
(1964) 05 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 52 and 53 of 1963, and Cri. Ref. 24 of 1963

Jaisi Ram and Others

APPELLANT

Vs

A.D.M. Kamua and Others

RESPONDENT

Date of Decision : 01-05-1964

Acts Referred:

Town Area Act, 2011 — Section 34(1), 34(3)

Citation : AIR 1964 J&K 86

Hon'ble Judges : Syed Murtaza Fazl Ali, J

Bench : Single Bench

Advocate : R.N. Bhalgotra, for the Appellant; D.D. Thakifr and B.L. Suri, for the Respondent

Judgement

S. Murtaza Fazil Ali, J.—These three petitions arise out of more or less connected matters and have been taken up together and will be

decided by one common judgment.

2. It appears that-the Petitioner Jaisi Ram was that contractor of Basohli Town Area Committee and as his contract money was due, the Chairman

Town Area Committee issued a writ of demand against the Petitioner Jaisi Ram and forwarded it to the Magistrate for its realization u/s 34(1) of

the Town Area Act of 2011. It appears that the Petitioners Ammer Chand and Ors. were partners of the Petitioner Jaisi Ram and had stood

sureties for the payment of his dues to the Town Area Committee. In view of this contract between Ammer Chand and Ors. and the Petitioner Jaisi

Ram, the Chairman Town Area Committee issued a writ of demand against Ammer Chand and ors also and forwarded the same to be executed

by the Magistrate at Basohli u/s 34(1) of the Town Area Act. Subsequently, an application for transfer was filed before the Additional District

Magistrate by the Petitioner Ammer Chand and ors and the application was dismissed by the Additional District Magistrate who observed that the

Magistrate should not start any proceedings against these Petitioners. The Petitioner Jaisi Ram went up to the District Magistrate for making a

reference against the order of the Additional District Magistrate giving the directions referred to above and accordingly a reference has been made

to this Court for quashing the order of the Additional District Magistrate on the ground that he had no jurisdiction to direct the Magistrate not to

proceed against the Petitioners Ammer Chand and Ors.

3. Mr. Bhalgotra' appearing for the Petitioner Jaisi Ram submitted that the order passed by the Magistrate cannot be said to be without jurisdiction

because u/s 34 (3) the Petitioners Ammer Chand and Ors. had a right to contest the liability to pay after depositing the amount. Similarly he has

contended that as the Magistrate was exercising a special function, under the Town Area Act his order could not be reversed by the Additional

District Magistrate nor would a transfer application even lie to the A.D.M. While there may be some force in the second contention raised by Mr.

Bhalgotra, the main point to be seen is as to whether or not the Petitioners Ammer Chand and ors could be proceeded against u/s 34(1) of the

Town Area Act. Sub-clauses 1, 2 and 3 of the Town Area Act, 2011 run thus:

Arrears of any tax or of any fee or any other sum due to the Town Area Committee under this Act or rules made there under may be recovered,

on the expiry of two weeks from the date specified for payment in the writ of demand on application to a Magistrate having jurisdiction within the

limits of the town area or in any other place within the State where the defaulter may, for the time being reside, by the attachment and sale of any

movable or Immovable property belonging to such defaulter and within the limits of such Magistrate's jurisdiction.

Such attachment and sale shall be made in the same manner as attachment and sale of movable or immovable property in execution of a decree of

a Civil Court.

Arrears of contract money due from a contractor for the collection of any of the town area taxes or fees and the damages incurred by the Town

Area Committee by reason of a contractor or tenderer or bidder of such contract committing a breach of contract and arrears of rent on account

of any immovable property vested in or under the control of a Town Area Committee from whatever date due may be recovered in the manner

laid down in Sub-section (1), provided that if any person disputes his liability to pay the amount due under this Sub-section or the correctness of

amount demanded he may pay the amount demanded from him under protest in writing and may bring a suit in a civil court to contest his liability

and or refund o the amount paid by him.

4. A perusal of Sub-clause (1) of Section 34 would clearly show that the Statute has provided a summary and coercive method of realizing the

dues which the contractor owes to the Town Area Committee under a contract. It is common ground that the present case is covered by Sub-

clause (3) of Section 34 which relates to the realization of the contract money due from a contractor. By recourse to Sub-clause (3) dues falling

within the ambit of that Section can be realised u/s 34(1) of the Act. But before recourse' can be taken to Sub-clause (1) of Section 34, the

following conditions mentioned in Sub-clause (3) must be fulfilled.

i. There must be arrears.

ii. The arrears must be of contract money.

iii. The contract money must be due from a contractor for the collection of Town Area tax and fees etc. This Section does not include within its

scope any partner or surety of a contractor. It is obvious that' the Legislature did not intend to subject a person who had no privity of contract

between himself and the Town Area Committee to the coercive methods provided for u/s 34(1) of the Act. If the intention was that even surety or

a partner of a contractor could be proceeded against u/s 34(1) there is no reason why this should not have been made absolutely clear in Sub-

clause (3).

In my opinion, the interpretation of Sub-clause (3) of the Act clearly shows that it refers only to arrears of contract money due from a contractor

and a contractor j alone. Thus any proceedings taken against the surety of a contractor or one of his partners would be beyond the ambit of the

statute and without any authority of law. In this view of the matter, it is manifest that the Chairman of Town Area Committee transcended the limits

of his jurisdiction under the Act in issuing a writ of demand against Ammer Chand and ors and sending it for execution to the Magistrate. Similarly

the Magistrate had no jurisdiction to proceed against these Petitioners since they could not be contractors as contemplated by Sub-clause 3 of the Town Area Act.

5. Mr. Bhargotra submitted that in the proviso the word ""person"" is used and not the contractor which shows that Section 34(3) could apply even

to a surety or a partner. I am, however, unable to agree with this contention. The proviso has to be read within the scope and meaning of Sub-

section (3) itself. The word ""any person"" would obviously refer to the person indicated in Sub-section (3) of Section 34 which is the contractor

alone. Having regard to these facts, I am clearly of the opinion, that the action taken by the Chairman Town Area Committee in proceeding against

the Petitioners Ammer Chand and Ors. was a direct interference with the fundamental rights of the Petitioners to hold their property and was an

action without any authority of law. Even if, therefore, the Additional District Magistrate had no jurisdiction to give necessary direction to the

Magistrate not to proceed against the Petitioners Ammer Chand and Ors. , since he had rectified a fundamental error committed by the Magistrate

in proceeding against the Petitioners, this Court will not interfere because interference would amount to a serious travesty of justice; Moreover, the

directions which the Additional District Magistrate has given were to be given by this Court itself in the petition filed by Ammer Chand and Ors. .

6. For these reasons, therefore, the petition of Ammer Chand and Ors. is allowed and the proceedings taken against the Petitioners Ammer Chand

and Ors. are reference is discharged.

7. In the circumstances of the case, there will be no order as to costs.