or group of estates in

which he holds office, and pay the same personally or by money order or by remittance of currency notes through the post at the place and time

appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it.

(ii) xx xx xx

(iii) Acknowledge every payment received by him in the books of the land owners and tenants:

(iv) Report to the Tehsildar death of any assignee of land revenue or government pensioner residing in the estate, or the marriage or remarriage of a

female drawing a family pension and residing in the estate, or of the absence of any such person for more than a year.

A plain reading of the above rule makes it obvious that there is no transfer or conveyance of land revenue in favour of a Lambardar. There is also

nothing in any other rule of the aforesaid Rules framed under S. 20 of the Act to point to a contrary conclusion. The Rules merely make it

incumbent for a Lambardar to collect by the due date the entire land revenue realizable from the estate or a subdivision of an estate or group of

estates within his jurisdiction and to deposit the same i. e. the whole of the land revenue in the Government Treasury irrespective of the fact

whether he has collected it from the land holders or not. He has also no right to appropriate the land revenue collected by him. For the discharge of

the duties imposed on him he is Paid a remuneration called ""Pachotra"" which is 5 per cent of the land revenue for the time being assessed on the

estate or a portion of the estate or group of the estates in which he holds office.

11. Accordingly as rightly pointed out by Mr. Malik, clauses (i) and (iv) of Rule 9 of the Lambardari Rules, 2005. clearly indicate that a

Lambardar and an assignee are distinct entities. The distinction between the two is also crystal clear from a perusal of Section 122 (1) of the Act

which runs thus:

122. Power to deposit certain sum other than rent- (1). In either of the following cases namely:-

(a) When a headman or other land holder or an assignee of land revenue to whom any sum other than rent is payable on account of liability under

this Act, refuses to receive the sum from, or to grant a receipt therefore to. the person by whom it is payable or.

(b) When the person by whom any such sum is payable is in doubt as to the headman or other land holder, or the assignee of land revenue, entitled

to receive it, that person may apply to Tehsildar within whose local jurisdiction the land in respect of which the payment is to be made is situate for leave to deposit the sum in his office, and he shall receive the deposit, if after examining the applicant, he is satisfied that there is sufficient ground

for the application, and if the applicant pays the fee, if any, which may be chargeable on any notice to be issued of the receipt thereof"".

There is also nothing in the Jammu and Kashmir Land Revenue Rules. 1969. framed under Sections 22 (2), 57 (l), 92-A, 137 (g) etc. of the Act to

show that a Lambardar is an assignee of land revenue. If any land revenue which has fallen due is not paid to him by a land holder he can approach

a Revenue Officer u/s 92-A of the Act read with Rule 15 of the Jammu and Kashmir Land Revenue Rules. 1969, and invoke his assistance for its

recovery as arrears of land revenue provided he applies to the officer in due form within six months of the its falling due. As a Lambardar is bound

to deposit the whole of the land revenue in the Government treasury irrespective of the fact whether the same is paid to him by the land holders or

not. his position in respect thereof is that of a quasi lessee (see Said Ahmad v. Emperor. A. I. R. 1937 Pesh. 35)

We therefore, regretfully find ourselves unable to uphold the view that a Lambardar is an assignee of land revenue.

12. There is also no force in the contention of Mr. Handoo that the processes detailed in Section 61 of the Act are not available against a

Lambardar even though he may have recovered the land revenue from the land holders within his jurisdiction, and that it is only the holding against

which an arrear of land revenue is due that can be proceeded against in the summary manner provided in Chapter VII of the Act. The scheme of

the Act far from supporting the contention of Mr. Handoo totally demolishes it. As already seen Section 20 of the Act read with Rule 9 of the

Lambardari Rules. 2005 imposes a duty on a Lambardar to collect by due date the whole of the land revenue recoverable from an estate or sub-

division of an estate, or group of estates, in which he holds office and to deposit the same (i e. the whole of the land revenue recoverable) in the

Government treasury, Section 54 of the Act emphasises that the entire estate and all the land holders therein are jointly and severally liable for

payment, of the whole of the land revenue assessed upon the estate. It makes each land holder (including a lambardar) liable not, only for the

demand due on his own holding but also for any arrear that may arise in respect of another holding. If he happens to be the only solvent land holder in the estate he can raise no legal objection to an order that he should himself pay the whole balance. Further security for payment of the land

revenue is provided in Section 55 (1) of the Act which ordains that the land revenue for the time being assessed on an estate or payable in respect

of a holding shall be the first charge upon the profits and produce thereof. Section 56 enables the Government to issue orders regulating payment

of land revenue i. e, fixing the number and amount of instalments and the times, places, and manner, by, at, and in which land revenue is to be paid.

Section 57 empowers the Government to make rules consistent with the Act to regulate the collection, remission and suspension of land revenue

Section 59 states that a statement of account certified by a Revenue Officer shall be conclusive proof of the existence of arrear of land revenue, of

its amount, and of the person who is the defaulter, Section 61 details the processes that can be issued against a defaulter for recovery of the arrear

of land revenue, Section 63 (5) is an important or a key provision. It leaves no manner for doubt that a village Headman or a Lambardar who

makes default in depositing by due date the entire revenue due from the estate in his charge is a defaulter and can be arrested and detained.

Sections 64 (2), 65 (1) and (2) and 71 refer to other actions that can be taken against a defaulter for recovery of the arrears of land revenue.

Section 92-A and Rules 14 to 16 of the Jammu and Kashmir Land Revenue Rules. 1969. (Supra) provide a safeguard for a lambardar who is

charged with the responsibility of collecting the entire land revenue recoverable from the estate or group of estates in his charge and depositing the

same in the Government treasury in that they enable him to make an application to the concerned Revenue Officer within six months of the accrual

of the arrear for recovery thereof as arrear of land revenue from the defaulting land-holder or land-holders.

13. It would be at this stage be helpful to refer to the definitions of the terms ""arrear of land revenue"", and ""defaulter'' as contained in clauses (7)

and (8) of Section 3 of the Act.

""Arrear of land revenue"" means land revenue which remains unpaid after the date on which it becomes payable. ""Defaulter"" means a person liable

for an arrear of land revenue, and includes a person who is responsible as surety for the payment of the arrear.

The above definition of the term ""arrear of land revenue"" is very significant and knocks the bottom out of the contention of Mr. Handoo and the

other learned counsel appearing with him. It shows that the amount payable by a lambardar on account of land revenue due from an estate or

group of estates in his charge becomes an arrear of land revenue if it is not paid by him into the Government treasury by the due date. The above

definitions also completely negative the contention of the learned counsel for the respondents that the land revenue loses its original character the

moment it is realized by a lambardar from a landholder or landholders.

14. Thus the summary procedure contained in Chapter VII of the Act can be utilized for recovery of the arrears of land revenue which may not

have been deposited by a lambardar in the Government treasury by the due date. This view also receives support from two decisions in AIR 1937

Pesh 35. and Advocate General N. W. F. P. v. Miranjan Shah Mir Azam. AIR 1938 Pesh 25. where it was held that the money payable by a

lambardar on account of land Revenue demand becomes arrear of land revenue if it is not paid to the Government by due date.

15. We have, therefore, no manner of doubt that on failure of a Lambardar to deposit by due date the whole of the land revenue recoverable by

him clothes him with the status of a defaulter and the amount, outstanding against him can be recovered as arrear of land revenue by proceeding

against his person and property. This position has now become all the more explicit by the amendments introduced in Sections 3 (3), 63 (5) and

91 of the Act by the Jammu and Kashmir Land Revenue (Amendment) Act. 1972, Act No. 25 of 1972.

16. In view of the observations made by us and the clear provisions of Section 92-A of the Act and rules 14 to 16 of the Jammu and Kashmir

Land Revenue Rules. 1969 (Supra). we do not feel called upon to deal with another contention of Mr. Handoo that the amounts sought to be

realized from the respondents as arrears of land revenue were not actually recovered by them from the land holders of the estates in their charge.

We are however, confident that the concerned Revenue Officers will meticulously follow the procedure enjoined on them by law while trying to

recover the amounts outstanding against the respondents.

17. There is also no force in the last submission of Mr. Handoo that the amounts

in question cannot be realized as arrears under Chapter VII of the

Act as they are more than eight years old. As will be seen from a careful study of Chapter VIII. the proviso to the 1st paragraph of Section 90 of

the Act applies only to recovery of demands other than the land revenue which are made recoverable as arrears of land revenue under the Act and

not to arrears of land revenue pure and simple as in the instant case.

18. For the foregoing reasons, we allow these appeals set aside the judgements and orders referred to above and dismiss Writ Petitions No. 120

of 1968 and No. 1 of 1969. In the circumstances of the case, we leave the parties to bear their own costs of these appeals.

Mufti Bahauddin Farooqi, J.:-

I agree.

