
(1957) 03 CAL CK 0038
In the Calcutta High Court
Case No : Civil Revision No. 3557 of 1953

Hazi Siddique

APPELLANT

Vs

Certificate Officer, Burdwan and Others

RESPONDENT

Date of Decision : 19-03-1957

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 12, 12(1), 12(2), 23, 51
Bengal Public Demands Recovery Rules — Rule 18, 66
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226

Citation : AIR 1958 Cal 14 : 61 CWN 612

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Hariprasanna Mukherjee and Bankim Chandra Roy, for the Appellant; J. Majumdar, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for a writ in the nature of Certiorari to quash certain orders made by the Certificate Officer, Burdwan, by the Collector and by the Commissioner, Burdwan, and by the Board of Revenue, West Bengal, in certificate proceedings taken under the Bengal Public Demands Recovery Act, 1913. The case of the petitioner is that the petitioner is one of the partners of a firm known as Haji Ibrahim Kasem Upletwalla. Certain certificate cases bearing Nos. 311, 312 and 313 of 1948-49 were started by the Certificate Officer of 24-Parganas against the petitioner and his partners for realisation of certain excess profit tax and sale tax. These certificate cases were transferred to the Certificate Officer, Burdwan, where the cases were numbered as Certificate Cases Nos. 35, 26, 37, 54 and 55 -- O. D. of 1949-50. The total amount in respect of which the certificate proceeding was taken was Rs. 1,97,096-12-9 after giving credit for a sum of Rs. 2,500 paid in the Office of the Certificate Officer, 24-Parganas, on the 5th February, 1951. The case of the petitioner further is that the business carried on by the firm of Haji

Ibrahim Kasem Upletwalla had suffered considerable loss from time to time as a result whereof all the business of the firm except the business carried on under the name of Jilani Rice Mill at Memari, was completely closed down. As the petitioner had no means left to pay up the certificate dues the petitioner and his partners in order to make arrangement for payment in instalments of the certificate dues, leased out the said Jilani Rice Mill to the respondent No. 5, G. S. Rama Shett on the 31st of October 1950, for a term of 20 years terminating with the expiry of the month of October 1970, at an annual rental of Rs. 2,500 with the stipulation, that the lessee would deposit the annual rent every year in advance, before the expiry of the month of March, in the Government Income Tax Fund, towards part satisfaction of the certificate dues of the said firm of Haji Ibrahim Kasem Upletwalla. It is further alleged in the petition that upon the application of the respondent No. 5 the Certificate Officer, Burdwan, by a letter dated the 19th of January 1951, permitted the lessee to run the aforesaid rice mill on condition that the rent payable in terms of the lease would not be paid to the lessor. Thereupon the rent payable for the first year being the sum of Rs. 2,500 due for the period from the 1st of November 1950 to the 31st of October 1951, was deposited by the respondent No. 5 in the Office of the Collector of 24-Parganas on the 5th February 1951 and the said amount was appropriated towards part satisfaction of the certificate dues. But although the said amount was so deposited the Office of the Burdwan Collectorate called upon the respondent No. 5 by a letter dated the 18th April 1951 to deposit Rs. 2,500 towards the rent of the aforesaid lease as part payment of the certificate dues. The respondent No. 5 thereupon intimated to the Office of the Burdwan Collectorate that a sum of Rs. 2,500 had already been deposited in the Office of the Collector of 24-Parganas. But the Certificate Officer, Burdwan, on the 14th December 1951, wrongfully and in contravention of Rule 66 of the Certificate Manual, ordered the said mill to be put up to sale subject to the aforesaid lease in favour of respondent No. 5. A sale proclamation dated the 29th April 1952 was accordingly issued, at first fixing the date of sale on the 10th of June 1952, for realisation of the certificate dues. The sale was however subsequently adjourned from time to time on the application of the petitioner and it appears that the property has not yet been sold. It further appears that on the 10th June 1952, the petitioner filed an objection before the Certificate Officer u/s 37 of the Bengal Public Demands Recovery Act, pointing out that the order directing sale of the mill was in contravention of Rule 66 and it was further pointed out in that petition that no notice u/s 7 of the Bengal Public Demands Recovery Act, was served upon the certificate debtor. It is further the case of the petitioner that the procedure prescribed for bringing the property to sale has not also been followed in the present case and the sale proclamation that was issued was in contravention of Rule 46 of the Certificate Manual and the service of the sale notice was also not in conformity with the Rules prescribed in the Certificate Manual. It appears further from the petition that on the 26th June 1952, the Certificate Officer had examined a process server who had served the sale notice and the Certificate Officer came to the conclusion that the service of the notice

had been properly done. Against the said order of the Certificate Officer dated the 26th June 1952, the petitioner filed a petition of revision u/s 53 of the Public Demands Recovery Act. The said petition was filed on the 28th June 1952, before the Collector of Burdwan for revising the orders of the Certificate Officer, dated the 26th June 1952, and also an earlier order, dated the 14th December 1951. The said petition was registered as Certificate Revision Case No. 7 of 1952-53. The Collector of Burdwan however summarily rejected the petition of revision on the ground that as the petitioner had not filed any appeal in terms of Section 51 of the Public Demands Recovery Act, against the order of the Certificate Officer, the petition for revision was not maintainable. The Collector however considered the objection of the petitioner as to non-service of the notice and he was of the opinion that service had been properly effected. Against the said order of the Collector the petitioner filed a petition for revision before the Commissioner, Burdwan Division. The Commissioner, Burdwan Division, was also of the opinion that the order of the Collector rejecting the petition of revision filed by the petitioner before the Collector on the ground that the petitioner had not filed an appeal as contemplated by Section 51 of the Act was a reasonable order and the Commissioner also took the view that the petitioner had failed to make out any other ground for interference by the Commissioner in revision with the order made by the learned Collector. It appears that thereafter the petitioner moved the Board of Revenue, West Bengal, also by way of revision but the said petition for revision was also rejected by the Board by its order dated the 21st of September 1953.

2. The first point that has been urged on behalf of the petitioner by Mr. Hariprasanna Mukherjee, the learned Advocate for the petitioner, is that as no notice u/s 7 of the Bengal Public Demands Recovery Act was served on the certificate debtor or the petitioner the entire proceedings which were taken under the Bengal Public Demands Recovery Act, were without jurisdiction and should therefore be quashed. It appears from the counter-affidavit affirmed by one Chittaranjan Bhattacharjee, who was the Certificate Officer of Burdwan at the relevant time and who is respondent No. 1 in this application, that notice u/s 7 of the Public Demands Recovery Act, was duly served on the 3rd of March 1949 (para. 4 of the counter-affidavit). Further the records of the certificate cases which were directed to be produced by this Court at the time the Rule Nisi was issued and which have been produced at the hearing contain an acknowledgment receipt which shows that the notice u/s 7 was served on the 3rd of March 1949 as alleged in the said affidavit in opposition. It also appears from the order sheet of the Certificate Officer that the constituted attorney of the firm of Haji Ibrahim Kasem Upletwalla filed an objection u/s 9 of the Bengal Public Demands Recovery Act, denying the liability of the firm. But in this petition of objection no ground appears to have been taken as regards the non-service or any irregular service of notice u/s 7 of the Bengal Public Demands Recovery Act. It is thus clear that there is no substance in this point of Mr. Mukherjee that there was no service of notice u/s 7 as required by the provision of the Bengal Public Demands Recovery

Act. Mr. Mukherjee has however Submitted that even if it is held that notice u/s 7 was served by the Certificate Officer, 24-Parganas, it Was incumbent under the provisions of the Act to serve a fresh notice u/s 7 of the Act after the certificate proceedings were transferred to the Certificate Officer, Burdwan, under the provisions of Section 12 of the Act. It appears to me that this contention of Mr. Mukherjee has also no force. Section 12 of the Act may be set out as follows:

"12 (1). A Certificate-Officer in whose office a certificate is filed may send a copy thereof, for execution to any other Certificate Officer.

(2). When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of Section 8 with respect to certificates filed in the office of a Certificate-Officer shall apply as if Such copy were an original certificate.

Provided that it shall not be necessary to serve a second notice and copy u/s 7."

3. It may he pointed out that in Clause (1) of Section 12 there were originally these words appended to the end of this clause, "in the same district or to the Collector of any other district"; but these words were omitted by Bengal Act III of 1934. It also appears that the proviso which now appears in Clause (2) of Section 12 was added for the first time by Bengal Act I of 1942 -- Section 2. So reading the section as a whole it appears that the object of the amendment was to clarify the position that once a notice u/s 7 of the Act had been served in connection with a certificate proceeding it was not necessary to serve a second notice under the said section when the certificate proceeding is transferred from one Certificate Officer to an-other Certificate Officer, whether belonging to the same district or to different districts, for the purpose of execution of such certificate. Mr. Mukherjee has drawn the attention of the Court to the words "situated in the district in which the certificate is filed" as appearing in Clause (a) of Section 8 of the Act. With reference to these words it is submitted by him that it is clear from these words that a notice issued or served u/s 7 would spend its force as soon as the proceeding is transferred from one district to another for execution. But as has been pointed out by me already the amendment of Section 12 now leaves no doubt about the correct position and in my view it is not necessary to serve any fresh notice u/s 7 simply because a certificate case is transferred from one district to another for execution. It may be noted that Mr. Majumdar, the learned Additional Government Pleader, who appears on behalf of the opposite parties has pointed out that non-service of a notice u/s 7 of the Bengal Public Demands Recovery Act, does not render a sale held under the provisions of the Act void but such a sale is merely voidable and the sale can be avoided in accordance with the provisions as laid down in Section 36 of the Act. Mr. Majumdar has also relied on a decision of this Court in the case of Sri Bansi Gopal Jiu and Others Vs. Uday Chand Mahatab and Others, . But it may be pointed out that as no sale of the property has taken place in the case before me this question need not be considered any further.

4. The next point that has been argued by Mr. Mukherjee on behalf of the petitioner is that as no notice as required by Rule 46 has been served, the proceedings taken in pursuance of the provisions of the Bengal Public Demands Recovery Act are without jurisdiction. It is to be pointed out at the very outset that the only case which appears to have been made in the petition before this Court under Article 226 of the Constitution and also in the petition of revision which had been filed before the Collector, the Commissioner and the Board of Revenue was that the sale notice as required by Rule 46 had not at all been issued or served upon the certificate debtor or the petitioner. There was no case made at any stage that the sale notice had not been properly or duly served in accordance with the rules of service as prescribed in the Rules framed under the Act. Further, it appears from the order of the Certificate Officer dated the 26th June 1952 which is annexure G to the petition that the process server Pramatha Nath Adhikary was examined on oath before the Certificate Officer and the process server was also cross-examined on behalf of the certificate debtor or the petitioner and the Certificate Officer was satisfied upon the evidence adduced before him by the process server that the process server had served the sale notice by hanging it on the outer door of the premises of the shop where the mill was situated as there was nobody on behalf of the certificate debtor to accept the service of the notice. The Certificate Officer had no reason to disbelieve the process server and he was convinced that the sale notice had been properly served. It does not appear from this order that the certificate debtor or the petitioner had at any stage raised any question about the non-compliance with the requirement of Rule 6 in the Certificate Manual in the mode of service. No such indication is furnished by the order of the Collector dated the 26th June 1952. It appears however that some question was raised to the effect that the serving peon who had submitted the return of service but who had not verified it by an affidavit should have been examined by the Certificate Officer according to Rule 8/6 of the Certificate Manual and that as that had not been done the service was not proper. But it is to be noted that the serving peon was in fact examined and cross-examined on the 26th June 1952 after this point was raised by the petitioner. The Rule does not give any indication as to the stage at which this examination of the serving peon is to be done. So it appears to me that by examining the process server on the 26th June 1952, the spirit of Rule 8 was given effect to.

5. Apart from that it is clear that the petitioner or the certificate debtor was not in any way prejudiced by the irregularity, if any, as to the service of the sale notice. The petitioner or the certificate debtor had knowledge of the contemplated sale at all material time. The whole object of Rule 46 is to give intimation of the sale to the certificate debtor before putting up the property to sale. Not only had the petitioner or the certificate debtor knowledge of the sale but since the order for sale was made the petitioner or the certificate debtor obtained postponement of the sale on 11th September 1951, 20th November 1951, 26th February 1952 and 10th June 1952. It therefore does not lie in the

mouth of the petitioner now to complain of the fact that the sale notice was not properly served according to the rules. Furthermore, the rules for serving of notice appear to be directory in character. It is clear from Section 39 of the Bengal Public Demands Recovery Act that the rules can be altered or added to or annulled by the Board of Revenue with the sanction of the State Government. It is true so long as the rules are in force they should be observed but in my view non-compliance with the rules unless it results in failure or miscarriage of justice cannot in all cases vitiate the proceedings taken under the Bengal Public Demands Recovery Act. Reference has been made to the cases of *Bajinath Sahai v. Ramgut Singh* 23 Ind App 45 (PC) (B) and *Mohiuddin v Pirthichand Lal* 19 CWN 1159: (AIR 1915 Cal 444 449) (C); but these cases show that a certificate drawn up without specifying the sum due and the person to whom it is due cannot form the foundation for a sale of the property purported to be held in pursuance of the Act. But it is to be observed that in the present case the certificate does not suffer from any such defect. Therefore these cases are not of any assistance to the petitioner. Mr. Majumdar has drawn the attention of the Court to the cases of *Manindra Chandra Roy Chowdhury and Another Vs. Gopi Ballav Sen and Others*, and AIR 1945 62 (Privy Council) ; but these cases also do not touch the point under consideration.

6. The next point that has been argued by Mr. Mukherjee is that the Certificate Officer acted in contravention of Rule 66 in directing sale of the property after permitting the certificate debtor to grant a lease of the Jilani Rice Mill in favour of respondent No. 5 but this contention is also without substance. The records do not show that the certificate debtor or the petitioner made any application to the Certificate Officer asking for leave to raise any money by any lease of the mill for clearing of the dues of the certificate debtor. The certificate debtor appears to have granted the lease on the 30th October 1950 without reference to the Certificate Officer and it was the lessee (respondent No. 5) who approached the Certificate Officer later on and proposed to make over the annual rental of Rs. 2,500 to the Certificate Officer towards satisfaction of the certificate dues. The Certificate Officer allowed the lessee to run the mill on condition of the lessee paying the annual rental in advance to the Certificate Officer and the Certificate Officer also issued a sort of prohibitory order restraining the lessee from making payment of the annual rental to the certificate debtor. It appears that this prohibitory order was made in terms of Rule 18 in the Certificate Manual. It does not appear that the Certificate Officer approved of or confirmed at any time the terms and conditions of the lease which was granted by the certificate debtor in favour of respondent No. 5 as is contemplated by Rule 66 of the Rules. Moreover it appears to me to be improbable that the Certificate Officer would agree to accept instalments of Rs. 2,500 annually in liquidation of a debt of Rs. 1,97,096-12-9 knowing full well that it would take near about eighty years to get the debt liquidated in full. What happened was that on the 19th October 1949, distress warrants were issued against the certificate debtor and on the 23rd of October 1949 it was reported to the Certificate Officer that the property had

been leased out. On the 30th of August 1950 the lessee was directed to deposit the annual rent but on the 12th of September 1950 Golam Rubbani who was alleged to be the lessee in respect of the mill came forward and stated that he was not the lessee. Upon that on the 14th of December 1950 the Certificate Officer directed issue of the sale notice. On the 19th of January 1951 the respondent No. 5 came forward with the claim that he was the lessee in respect of the rice mill in question and the annual rent that was payable in respect of such lease was Rs. 2,500. It further appears that this respondent No. 5 deposited a sum of Rs. 2,500 with the Certificate Officer, 24-Parga-nas, in respect of the rent due for the period from the 1st of November 1950 to the 31st of October 1951. This deposit was made by a cheque but the Said cheque was dishonoured on presentation. Thereafter on the 5th February 1951, the lessee applied for payment in cash and in fact paid the sum of Rs. 2,500 in cash and such payment was accepted by the Certificate Officer. Thereafter the Certificate Officer called upon the lessee to deposit further one year's rent in advance and it was directed that in default the sale notice would issue. Thereafter on or about the 1st of September 1951, the lessee applied for payment of rent in accordance with the terms of the lease and in the alternative he prayed for sale of the property subject to the lease. The Certificate Officer thereupon ordered the property to be sold subject to the lease. It is therefore clear from the aforesaid facts that it was not in the contemplation of the Certificate Officer or the certificate debtor to act in accordance with Rule 66 nor was any arrangement as contemplated in Rule 66 entered into between the Certificate Officer and the certificate debtor.

7. The last point that was argued by Mr. Mukherjee was that the Collector acted in excess of jurisdiction in throwing out the petition for revision filed by the petitioner against the order of the Certificate Officer on the ground that the revision application was not maintainable as the petitioner had failed to prefer an appeal in terms of Section 51 of the Act. This argument of Mr. Mukherjee has also no force. It is clear from the terms of Section 51 of the Act that what this section contemplates is that appeals from original orders made by a Certificate Officer lie to the Collector and appeals from original orders made by a Collector lie to the Commissioner and such appeals are to be preferred within 15 days and within 30 days respectively. Section 52 of the Act bars second appeals from orders of the Collector passed on appeals and Section 53 deals with cases of revision of any order passed by a Certificate Officer or the Collector or the Commissioner. It is well-known that the scope of appeals and revisions is different. The revisional jurisdiction is more restricted and is narrower than the appellate jurisdiction. Furthermore, considering the setting in which the provisions of appeals and revisions find place in the Bengal Public Demands Recovery Act it appears that the scheme of the Act is that where the remedy by way of appeal is available that remedy should be pursued. It was not the object of the framers of the Act to allow concurrent or alternative remedies of appeal and revision to a party aggrieved by any order made under the Act. If it were so, then a party may always ignore the provisions for appeal as embodied in Section

51 of the Act and can also ignore the bar of time prescribed for filing an appeal and then can file a petition for revision against the order complained of. I think that Section 53 is a residuary section which should be availed of in a case where no appeal lies. Both Sections 51 and 53 are not happily worded and there is scope for confusion and misunderstanding. It appears to me that the intention of the Legislature was not to make the remedies concurrent or alternative. Section 51 which is the more specific provision was not intended to be overridden or nullified by Section 53. The two sections of the Act have to be reconciled and to achieve such object the remedy of appeal has to be followed in the first instance where such remedy is available and it is only where it is not open to a party to prefer an appeal that the remedy by way of revision should be resorted to. Mr. Mukherjee has referred to Mulla's Civil Procedure Code, 11th Edn., p. 409, to show that a memorandum of appeal may be treated as an application for revision and an application for revision may be treated as a memorandum of appeal by a Court competent to entertain an appeal or the application for revision. It is stated in Sir Dinshaw Mulla's book that where an appeal is preferred in a case where no appeal lies High Court may in a proper case treat a memorandum of appeal as an application for revision and deal with it on that footing. Similarly, if an application for revision is made in a case in which an appeal lies the application may be converted into an appeal. Several decisions have been cited in Sir Dinshaw Mulla's book in support of the proposition stated above. But it is clear from the observation's in the said book that the question whether an application for revision is to be treated and dealt with as a memorandum of appeal or vice versa is a matter which is entirely in the discretion of the Court before which Such appeal is preferred or the application for revision is made. This Court cannot in exercise of its powers under Article 226 of the Constitution interfere with the exercise of such discretion unless it can be established that the discretion has been exercised arbitrarily or mala fide. It is to be noted that in the present case the petitioner presented a petition for revision of not only the order dated the 26th June 1952 but also the order dated the 14th December 1951. This is clear from the statement in para. 11 of the I petition. The time to file an appeal against the order dated the 14th December 1951 had expired long ago. So the petitioner tried to circumvent the time limit which is to be found in the provision for appeal u/s 51 of the Act by presenting a petition for revision. Neither the Collector nor the Commissioner was willing to give countenance to this attitude taken by the petitioner. As the matter was entirely in the discretion of the Collector and as there is nothing to show that the discretion has been improperly and arbitrarily exercised I do not think that this Court will be justified in interfering with the order of the Collector or the Commissioner on the ground that they had not treated the application for revision as a memorandum of appeal u/s 51 of the Bengal Public Demands Recovery Act. This disposes of all the points which have been raised by Mr. Mukherjee on behalf of the petitioner.

8. In my view, this petition must fail. The Rule is accordingly discharged. There will be no order as to costs.