
(1978) 11 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1650 of 1972

Jagannath Singh

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 11-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1978) WLN 350

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Shri Jagannath Singh, the petitioner in this writ petition filed under Articles 226 & 226 of the Constitution, was the Jagirdar of Thikana Malas in the former State of Mewar. A tank known as "Arjun Sagar" had been constructed by Shri Arjun Singh in village Malas, Tehsil Mandal, District Bhilwara. The petitioner's grand father, Shri Khunaan Singh reconstructed the said tank so as to enable it to meet the requirements of irrigation of jagirs land and for that purpose he was advanced a loan, on Rs. 13.000/- by the former State of Mewar in 1936 under a written deed dated Vikram Samwat year 1992 Kati Bid 11. The said loan carried interest 6% per annum. Shri Khumansingh died in 1940 and shortly thereafter his son, Shri Ratansingh, the father of the petitioner, also died leaving behind the petitioner. As the petitioner was put under the Management of the Court of Wards and was released from the administration of the Court of Wards in the year 1954. During the period, the Makana was under the administration of the Court of Watds, a sum of Rs. 6,335/- was paid towards the principal amount of the loan aforesaid. The Jagir of the petitioner was resumed under tine previsions of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, with effect from 23rd August, 1954. As a result of the aforesaid resumption of the Jagir, the petitioner was also deprived of the possession of the Arjun Sagar tank referred to above.

2. By order dated 31st August, 1959, the Finance department of the Government of Rajasthan determined that the total amount payable by the petitioner towards the loan and interest payable thereon was Rs. 26,000/- principal amount Rs. 13,000/- and interest amount Rs. 13,000/- and that after deducting the amount of Rs. 6,335/- which had already been deposited, a sum of Rs. 19,265/- was the balance and outstanding against the said loan. While determining the amount of compensation payable to the petitioner irrespective of his Jagir which was resumed under the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, the total amount payable to the petitioner by way of compensation and rehabilitation in respect of the said Jagir was assessed at Rs. 15,184.34 P. and it was further determined that a sum of Rs. 3,592.19/- was deductible from the aforesaid amount of compensation towards dues recoverable from the petitioner u/s 22(1) of the said Act. No determination was, however, made with regard to the amount recoverable from the petitioner as against the loan of Rs. 13,000/- advanced to him by the former State of Mewar. But in the said order of final determination of compensation a note was appended to the effect that the amount recoverable by the Finance Department was still due. The total amount payable to the petitioner by way of compensation of the Jagir was Rs. 10,692.10/- and after adjusting the said sum against the sum of Rs. 19,665/- payable by the petitioner toward the principal amount & interest on the loan advanced to the petitioner by the former State of Mewar, the Government of Rajasthan directed that a sum of Rs. 8,971.90/- was recoverable from the petitioner. The Treasury Officer, Udaipur, thereafter, sent a requisition on 23rd May, 1960 to the Collector and District Magistrate, Bhilwara, for the recovery of Rs. 8,971.90/- from the petitioner under the provisions of the Rajasthan Public Demands Recovery Act, 1952, (hereinafter referred to as the Act). After the receipt of the said requisition, the Sub Division Officer, Bhilwara, on 5th August, 1960 issued a certificate u/s 4 of the Act, certifying that a sum of Rs. 8,971.90 is due and justly recoverable and that its recovery was not barred by any law. On 5th August, 1960, the Sub-Divisional Officer, Bhilwara, issued a notice to the petitioner, u/s 6 of the Act, whereby the petitioner was informed that if he wanted to deny his liability to pay the sum of Rs. 8,971.90/- mentioned in the certificate, he may, within 30 days from the service of said notice, file an objection denying liability in whole or in part and if the petitioner failed to file such an objection within 30 days or if he failed to show cause or did not show sufficient cause why the said certificate should not be executed, the certificate would be executed. On the receipt of the said notice, the petitioner, on 6th September, 1960, filed an objection petition denying his liability to pay the sum of Rs. 8,371.90/- and requested that the proceedings for the recovery of the aforesaid amount against him may be dropped. The S.D.O, Bhilwara, by his order dated 25th January, 1961, rejecting the said objection petition filed by the petitioner & proceeded with the recovery of the amount of Rs. 8,971.90/. under the certificate dated 5th August, 1961, found by him. In the aforesaid recovery proceedings, the petitioner deposited the sum of Rs. 8,971.90/- on various cases between 1969 and 1972. Thus the total amount of the loan of Rs. 13,000/-

determined as well as to interest payable on the said loan has been paid by the petitioner and the recovery proceedings are confined to the interest payable on the sum of Rs. 8,971 90/- from 5th August, 1960 till the repayment of the said amount in 1972. Aggrieved by the aforesaid recovery proceedings, the petitioner filed this writ petition on 4th September, 1972.

3. During the course of hearing the validity of the recovery proceeding aforesaid was challenged by the learned Counsel for the petitioner on the following grounds:

(i) The Sub Divisional Officer, Bhilwara, was not competent to issue the certificate of recovery u/s 4 of the Act and to take further proceedings of recovery against the petitioner on the basis of the said certificate.

(ii) The power to determine any amount recoverable from a Jagirdar in respect of a debt owned by the Jagirdar vests exclusively in the Jagir Commissioner under the Rajasthan Land Reforms and Resumption of Jagirs Act and the rules framed thereunder and in the absence of any determination having been made by the Jagir Commissioner with regard to the loan of Rs. 13,000/- advanced by the former State of Mewar, while assessing the compensation under the provisions of the said Act, it was not competent for the State to take steps for the recovery of amount recoverable towards said loan of Rs. 13,000/- & interest payable thereon.

(iii) The Rule of Damadupat was applicable and the State Government could not recover interest in excess of the principal amount of the loan of Rs. 13,000/-.

(iv) The loan of Rs. 13,000/- was advanced for the purpose of reconstruction of the tank used for the purpose of irrigation of Jagir lands and after the resumption of the Jagir and the vesting of the tank in the State the liability of the petitioner for repayment of the loan came to an end.

4. In reply to the first contention, the learned Deputy Government Advocate has submitted that by notification dated 20th February, 1957, issued in exercise of the powers conferred on it u/s 26(1)(d) of the Rajasthan Land Revenue Act, 1956, the State Government has conferred on all the Sub-Divisional Officers, the powers of the Collector under the Rajasthan Public Demands and Recovery Act, 1952, and that in view of the aforesaid notification, the S.D.O., Bhilwara, was competent to issue the certificate dated 5th August, 1960 u/s 4 of the Act and also to take all the steps under the Act for the recovery of the amount due as mentioned in the said certificate. The submission of the learned Deputy Government Advocate is that Section 26(1)(d) of the Rajasthan Land Revenue Act empowers the State Government to confer on the Sub-Divisional Officer all the powers conferred on the Collector, u/s 25 of the said Act, which includes the power conferred on the Collector under the Rajasthan Public Demands Recovery Act. The submission of the learned Counsel for the petitioner, on the other hand, is that Section 26(1)(d) of the Rajasthan Land Revenue Act, is confined in its operation to the powers conferred on Collector under the Land Revenue Act and does not empower the State Government to confer on the Sub-Divisional Officer,

the powers conferred on the Collector under the Rajasthan Public Demands Recovery Act.

5. The question as to whether by notification dated 28th February, 1957, issued in exercise of its powers u/s 26(1)(d) of the Rajasthan Land Revenue Act, the State Government could confer on the Sub-Divisional Officer, the powers conferred on the Collector under the Rajasthan Public Demands Recovery Act, has come up for consideration before this Court in a number of cases In Haji Mohammed v. Board of Revenue and Ors. D.B Civil Writ Petition No. 427 of 1960, decided on 16th March, 1961 a Division Bench of this Court has laid down:

It may be noted that the notification of the 28th of February, 1957, has been issued by the Government in exercise of its powers u/s 26 of the Rajasthan Land Revenue Act. Section 26(1)(d) invests power in the Government to confer all or any of the powers of a Land Record Officer, or a Settlement Officer, or a Collector on a Sub Divisional Officer by means of a notification published in the official Gazette. The delegation of powers contemplated by the said Section 26 are powers exercisable under the Rajasthan Land Revenue Act. Section 26 cannot be conceived to invest the Government with power to delegate authority conferred on a Collector under laws other than the Rajasthan Land Revenue Act The notification, referred to above, cannot therefore of construed in such a way as to authorise a Sub-Divisional Officer to act as a Collector under part 2 of the Rajasthan Public Demands Recovery Act. u/s 256 of the Rajasthan Land Revenue Act arrears of Government dues under other laws have also been made recoverable as arrears of land revenue. Consequently, the authority conferred by the Government on the Sub Divisional Officer u/s 26 would hold good for purpose of proceedings of recovery of State dues to the extent only of part 3 of the Rajasthan Public Demands Recovery Act. In other words, so far as the procedure for collection of an ears is concerned, the Sub-Divisional Officer may act in place of the Collector but in so far as the functions of the Collector under part 2 of the Rajasthan Public Demands Recovery Act are concerned, the Sub-Divisional Officer cannot take upon himself the duties of the Collector, by virtue of the investment of powers u/s 26. Filing of a certificate u/s 4 with the Collector & filing of petition denying the liability & hearing of such petition u/s 9 are matters not purely of procedure but of substance, & they cannot be considered to be covered by the scope of Section 256 read with Section 26 of the Raj Land Revenue Act. Thus, it is evident that the powers conferred upon a Collector under Part 2 of the Public Demands Recovery Act shall have to be performed by the Collector himself. They cannot be deemed to be capable of being delegated by Government u/s 26 of the Rajasthan Land Revenue Act.

6. The aforesaid judgment has been followed by this Court in Sardar Gyan Singh v. Board of Revenue and Ors. D.B. Civil Writ Petition No. 32/61, decided on 13-1-1964 and Lilachund Khemarjmul v. State and Ors. D.B. Civil Writ Petition No. 60/1963. decided on 22-2-1965.

7. From the aforesaid decisions of this Court, it is clear that it was not competent

for the State Government, in exercise of its powers u/s 26(1)(d) of the Rajasthan Land Revenue Act, to confer on the Sub-Divisional Officer, Bhilwara, the power conferred on the Collector under Part 2, (Section 4 to 8) of the Rajasthan Public Demands Recovery Act and any action taken by the Sub-Divisional Officer, Bhilwara. under Sections 4 to 8 of the said Act was, therefore illegal and void. The certificate dated 5th August 1960, on the basis of which recovery is being made from the petitioners was issued by the Sub-Divisional Officer, Bhilwara, u/s 4 of the Act. As the Sub-Divisional Officer, Bhilwara was not competent to issue a certificate u/s 4 of the Act, the certificate dated 5th August, 1960 issued by him was illegal and without the authority of law and the recovery proceedings initiated against the petitioner under the provisions of the Rajasthan Public Demands Recovery Act, 1952 by the S.D.O. Bhilwara, on the basis of the aforesaid Certificate dated 5th August, 1960, are completely without jurisdiction. The petitioner is, therefore, entitled to the issue of a writ of prohibition, restraining the respondents from taking any steps for the recovery of any amount from the petitioner under the Rajasthan Public Demands Recovery Act, on the basis of the Certificate dated 5th August, 1960, issued by the Sub-Divisional Officer, Bhilwara.

8. In view of my finding aforesaid on the first submission urged by the learned Counsel for the petitioner, I do not consider its necessary to deal with the other submissions urged by the counsel for the petitioner.

9. The result is that the writ petition is allowed and the recovery certificate dated 5th August, 1960 issued by the S.D.O. Bhilwara is quashed and the respondents are prohibited from taking any steps for the recovery of and amount from the petitioner under the provisions of the Rajasthan Public Demands Recovery Act, 1952, on the basis of certificate dated 5th August, 1960 issued by the SDO, Bhilwara. Taking into consideration the facts and circumstances of the case, I further direct that the parties shall bear their own costs of this writ petition.