

(1987) 02 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1987 of 1987

Dr. Aziz Haider and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-02-1987

Acts Referred:

Banking Regulation Act, 1949 — Section 21A
Constitution of India, 1950 — Article 14, 226
Uttar Pradesh Agricultural Credit Act, 1973 — Section 10B, 11, 11A, 11A(2), 11A(3)
Uttar Pradesh Agricultural Credit Rules, 1975 — Rule 29
Uttar Pradesh Co-operative Societies Act, 1965 — Section 95A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279, 280, 281, 282, 283
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 23, 284(2)

Citation : (1987) 1 AWC 750 : (1988) RD 42 : (1987) RD 315

Hon'ble Judges : R.S. Dhavan, J;B.D. Agrawal, J

Bench : Division Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant; S.N. Varma and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agrawal, J.—On February 5, 1975, Imdad Husain, the predecessor-in-interest of the Petitioners took on loan a sum of Rs. 38,000/- from the State Bank of India, Agricultural Development Branch Chakiya, district Varanasi, repayable in instalments with interest. The loan taken was for the purpose of purchase of a tractor. The borrower did make purchase of a tractor from the money advanced to him. The tractor was hypothecated with the Bank in addition to the security furnished by mortgage of 13.22 acres of land. A sum of Rs. 1500/- only was paid back by him to the Bank on May 25, 1975. Imdad Husain died on January 16, 1976. The Petitioners claim to have made payment of a sum of Rs. 18,155/- during the period of February 24, 1977 to January 198). In view of the default incurred the State Bank issued Certificate of Recovery u/s 11A of the U.P. Agricultural Credit Act, 1973 to the Collector district Varanasi.

Subsequent to this a sura of Rs. 6000/- was allegedly paid by the Petitioners in three instalments of Rs. 2000/- each during March 31, 1986, to September 3, 1986. For the balance remaining unpaid, there was attachment made of the tractor aforementioned on January 9, 1987. Aggrieved against the recovery being proceeded against, the Petitioners have preferred this petition under Article 226 of the Constitution.

2. We have heard Sri Ram Niwas Singh Teamed Counsel appearing for the Petitioners.

3. In so far as the vires of Section 11A of the U.P. Agricultural Credit Act, 1973 is concerned, the same was raised in issue on the footing of Article 14 of the Constitution recently in *Trijugi Narain Tewari and Others Vs. Gorakhpur Kshetriya Gramin Bank and Another*, before a Division Bench, Upon a review of the case law on the subject and a detailed consideration the Bench concluded that the provision aforementioned is not arbitrary and is not hit by Article 14. In paragraph 19 it was observed:

To recapitulate, the object was early recovery of moneys given to agriculturists by way of financial assistance. This procedure was provided as experience had shown that despite Section 11, moneys were being held up. Consequently Section 11A was inserted which provided for various modes of recovery by the Collector as arrears of land revenue. Recovery of dues as arrears of land revenue is speedier way or method to recover the amount claimable from the persons from whom recoveries are being made. A citizen has a right of equal treatment, but he in the grab of equal treatment cannot be permitted not to pay the government dues or public money. A defaulter has no right to prolong the proceedings of recovery which, in fact, appears to be the purpose of the argument advanced for declaring Section 11A to be void on the ground of Article 14 of the Constitution.

4. Learned Counsel does not challenge the validity of the statutory provisions before us but contends that this could not be made applicable to the facts hereof since, it is submitted, Section 11A applies to recovery in case of personal security. The submission is devoid of merit. The heading which Section 11A bears is no doubt "Recovery in case of Personal Security". But a perusal of the contents shows that there is nothing absolutely to confine the same to a case of personal security. The provision on its terms applies where any amount of financial assistance is granted by a bank to a agriculturist and the agriculturist fails to pay the amount together with interest on the due date. It is not in dispute that the loan advanced to Imdad Husain, an agriculturist, was for the agricultural purpose, namely, the purchase of tractor and this constitutes financial assistance within the meaning of Section 2(e) of this Act. It is not in dispute either before us that there is default in repayment of the amount due under the transaction. Section 11A moreover applies, without prejudice to the provisions of Sections 10B and 11 meaning thereby as also upheld in the case of *Trijugi Marain Tewari* (supra) that it remains open to the Bank to avail of this provision for recovery of

the dues notwithstanding there being other methods provided for in Section to-B or 11 of the Act.

5. It was next argued for the Petitioners that there was no opportunity given by the Bank to them before the issue of the Certificate of Recovery and hence the action taken in pursuance thereof is vitiated. In this context it is of interest to refer to the contents of paragraph 7 of the writ petition wherein it is admitted in express terms that as the entire loan together with interest was not repaid, the Bank was at liberty to proceed for recovery of the loan in accordance with the provisions of the U.P. Agricultural Credit Act, 1973. This aspect of the matter also came to be considered in *Trijugi Narain Tewari* (supra) as appearing in paragraph 28, with which we are in respectful agreement:

It was urged by the counsel for the Petitioners that the discretion conferred on the principal officer is absolute and is capable of being misused. In that connection, counsel emphasised for the need of being given an opportunity of hearing. We find no merit in this submission. The discretion must at last be reposed somewhere. The best, and in many cases, the only security is the wisdom and integrity of public servants. The Government cannot administer without committing powers in trust and confidence. If we consider and take into account the fact that the amount which is sought to be recovered is on the basis of entries in the books of account of the bank which offers financial assistance and evidence of the same is in the shape of a pass book given to every agriculturist, no confusion would arise on this account. The amounts paid from time to time and interest which accrues thereon are entered in the pass books. These pass books are always in possession of the agriculturists. If an agriculturist has any doubt about the correctness of the pass books and the entries made therein, he has only to contact the bank. Pass book repeats the entries entered in the ledger. That being so no bank is likely to claim the amount arbitrarily and capriciously. Sometime it may happen that the amount claimed is more than what it is due in that event such a person can always contract the bank and get his doubt removed, seeing in this background, one would be left to believe that the point of not being given opportunity of hearing by the bank is devoid of substance. We know of no authority to pronounce a provision of the Act to be void if it is within general scope of constitutional powers of the Legislature only because in the opinion of the Court it was contrary to the principles of natural justice.

6. The next argument of Sri Singh before us is that there was no citation issued to the Petitioners. Section 279 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, categorises the methods which may be adopted for recovery as arrears of land revenue. Further elucidation appears in the following Sections 280 to 294. It is noticeable that except for Section 286, which deals with the powers to proceed against the interest of defaulter in immovable property other than the immovable concerning which the arrear is due, the rest of the clauses of Section 279 are mutually exclusive. In other words the interest of the defaulter in other

immovable property can be proceeded against only after the processes mentioned in Clauses (a) to (e) of Section 279 are exhausted. But for any other method of recovery, including attachment and sale of movables covered under Clause (c) of Section 279, the law does not insist upon any other process to be exhausted. This clause has to be read along side with Section 282 of that Act whereunder the Collector may, whether the defaulter has been attested or not attach and sell his movable property.

7. Learned Counsel urged then that the provision contained in Rule 29(a) of the U.P. Agricultural Credit Rules, 1975, is arbitrary and liable, therefore, to be struck off. We are not impressed with the contention raised. Sub-section (3) of Section 11A empowers the Collector to proceed to recover from the agriculturist the amount specified in the Certificate of Recovery together with expenses of recovery as arrears of land revenue. Rule 29 deals with utilization of the amount recovered and says that firstly the amount shall be utilised to meet the expenses of recovery which shall be charged at the rate of 10% or at such other rate as the State Government in the revenue department may from time to time fix in this behalf. The argument advanced is that actual costs of the proceedings cannot be ascertained till the costs are actually incurred. The State Government, as in this case, in exercise of the rule making power conferred by Section 25 considered appropriate to prescribe a flat rate for charging the expenses of recovery which is variable from time to time depending on the notification as the State Government makes. We do not have before us in this case any dates or other material to infer that the flat rate prescribed tends to be arbitrary or such as is not the normal rate of expenses actually incurred in recovery on an average. It was up to the Petitioners to have dislodged the presumption. Instead of leaving it to be assessed case by case, the State Government could prescribe the standard rate depending on the experience gained from the averages in making such recoveries. In *Mirza Javed Murtaza v. U.P. Financial Corporation Kanpur* AIR 1983 All. 234 cited for the Petitioners in this connection the issue was not exactly the same the reasons being that in that case their Lordships were dealing with Rule 284(2) of the U.P. Zamindari Abolition and Land Reforms Rules, which prescribes a different mode for the assessment of costs of recovery. It was observed that in accordance with that rule, a charge shall be levied for recovery upon such amount not exceeding the total sum due for recovery as may be realised by sale at the rate of three Naya Paise of the sale proceeds, but that should not be taken to imply that an alternative provision made as in Rule 23(a) is arbitrary.

8. The submission then made is that in view of Section 11A(2) the certificate may be forwarded to the Collector within three years from the date when the amount specified, in the certificate falls due. It is stated that the last instalment was due on December 28, 1979. The date when the certificate was issued by the bank is not disclosed. The Pass book with the Petitioners is also not referred to. Subsequent to the issue of the certificate as well as mentioned above, there has been payment made of a sum of Ks. 6000/- in three instalments by the

Petitioners. The foundation requisite is not laid thus before us to conclude that the certificate issued is beyond the specified period.

9. Contention raised for the Petitioners is that in view of Section 12B(2) of the 1973 Act the recovery may be had only against the assets of Imdad Husain deceased in the hands of the Petitioners. There may be no dispute as to this. Section 12 permits recovery against the legal representatives to the extent of the assets in their hands derived from the borrower. The Collector has in the present attached the tractor which admittedly belonged to the deceased and is thus an asset in the Petitioners' hands. There is no reason to assume that the Collector would be proceeding to make recovery in contravention of Section 12B(2).

10. Learned Counsel urged also that the bank may not charge interest at the rate of 14.5% subsequent to April 1983 and that the amount due according to the Petitioners is Rs. 67,075/- only (vide Karagraph 16), in terms of the certificate, it is averred, the amount would come to Rs. 89,365-34 m all. It is not said that the agreement entered into by Imdad Husain did not make provision for interest at the rate of 14.5% being charged in the event of default such as incurred in the present. Section 287-A of the U.P. Zamindari Abolition and Land Reforms Act contemplates that in a situation where the defaulter disputes the amount due, there may be payment made under protest whereafter he may file a suit in civil court wherein evidence may be given by him of the amount, if any, which he alleges to be due from him.

11. Lastly, the learned Counsel urged that the Court may fix instalments and grant time to the Petitioners to pay up the amount. On the Petitioners' own showing a sum of Rs. 67,000/- and odd remains unpaid. The recourse to coercive method has had to be taken by the bank as a last measure keeping in view the persistent default incurred in this behalf. In the circumstances there is neither any equity nor any illegality in the recovery sought to be made under one of the methods permissible under the law. In *Trijugi Narain Tewari* (supra) considering this aspect of the matter it was observed that the Legislature has provided for the decision of the Certificate Officer to be final. If a bank has decided to recover the amount as arrears of land revenue, the Court cannot interfere with the same when nothing illegal is found with the recovery. Whether more instalments should have been given is a question to be decided by the bank and not by the Court. We are not persuaded to take a different view on the subject.

12. Learned Counsel argued also that the Bank could not charge compound interest with monthly, quarterly or half yearly rests though this could be done with yearly rests. In this connection he relies on the decision of a Division Bench reported in AIR 1986 Karn 242, *Bank of India v. Karnam Ranga Rao*. In para 11 of that decision the principles are summed up as follows:

The Courts cannot re-open any account maintained by Banks relating to transaction with its customers on the ground that the rate of interest charged, in the opinion of Courts, is excessive or unreasonable. Section 21A of the Banking

Regulation Act is a restraint on such power of Courts. However, in any case, if it is proved that the interest charged by Banks on loans advanced is not in conformity with the rate prescribed by the Reserve Bank, then the Court could disallow such excess interest and give relief to the party notwithstanding the provisions of Section 21A. Banks are bound to follow the directives or circulars issued by the Reserve Bank prescribing the structure of interest to be charged on loans and any interest charged by Banks in excess of the prescribed limit would be illegal and void. Banks cannot charge compound interest with quarterly rests on agricultural advances.

The conclusion arrived at in para 21 is thus stated:

To sum up the above discussion, the circulars/directives of the Reserve Bank direct that agricultural advances should not be treated on par with the commercial loans in the matter of application of the system of compounding interest. The farmers do not have any regular source of income other than sale proceeds of their crops is an acknowledged fact. They get income generally only once a year. They are, therefore, not in a position to pay interest at usual fixed intervals like monthly, quarterly and half yearly. Banks should not compound interest on current dues. Banks should not also charge interest with monthly, quarterly or half yearly rests on over due loans. Perhaps, it may not be illegal to charge interest with yearly rests.

13. The question under consideration therein arose in appeal filed by the Bank of India against the judgment and decree of the Civil Court in a suit. There had been an issue raised before the trial court as to whether the Bank was not entitled to charge compound interest. We have scanned through the pleadings before us in this writ petition. It is not to be found stated that there is compound interest charged with monthly, quarterly or half yearly rest. The Petitioner had necessarily to lay the foundation to be able to argue that the directives of the Reserve Bank are contravened. The remedy may lie still by taking recourse to a suit as contemplated u/s 287-A of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

14. Before concluding we may refer also to the decisions in *Ram Narain Himmat Ram v. Jalaun Kraya Vikraya Sahkari Samiti Ltd. etc.* 1986 AWC 273 and *Beedha Singh v. District Registrar Cooperative Societies, Mathura* 1986 AWC 552 cited by Sri Singh. Both of them are in reference to Section 95A of the U.P. Cooperative Societies Act, 1965, which casts a statutory duty upon the Registrar to issue a certificate for the recovery of the amount due "on an application made by the Society for the recovery of arrears of any loan advanced by it or any instalment thereof to any member and on its furnishing a statement of accounts in respect of such loan and after making such enquiries, if any, as he thinks fit." It was held in "this context that this provision does not mean that while issuing recovery certificate, the Registrar can give a go by to the principles of natural justice. It is clear in our view that this cannot as principle be imported into a case where the Bank does not have to enter into a formal enquiry before issuing a certificate of

recovery to the Collector though it is expected to act with fairly and with abundant care in the light of the accounts maintained in the regular course of business, as also explained in para 28 of Trijugi Narain Tewari's case cited above. The functioning of the Bank in the ordinary course might be severely paralysed if the Bank were required to hold a regular enquiry on giving opportunity to the debtors before proceeding to take steps for recovery of outstanding balance as per books of accounts ordinarily maintained. It is doubtful whether through such a course the Bank would be able to sub serve the salutary object of boosting agricultural economy through continuous flow of money into the market, which is the basic purpose behind the provisions of the U.P. Agricultural Credit Act, 1973.

15. The petition is for these reasons dismissed.