

(1984) 01 KAR CK 0001
In the Karnataka High Court
Case No : W.P. No. 20405 of 1983

Gopal B.S.

APPELLANT

Vs

Karnataka State Financial Corporation and Others

RESPONDENT

Date of Decision : 11-01-1984

Acts Referred:

Karnataka Public Moneys (Recovery of Dues) Act, 1979 — Section 3

Citation : (1985) 2 KarLJ 160

Hon'ble Judges : K. A. Swami, J

Judgement

1. In this petition under Article 226 of the Constitution, the petitioner has sought for quashing the notice dated 21-7-1982 bearing No. KSF.C/P-10-1025/1 (Annexure-C) and also the sale proclamation dated 17-11-1983 bearing No. KSF/RO/P-7648 (Annexure-E).

2. The first respondent has advanced a loan on certain terms to the petitioner for setting up an industry. The first respondent is a Corporation established under the provisions of the State Finance Corporation Act, 1951. As the petitioner has failed to repay the loan in accordance with the terms on which it was advanced, the Managing Director of the first respondent has sent a certificate dated 15-3-1982 to the Deputy Commissioner, Bangalore District, under Sec. 3 of the Karnataka Public Moneys (Recovery of Dues) Act, 1979 (hereinafter referred to as the "Act") mentioning the sum due from the petitioner, with a request to the Deputy Commissioner to recover the sum due from the petitioner with the cost of the proceedings and future interest at the prescribed rate upto the date of recovery as if it were arrears of land revenue. Pursuant to that the Deputy Commissioner has authorised the Special Tahsildar to recover the dues by sale of the properties belonging to the petitioner which are mortgaged to the first respondent. Accordingly, the Special Tahsildar K.S.F.C., Bangalore Zone, has issued a sale proclamation as per Annexure-E.

3. Though several contentions are raised in the petition, Sri Dattatreya D. Bhat, learned Counsel for the petitioner, has advanced only two contentions:

(i) That before issuing the certificate to the Deputy Commissioner, a show cause notice, as held by this Court in the case of *Kamat v Karnataka State Finance Corporation*, reported in 1981 (2) Kar.L.J. 129, ought to have been issued to the petitioner; but no such notice is issued; therefore the petitioner had no opportunity to put-forth his say in the matter, hence the certificate is bad in law.

(ii) As per sub-section (2) of Sec. 4 of the Act, the movables belonging to the petitioner which have also been pledged to the first respondent as security to the loan in question ought to have been first brought for sale, before issuing a certificate, and in case the sale proceeds of the movables found insufficient to satisfy the sum due, then only it was open to the first respondent to issue the certificate for recovery of the balance amount by sale of the mortgaged properties.

4. On the contrary, Sri N.B. Bhat, learned Counsel appearing for respondents 1 and 2, submits that show-cause notice was issued to the petitioner before sending a certificate to the Deputy Commissioner and this fact the petitioner has suppressed from the Court; therefore, he is not entitled to any relief under Article 226 of the Constitution. It is also further submitted that the recovery of dues as arrears of land revenue by issue of certificate to the Deputy Commissioner under Sec. 3 of the Act, is not controlled by Section 4 of the Act. It is open to the first respondent either to bring the pledged movables of the petitioner for sale or the mortgaged properties; therefore, the certificate issued to the Deputy Commissioner to recover the sum due from the petitioner is valid and is not vitiated.

5. The first respondent along with its statement of objections has produced as Annexure-R1, a copy of the notice dated 29-12-1981 issued to the petitioner by a registered post. It is not disputed by Sri D.D. Bhat, learned Counsel for the petitioner.

6.1) It appears to me that both the contention urged on behalf of the petitioner cannot be accepted. Annexure-R1 produced by the first respondent satisfies all the requirements of a show cause notice. It has also to be remembered that the relationship between the petitioner and the first respondent is that of a creditor and a debtor. Therefore, what the creditor is required to do is only to demand the sum due from the debtor and to inform him that in case the amount is not paid, necessary action as per law will be taken to recover the sum due. Annexure-R1 satisfies all these requirements. The material portion of the notice is as follows:

"4. Hence, I hereby give you this notice calling upon you to pay the said sum of Rs. 41,626-74 with Interest.....

6. Further, the Corporation hereby gives you notice calling upon you to show cause within 10 days from the date of receipt of this notice by you, why such action as proposed above should not be taken against you for the recovery of the aforesaid amount."

6.2) The notice states the sum due from the petitioner and also calls upon him to pay the amount or to show cause, and in case he fails to pay or show cause the action as per law will be taken against him. It is not the case of the petitioner that he has filed an objection to the notice dated 29-12-1981. That being so, when he has failed to show cause and appear before the first respondent and explain to the 1st respondent that the sum demanded is not correct; the first respondent is justified in issuing the certificate.

6.3) Here itself, I may also dispose of another submission made by learned Counsel for the petitioner that the notice dated 29-12-1981 is not issued by the Managing Director of the Corporation, but it is issued by the Counsel for and on behalf of the Corporation. It is not necessary that such a notice need be issued by the Managing Director of the Corporation himself. As long as it is not in dispute that the counsel who has issued the notice was authorised to issue such a notice, it is as good as issued by the Corporation itself, because the counsel represents the Corporation. The purpose of notice is only to demand the sum due from a debtor or to call upon him to put forth his say if he is not accepting the amount demanded. Therefore, the notice issued as per Annexure-R1 is a valid notice and failure to reply to the same enables the Corporation (1st respondent) to proceed to issue a certificate to the Deputy Commissioner under Section 3 of the Act. Thus, the first contention fails and it is accordingly rejected.

7. The second contention cannot also be accepted. Sub-section (2) of Section 4 of the Act, reads as follows:

"(2) Where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, the Corporation, a Government company or a banking company, then- (a) in every case of a pledge or hypothication of goods proceedings shall first be taken for sale of goods pledged or hypothicated and if the proceeds of such sale or less than the sum due, then proceedings shall be taken for recovery of the balance as if it were an arrear of land revenue:

Provided that where the State Government is of the opinion that it is necessary so to do for safeguarding the recovery of the sum due to it or to the Corporation, a Government company or a banking company, as the case may be, it may for reasons to be recorded direct proceedings to be taken for recovery of the sum due, as if it were an arrear of land revenue before or at the same time the proceedings are taken for sale of the goods pledged;

(b) in every case of a mortgage, charge or other encumbrance or immovable property, such property or, as the case may be, the interest of the defaulter therein, shall first be sold in proceedings for recovery of the sum due from that person as if it were an arrear of land revenue, and any other proceedings may be taken thereafter only if the Deputy Commissioner certifies that there is no prospect of realisation of the entire sum due through the first mentioned process within a reasonable time."

From the aforesaid proviso to clause (a) of sub-section (2) of Sec. 4 of the Act, and clause (b) thereof, it is clear that it is open to the first respondent to proceed to recover the sum due from the defaulter as if it were an arrear of land revenue by sale of the immovable property which is mortgaged. Both the proceedings can be taken out at the same time. The provisions of clause (a) of sub-sec. (2) of Sec. 4 of the Act, do not control the power available to the first respondent under Sec. 3 of the Act, in the case of a mortgage charge and other encumbrances on immovable property. Similarly, the power exercisable under clause (a) of sub-section (2) of Sec. 4 of the Act, is also not controlled by Section 3 of the Act; therefore, it is not possible to hold that the certificate issued under sec. 3 of the Act, to the Deputy Commissioner, is vitiated because it ought to have been preceded by the sale of movables as per clause (a) of sub-sec. (2) of Sec. 4 of the Act. Accordingly, second contention also is rejected.

8. It may also be mentioned here that one of the contentions raised by the petitioner is that the certificate issued to the Deputy Commissioner under Sec. 3 of the Act, has not been signed by the Managing Director of the first respondent. But, during the course of hearing, Sri D.D. Bhat, learned Counsel for the petitioner, has submitted that the said contention is not pressed because the certificate issued to the Deputy Commissioner is signed by the Managing Director of the Corporation.

9. For the reasons stated above, the writ petition fails and the same is dismissed.