
(1977) 12 AP CK 0001
In the Andhra Pradesh High Court
Case No : Writ Pen No. 3947 of 1977

M. Reddannam

APPELLANT

Vs

Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 21-12-1977

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 16, 16(1)
Andhra Pradesh Revenue Recovery Act, 1864 — Section 3, 4, 48, 49, 5

Citation : (1978) 1 APLJ 407 : (1980) 46 STC 232

Hon'ble Judges : T. Narasinga Rao, J; Madhavarao, J; M. Ramachandra Raju, J; Chennakesav Reddy, J; A. Sambasiv Rao, J

Bench : Full Bench

Advocate : S. Dasaratharami Reddi and S.R. Ashok, for the Appellant; Public Prosecutor, for the Respondent

Judgement

S. Sambasiva Rao, J.—The question formulated by our learned brothers Chennakesav Reddy and Madhava Rao JJ. whiel referring the writ petition to a Full Bench is; "Whether the Revenue Divisional Officer has jurisdiction to issue a warrant of arrest and detention of a defaulter under Sec. 48 of the Revenue Recovery Act." This is one of the questions which arise in the petition filed seeking a writ of habeas corpus. Though our learned brothers have referred the case itself to a Full Bench , learned counsel for the petitioner has submitted that besides this question there are many other points which he seeks to urge in the writ petition and therefore requested us to give our opinion on it and remit back the matter to the Division Bench. Acceding to this request, we will now proceed to answer the question

2. It appears there are arrears of sales tax of an extent of Rs. 33,274-65 ps due from the petitioner. By proceedings dt. 25-6-1977 the Revenue Divisional officer. Cuddapah expressed the opinion that the petitioner was wilfully withholding payment of the arrears and charges, and had been guilty of fraudulent conduct in evading payment of the said arrears and charges by his failure to report the turnovers and failed to pay the tax due to the Government till such time as the

case was detected by the Department as reported by the Deputy Commissioner (Commercial Taxes), Chittoor, in his letter dated 24-6-1977. Therefore, the Commercial Tax Officer, Cuddapah, was directed forthwith to arrest the said defaulter, and unless he paid the amount of arrears, to convey him to the Central Prison Rajamundry and deliver him to the Jailors to be detained for a period of two years unless sooner released by an order from his office. This was issued in Form No. 2 under Ss. 48 and 49 of the Revenue Recovery Act. Thereupon, the petitioner files the writ petition seeking a writ of habeas corpus for setting aside the aforesaid order of the Revenue Divisional Officer.

3. Even at the outset, it must be noted that Sri. Dasaratharama Reddy learned counsel for the petitioner, has stated before us that he is not challenging the validity of Ss. 48 and 49 of the Revenue Recovery Act. Therefore, there is no need to go into that question.

4. He, however, contended that under that said provisions only the Collector is empowered to issue a warrant of arrest and detention. The Government by their Notification is G. o. Ms. 77 Revenue dated 22-1-68 issued under S. 3 of the Andhra Pradesh District Collector's Powers vested in the Collector under the Revenue Recovery Act. So, in addition to the District Collector, the District Revenue Officer also has jurisdiction to issue a warrant. The Revenue Divisional Officer, however, has no such power under the law. Consequently, the warrant of arrest issued by such an officer is illegal and without jurisdiction.

5. On the other hand, Sri Obulapathi Chowdary, learned Public Prosecutor endeavoured to sustain the order by contending that a Revenue Divisional Officer has the necessary power to issue a warrant under S. 48 of the Revenue Recovery Act by virtue of S. 3 (i) of the Madras Subordinate Collectors and Revenue Malversation (Amendment) Regulation, 1828.

6. The power to arrest and detain a defaulter in payment of arrears is conferred on the Collector under s. 48 of the Revenue Recovery Act. That provision is in the following terms:--

"When arrears of revenue, with interest and other charges as aforesaid cannot be liquidated by the sale of the property of the defaulter, or of his surety and the Collector shall have reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter, or his surety, not being a female as hereinafter mentioned; but no person shall be imprisoned on account of an arrear of revenue for a longer period than two years, or for a longer period than six months, if the arrear does not exceed Rs. 500/- or for a longer period than three months, if the arrears do not exceed Rs. 50/- provides that such imprisonment shall not extinguish the debt to due to the State Government by defaulter, or his surety."

Sec. 49 lays down the procedure to be followed in issuing and executing the warrants. The expression "Collector", though it had been used at very many

places in the Revenue Recovery Act, is not defined in it. Sri Dasaratharaman Reddy submitted that the expression "Collector" means only "the District Collector." The learned Public prosecutor does not dispute this meaning given to the expression. Going by the entire scheme of the Act this meaning given to the word appears to be correct. Though not in S. 48, in many other provisions the expression used is "the Collector, or other officer empowered by the Collector in that behalf" thereby implying that the Collector is "the District Collector" and for certain purposes of the Act, he can empower some other officer to act on his behalf.

7. The Revenue Recovery Act was passed in 1964. Earlier there was the Madras Revenue Malversation Regulation, 1822 and the Madras Subordinate Collectors and Revenue Malversation (Amendment) Regulation, 1829. In those Regulations also the word "Collector" was used to refer to the "Collector of the District." The latter Regulation of 1828 brings out clearly the distinction between the "Collector" and "Subordinate and other Collectors". In fact, that Regulation had been made empowering the Subordinate, Deputy and Assistant Collectors to exercise, within their divisions, all the powers of the Collector. It is, therefore, manifest that "Collector" is used to denote "the District Collector". It is true that the word "Collector" is defined in the Andhra Pradesh General Clauses Act, 1982 as including every officer who, for the time being, is authorised to exercise the powers of a Collector and that the word "district Collector" as the chief local officer in charge of the Revenue Administration of a district. But in S. 3 it is made clear that these definitions are applicable to Acts made after the commencement of the General Clauses Act of 1891. The Revenue Recovery Act is an earlier Act, i.e., of 1964 and therefore the definition of "Collector" contained in the General Clauses Act does not apply to it. We need not go deeper into this aspect since both sides before us have argued on the basis that the word "Collector" in the Revenue Recovery Act means "the District Collector".

8. Sri Dasaratharaman Reddy pressed the brief on behalf of the petitioner on the following lines; the Revenue Recovery Act maintained through many of its provisions a clear distinction between a "Collector" and "other officer empowered by him". Whenever the District Collector was meant to be referred to, the Act used the simple word "Collector". At the same time, when some power is conferred not only on the Collector but some other officer whom he could authorise in this behalf, various provisions said so in clear terms. However, S. 48 which conferred the power to arrest and detain, deliberately used the word "Collector" and did not add "other officer empowered by him". This would clearly demonstrate the intention of the Act that only Collector, that is to say, District Collectors, can order arrest and detention. Otherwise, if the intention were to authorise other officers empowered by the District Collectors the Act would have said so as it did in several other sections. Since arrest and detention of a person result in serious consequences of grave import to the person concerned, the Act limited the exercise of the power only to the District Collector. The Andhra Pradesh District Collectors' Powers (Delegation) Act, 1961 empowers the State

Government to authorise by notification any joint Collector or any other officer of the revenue department not below the rank of a Deputy Collector, to exercise all or any of the powers vested by or under any law in the District Collector, and so that Government is now having power to delegate such powers. By G. O. Ms. 77, Revenue, dated 22nd Jan. 1968 some of the District Collectors' powers including those under the Revenue Recovery Act have been delegated to the District Revenue Officers. With the result, now the District Revenue Officers, in addition to the District Collectors can exercise the power of arrest and detention under S. 48 of the Revenue Recovery Act and nobody else. The Andhra Pradesh Subordinate Collectors and Revenue Malversation (Amendment) Regulation, 1928 does not confer these powers on Subordinate Collectors or Revenue Divisional Officers. That Regulation cannot be invoked by the Respondents to sustain the impugned order since the said Regulation has no application.

9. In the first place, the Revenue Recovery Act was passed subsequent to the Regulation of 1928 and still, s. 48 of the Revenue Recovery Act confined the powers of issuance of warrant of arrest and detention to the District Collectors. Secondly, the application of the said Regulation has to be limited only to the enforcement and implementation of Regulation alone. Thirdly even supposing that the word "Regulation" as used in the 1928 Regulation includes an "Act, S. 3 does not apply where the contrary intention has been expressly declared. Moreover, S. 48 has conferred on the appropriate authority very large powers of arrest and detention which would deprive a citizen of his personal liberty. Therefore, very strict construction should be laid on it. Consequently the word "Collector" should be construed as meaning only the "District Collector" and now in view of the 1961 Act also as "District Revenue Officer". No other officer can be brought within the ambit of the word "Collector" as used in Sec. 48. Lastly, it was submitted that the Andhra Pradesh District Collectors' Powers (Delegation) Act, 1961 is a comprehensive piece of legislation and it must, therefore, be deemed to have repealed the analogous provisions contained in the analogous provisions contained in the 1928 Regulation. This is a brief resume of the several contentions raised by the learned counsel for the petitioner.

10. On the other hand, Sri Obulapathu Chowdary, learned Public Prosecutor maintained that under S. 3 of the 1928 Regulation a Subordinate, Deputy or Assistant Collector has the power to exercise within the division under his charge, all the powers given to the Collector, under any law, be it a Regulation or an Act. The Revenue Act was passed long after the Regulation of 1928. Therefore, when the word "Collector" was used in S. 48 it must be taken as having been used with all its ramifications as stated in Sec. 3 of the 1928 Regulations. There is no express declaration in the Revenue Recovery Act as postulated by S. 3 of the 1928 Regulation showing a clear intention that a Subordinate, Deputy or Assistant Collector shall not exercise the power of arrest and detention. There is no express or implied repeal of S. 3 of the 1928 Regulation under the 1961 Act. Therefore, a Sub-Collector or an Assistant Collector or a Deputy Collector has the power to order arrest and detention

within his own division. Consequently, the impugned order is perfectly valid.

11. We have no hesitation in upholding the arguments of the learned counsel for the petitioner that Sec. 48 of the Revenue Recovery Act should be strictly construed. It confers on a Collector power to order arrest and detention of a defaulter in payment of revenue up to a period of two years depending upon the amount in arrears. Now only the defaulter but also the surety as well or both of them can be arrested and detained under this provision. It is true that the Collector can exercise the power only when he has reasons to believe that the defaulter or the surety is wilfully withholding payment of the arrears or has been guilty of fraudulent conduct in order to evade payment. All the same, there is no doubt that power is conferred under this provision on the Collector, who is executive authority, to deprive a citizen of his personal liberty. Usually such powers can be exercised only by courts of law and even the court will have to follow a well-defined procedure before it imposes a punishment of imprisonment. When such power is conferred on a Collector under S. 48, the provision must be construed very strictly and its application must be limited only to cases where it clearly applies.

12. The question with which we are now concerned is in a very narrow compass. It is whether a Sub-Collector or an Assistant Collector or a Deputy Collector can exercise this power of arrest and detention within his division. The other aspects of the matter have not been argued before us. S. 48 by itself does not authorise any other officer to exercise the power of arrest and detention. It is true as pointed out by the learned counsel for the petitioner, that s. 48 does not authorise any other officer empowered by the Collector to exercise his power. In contrast with what is contained in Ss. 3, 5, 6, 8, 9, 22, 26, 36, 39, 44, 47, 50 and 51 where-under not only the Collector but also any other officer empowered by him can exercise the powers and discharge the functions stated by them, Ss. 28, 37 (a), 38, 45, 48, and 49 confine the exercise of the power only to the Collector. Therefore, it follows that the Collector cannot empower any other officer to exercise his powers and discharge his functions under the latter set of sections, including Ss. 48 and 49. We have no hesitation to agree with Sr. Dasaratharama Reddy in his contention that a Collector cannot by himself authorise any other officer to exercise the power of arrest and detention conferred on him under Ss. 48, and 49 of the Revenue Recovery Act.

13. However, it is one thing to say that a Collector cannot authorise any other officer to exercise the power under S. 48 and it is altogether a different matter if some other officer is authorised by a law in force to exercise the powers of the Collector. A Collector may not by himself delegate the powers. In fact no Collector can delegate his powers under s. 48. But nothing prevents a law from authorising some other officers also to exercise that power and discharge those functions. For one instance and this is accepted by the learned counsel for the petitioner as perfectly valid, the Andhra Pradesh District Collectors' Power (Delegation) Act, 1961 empowers the State Government to delegate the powers

of the District Collector to District Revenue Officers. Indeed, the State Government has availed itself of this power of delegation by issuing G. O. Ms. 77, dated 22-1-1968 delegating the powers of the District Collectors to District Revenue Officers. The Revenue Recovery Act is one of the enactments, which was included in the Annexure to the notification, with the consequence that a District Revenue Officer can exercise the powers of the District Collector in that district under the Revenue Recovery Act. Likewise if there is a similar law in force powers of the District Collector, then the delegate's authority to exercise that power cannot be doubted.

14. In this particular case, the Deputy Collector in charge of the Division in which the petitioner lives has passed the order of arrest and detention. This power of his is sought to be sustained under s. 3 of the Madras Subordinate Collectors and Revenue Malversation (Amendment) Regulation 1828. Before we come to the provisions of the said S. 3, we will do well to notice how this 1828 Regulation came to be passed. There was an earlier Regulation which is the Madras Revenue Malversation Regulation. 1822. As its preamble indicates, it is a Regulation for empowering Collector to take primary cognizance of cases of malversation in revenue affairs; for prescribing the rules to be observed in such investigations and in the recovery of money embezzled or corruptly received by public servants and others amenable to the Collectors' jurisdiction. Nearly six years later the Madras Subordinate Collector and Revenue Malversation (Amendment) Regulation, 1828 came to be enacted. As the name indicates, the Regulation has two purposes, firstly to confer certain powers on subordinate Collectors, and secondly to introduce certain amendment in the Revenue Malversation Regulation. This is definitely brought out in the descriptive title and the preamble of the regulation. The descriptive title reads thus:---

"A Regulation for declaring the powers of Subordinate, Deputy and Assistant Collectors in charge of particular divisions of districts and for facilitating proceedings under Regulations IX of 1822.

The Preamble is as follows:

"Whereas the efficient discharge of the functions of Collectors requires that Subordinate, Deputy and Assistant Collectors should be empowered to exercise within their divisions all the powers of the Collector, but subject nevertheless, to their revision and correction and further, that Collectors should have authority to refer for investigation under certain restrictions, to their Sherishtadars and deputy Sherishtadars when absent from the huzur kacheri, and also to their tahsildar within their respective tahsildaris certain of the cases cognizable by themselves under Regulation IX of 1822 and also that petitions of appeal against judgements and orders passed under the same Regulation should be preferred within a limited time and should be finally decided upon by or in Council as at present; therefore the Governor in Council has enacted this Regulations."

It should be noted here that the 1822 Regulation as well as the 1828 Regulation

were not only amended but were also extended to the Talangana area by Act XIX of 1958. By virtue of S. 4(1) of the said Act XIX of 1958 the words "Subordinate, Deputy and Assistant Collectors". were substituted in the descriptive title and the word "Subordinate and Deputy Collectors" in the preamble of the 1828 Regulation. From the fact that these Regulations were amended by the Andhra Pradesh Legislature by Act XIX of 1958, it would be manifest that the legislature intended the continued operation of these Regulations not only in the areas which originally formed part of the Madras Presidency but also to the Telangana area. It is, therefore, abundantly clear that the Regulation of 1828, amended by Act XIX of 1958, continues to be in force all over the State of Andhra Pradesh. The preamble to the 1828 Regulation explains the two purposes which are sought to be served by the Regulation. The first intention is to provide for efficient discharge of the functions of the Collector, and for that purpose it became necessary to empower Subordinate, Deputy and Assistant Collectors to exercise within their divisions all the powers of the Collector. At the same time, the exercise of these powers by the Subordinate, Deputy and Assistant Collectors is subjected to the revisional correction by the District Collectors. The second object of the Regulation, as explained by the preamble is to make certain other provisions relating to investigation of malversation of revenues and providing for appeals etc. in respect of malversation. The latter part is by way of amendment to Regulation IX of 1822. Instead of making two Regulations, the Government thought it sufficient if one Regulation was made. S. 3 of the Regulation is in respect of the first purpose of the Regulation and the other provisions are in respect of the second purpose.

15. We will now read S. 3 of the 1828 Regulation which is as follows :

"3. First --- A Subordinate, Deputy or Assistant Collector in charge of a particular division of a district shall ex officio have authority to exercise within the division under his charge all the powers granted to Collectors by the Regulations now in force or that may be hereafter enacted unless the contrary shall be expressly declared in any Regulation.

Second:-- Collectors shall have authority to delegate at their discretion in writing under their official signature any of the powers granted to them by any Regulation now in force or that may be hereafter enacted to any of their Subordinates, Deputies or Assistants not in charge of a particular division of a district or to any of their Subordinates, Deputies or Assistants in charge of a particular division beyond the limits of the division under his charge.

Third:--- The proceedings of Subordinate, Deputy and Assistant Collectors acting under the preceding clauses shall be subject in all cases, and in the fullest manner to the superintendence, control and revision of the Collector, who shall have power either to direct, generally that the proceedings of any of his Subordinates, Deputies or Assistants shall be regularly submitted to himself before the decision, order or sentence is carried into execution, and to confirm, modify or annul them or issue any further orders in the cases as he may see fit,

or in any particular case to direct that, that decision, order or sentence of any of the Subordinates, Deputies or Assistants shall not be carried into execution, and to pass such further orders as he may see fit."

It should be noted that once again in S. 3 the words "Subordinate, Deputy or Assistant Collector" were substituted in all the three clauses of the section by virtue of S. 4 of the said A. P. Act XIX of 1958. Under the first clause a Subordinate, Deputy or Assistant Collector has power, by virtue of his office, to exercise within the division under his charge all the powers given to Collectors by Regulations then in force or that may be thereafter enacted, unless the contrary is expressly declared in any Regulation. The Second clause authorises the Collector to delegate the powers to Subordinate, Deputy or Assistant Collectors not in charge of a particular division or to such officers who are in charge of a particular division beyond the limits of the division under their charge. The third clause declares that the proceedings of these Subordinate Deputy and Assistant Collectors acting under cls. (1) and (2) are subject, in all cases and in the fullest manner, to the superintendence, control and revision of the Collector. He is given the power to confirm, modify or annul any of the decisions or orders passed by any Subordinate, Deputy or Assistant Collector in his district. He is also empowered to pass such further orders as he may deem fit.

16. Two important features emerge from these three clauses of S. 3 Firstly, any Subordinate, Deputy or Assistant Collector has power to exercise, without any delegation but only by virtue of his office, all the powers of a Collector under all Regulations in force or which may thereafter be enacted. However, this power is limited only to the division under the charge of that particular officer. The second important feature is that the orders passed by these officers are subject to the superintendence control and revision by the District Collector. It is worthy of note that the District Collector by virtue of cl. (3) can confirm, modify or annul even a sentence which had been passed by a Subordinate, Deputy or Assistant Collector. From this it is manifest that a Subordinate, Deputy or Assistant Collector can impose sentences within the division, provided the Collector is empowered to impose such a sentence under any Regulation in force. A Subordinate, Deputy or Assistant Collector exercises the power under the first clause not by virtue of any delegation but by virtue of his office. It is to indicate this aspect of the matter the words "ex officio" are used in the first clause and what is equally important is the use of the word "shall" in the first clause. A Subordinate, Deputy or Assistant Collector shall have the authority to exercise within the division all the powers of the District Collector under the Regulation. The use of this mandatory expression is in our view very clear and unambiguous in its import. The first clause declares that a Subordinate, Deputy or Assistant Collector has all the powers of a Collector within his own division. This is so declared, as the preamble explains, to facilitate efficient discharge of the functions of the Collectors. As the functions of the District Collectors increased and the word load became heavier, it was thought necessary to authorise the officers in charge of divisions to exercise the powers of the Collectors. At the same time, care was taken to create controlling

and revisional powers in the District Collector.

17. There is another feature worthy of note. This Regulation made by the Governor in Council in 1828 was not only amended but was also extended to the Telangana area by the Legislature of Andhra Pradesh by Act XIX of 1958. That is to say this Regulation though originally made by the Governor in Council, has received the seal of approval by the Andhra Pradesh State Legislature. It could have enacted a statute on the same lines; instead, it amended the Regulation and extended its operation and application to the Telangana area as well. so much so, there is no doubt that the Regulation of 1828 has all the force of law made by the State Legislature.

18. This takes us to the contention of the petitioner's learned counsel that the power conferred under S. 3 of the 1828 Regulation upon Subordinate, Deputy or Assistant Collector is to exercise the Collector's powers granted only by Regulations and not by any Act of the legislature. Throughout, a distinction has been kept between a Regulation and an act and that is kept up even in the Constitution of 1950. So, a Regulation is different from an Act. If this distinction is borne in mind, so argued Sri Dasaratharaman Reddy, it would be evident that s. 3 permits the Subordinate, Deputy or Assistant Collector to exercises those powers of the Collector conferred on the latter by Regulations alone and not by any Act. Consequently, a Deputy Collector cannot exercise the Collector's power under Sec. 48 of the Revenue Recovery Act.

19. We are not impressed by this argument. It is true that there was and continues to be a distinction between a Regulation and an Act. But in S. 3 of the 1828 Regulation there is no doubt the word "Regulation" is used to denote law. It should not be forgotten that his Regulation was made in 1828 when the Governor in Council was empowered to enact regulations which have the force of acts and other law. At that time the Governor in Council was the legislative body empowered to enact laws. After the East India Company handed over the Administration of India to the British Parliament, legislatures were constituted and the laws made by the legislatures have come to be called "Acts". Under the Constitution of India, 1950 provision is made for making Regulations. For instance, a Governor of a State can made Regulations in respect of scheduled areas under Sch. V to the Constitution. But these Regulations also have as much force of law as the statutes enacted by legislatures. It is very significant that the word "enacted" is used not only in the preamble but also in the first clause of S. 3 of the Regulation. The preamble ends with the declaration; "therefore, the Governor in Council has enacted this Regulation." Likewise in the first clause it is stated: "all the powers granted to Collector by the Regulations now in force or that may be hereafter enacted."

20. Here two aspects must be noted. The power exercisable by virtue of Cl. (1) of Section 3 has application to Regulation in force by 1828 but also to Regulations which might be thereafter enacted. Patently the Governor in Council intended that the provisions of Cl. (1) shall apply to all Regulations which would

be enacted thereafter as well. The word "enacted" indicates making an Act. Since it was the Governor in Council which had power then to enact, it was called a "Regulation" and subsequently since it was a legislature that could enact, the name "Act" is given to such enactment. But the underlying feature behind "Regulation" and "Act" is the same i.e., being a law enacted by the legislative body then in existence. When the 1828 Regulation was "enacted" it was the Governor in Council which was the legislative body and when the Revenue Recovery Act was "enacted" it was the legislature, which was the legislative body. We, therefore, see no distinction in S. 3 between a "Regulation" and "Act", since both were again enacted by competent legislative bodies. We therefore find that what is contained in the first clause would apply to all Regulations and Acts made by competent legislative bodies.

21. We will now deal with the other contention of the learned counsel for the petitioner that there is an exception to the exercise of powers under Cl. (1) of S. 3 of the 1828 Regulation to the effect that the power cannot be exercised by Subordinate and other Collectors if a contrary intention is expressly declared in any Regulation. We have decided above that "Regulation" occurring in S. 3 takes within its ambit "any Act" made by a competent legislative body. Therefore, if a contrary intention is expressly declared in any enacted law, be it called a Regulation or an Act, then clearly the first clause shall not apply. It has been argued that in the Andhra Pradesh District Collectors' Powers (Delegation) Act, 1961, the contrary intention is clearly declared, the contrary intention being that only the District Revenue Officers shall exercise the powers of the District Collectors under the Revenue Recovery Act. Reference was also made to a G. O. issued by the Government of Andhra Pradesh in exercise of the power conferred under s. 3 of the 1961 Act, thereby delegating the powers of the District Collectors, among other things under the Revenue Recovery Act as well to District Revenue Officers. This Act of 1961 and the notification of 1968 made thereunder are sought to be utilised by the learned counsel to argue that an intention contrary to Cl. (1) of S. 3 of the 1828 Regulation has been expressly declared. It was said that under the first clause of S. 3 of the Regulation any Subordinate, Deputy or Assistant Collector shall exercise the powers of the Collector within their divisions. But under the 1961 Act the State Government is conferred with the authority to delegate the said powers to District Revenue Officers and in fact under G. O. Ms. 77 of 22nd Jan 1968 that power was specifically delegated. In the submission of the learned counsel, this is express declaration contrary to what is contained in cl. (1) of S. 3 of the Regulation. Since the District Revenue Officers have been delegated the powers of the District Collectors, the Subordinate, Deputy or Assistant Collectors cannot exercise their powers by virtue of S. 3 (1) of the Regulation.

22. We are unable to agree with this argument. In the first place, there is no express declaration in the 1961 Act that the Subordinate, Deputy or Assistant Collectors shall not exercise the District Collector's powers in their divisions as empowered by S. 3 (1). To put it in other words, there is no express declaration

in the provision contrary to S. 3 (1) of the Regulation.. It is true that in Section 2 of the 1961 Act, "law" is defined as including "Regulation" as well. S. 3 empowers the State Government to authorise any joint Collector or any other Officer of the revenue department not below the rank of a powers vested by or under any law in the District and may, in like manner, withdraw such authorisation. It must be noted that S. 3 of the 1828 Regulation does not provide for withdrawal of the power conferred on the officers mentioned therein. on the other hand, S. 3(1) of the Regulation declares that by virtue of the office which they hold the Subordinate, Deputy or Assistant Collectors shall exercise in their respective divisions all the powers held by the Collector. Such is not the case postulated by the 1961 Act. when the legislature passed the Act of 1961 it has to be taken that it was aware of all the laws in force. Therefore, it can be safely accepted that the Andhra Pradesh Legislature passed the 1961 Act having in mind that the 1828 Regulation was still in force and was in fact amended and extended to the Telangana area also by virtue of Act XIX of 1958. Still the 1961` Act did not make any reference to the 1828 Regulation. Had the legislature intended to declare anything contrary to what is contained in S. 3(1) of the Regulation, it should have clearly provided in S. 3 that despite the provisions of the said S. 3(1) of the Regulation, the Govt. may, be notification, delegate the powers of the District Collector. When the legislature enacts a new law in addition to an existing one without in any way detracting from the existing law, the clear intention is that both the old law and the new law exist side by side. Therefore, the delegation contemplated by the 1961 Act is the delegation of the power of the District Collector, without such delegation being repugnant to the provision of S. 3 (1) of the Regulation. Not only there is no contrary intention in the 1961 Act but also its provision can easily be reconciled with those of S. 3(1) of the 1828 Regulation. By virtue of the notification of 1968, the State Government conferred the powers of the Collector on the District Revenue Officers also in respect of the Revenue Recovery Act as well. That would mean that Subordinate Deputy or Assistant Collectors would continue to exercise the powers of Collectors in their respective divisions, and by virtue of the delegation the District Collector or the District Revenue Officer would exercise the powers conferred on the Collector under Cls. (2) and (3) of S. 3 of the Regulation. That means by virtue of the delegation the District Revenue Officers can exercise the powers of the District Collector of delegation provided under the second clause and the power of control and revision provided under the third clause. At the same time the Subordinate, Deputy and Assistant Collectors would be continuing to exercise the powers of the District Collectors in their respective divisions. Thus, there is not only no contrary declaration, express or even implied, but there is a clear co-existence of the two laws. We are not, therefore, inclined to uphold the argument of the learned counsel for the petitioner that under the 1961 Act there is an express declaration contrary to the provisions of S. 3 (1) of the 1828 Regulation.

23. Adverting to the contention that despite the 1828Regulation the legislature deliberately used the word "Collector" in Section 48 of the Revenue Recovery Act,

thereby intending to confer the power of arrest and detention only in the District Collectors, it must be remembered that when the legislature passed the Revenue Recovery Act in 1864, it must be deemed that it was fully aware and conscious of the fact that the 1828 Regulation was still in force. Under that Regulation a Subordinate, Deputy of Assistant Collector can exercise the powers of the District Collector within their divisions. With the full consciousness of this provision Section 48 must be taken to have been enacted. In some other provisions the Collector or some other officer authorised by him in this behalf may exercise the functions and powers under the Revenue Recovery Act. But by virtue of S. 3 (1) a Subordinate, Deputy or Assistant Collector will have to exercise the Collector's powers by virtue of their own office and not by virtue of any authorisation, by the District Collector. The very office they hold confers them, with the power to exercise all the authority of the District Collector within the respective divisions, Therefore, conferring all the powers under S. 48 of the Revenue Recovery Act will have to be read in the light of s. 3 of the 1828 Regulation.

24. We will now refer to the decisions cited before us by Sri Dasaratharama Reddy in support of his above contentions. Reliance was placed on a Division Bench's decision of this court in Ramachandra Raw v. Seshaiyah, (1957) 2 AWR 106. This case arose under the Madras Hereditary Village Officers Act. In that case the Sub-collector rejected the application of the 1st respondent for the post of the village munsif of a village and complied with the request of the petitioner by registering him as the heir of the last holder and appointing his paternal uncle as his deputy, to discharge the duties of the headman. Against that order, the 1st respondent filed an appeal to the District Collect. The sub-Collector, who has passed the impugned order, happened to officiate then as Collector and the appeal came up before him. He rejected the appeal in limine on the ground that it was barred by limitation. The 1st respondent took the matter in revision to the Board of Revenue. The Board set aside the order of the District Collector by stating that the disposal of the appeal by the same Collector preferred against his own order was contrary to all judicial property and remitted it to the Collector, who by the time, was a different individual,, for fresh disposal. The District Collector who was another officer, reheard the matter and held that he post was a non-hereditary one and the registry of the minor should be cancelled. This order was impugned in a writ petition which was allowed and the Dist. Collector was directed to enquire into the matter, after giving the requisite notice. Again the District Collect enquired into the matter, after complying with the requirement of issuing notice and passed an order which was the subject-matter of the writ petition before the Division Bench. One of the grounds urged was that there was no provision in the Hereditary Village Offices Act for an appeal against the order of the Revenue Divisional Officer registering a minor under S. 10 (5). The contention was that the District Collector could not set aside the order of the Deputy Collector either in appeal or in revision and in support of that contention reliance was placed on Kajjam Lakshminarasamma Vs. Tanniru Seshayya and Others, . That was a decision of Justice Satyanarayana Rao, in the

couse of which he dealt with s. 3 of Regulation VII of 1828. Expressing their disagreement with the decision of Justice Satyanarayana Rao, the Division Bench observed that the powers co Collector are conferred on the by the Collectors. I was further pointed out that S. 3 of that Regulation lays down in unmistakable terms that the proceedings of Subordinate and Assistant Collectors shall be subject to superintendence control and revision of the Collector. Therefore, the Collector is invested with power inter alia to correct a mistake. That being so, it cannot be postulated that when once the orders of Sub-Collector or Assistant Collector have been carried into effect, the District Collect will have no authority to revise that order. While coming to this conclusion the Division Bench relied upon the Full Bench decision of the Madras High Court in K. Nagarathnammal Vs. S. Ibrahim Saheb and Another, . This decision of the Division Bench patently does not support the contention put forward on behalf of the petitioner. On the other hand, as pointed out above, the Division Bench held that by virtue of S. 3 of the 1828 Regulation, the Collector had power to correct the error, if nay, committed by the Revenue Divisional Officer. To put it in other words , the Division Bench was prepared to give effect to the provisions of S. 3. Further, the question as it is now argued did not arise before the Division Bench.

25. Our attention was invited to the decision of our learned brother Madhava Reddy , J, dated 11th Aug, 1977 in W. P. 1607/77. It was contended before the learned Judge that the Sub-Collector had no jurisdiction to exercise the powers vested in the Collect u/s 48 of the Revenue Recovery Act. This argument was repelled by the learned Judge by observing that a reading of S. 3 (first) of the 1828 Regulation is sufficient to hold, that the power of Sub-Collector in charge of the particular division of a district is ex-officio and is therefore vested with the authority to exercise within the division under his charge all the powers conferred on the Collectors by the Regulation then in force and those thereafter enacted unless the contrary shall be expressly declared in any such Regulation. The learned judge proceeded to observe that there is nothing in the Andhra Prade3sh Revenue Recovery Act which declares an intention contrary to what is contained in S. 3 (first) in the Regulation of 1828. It was therefore held in the writ petition that the Sub-Collector was competent to issue the impugned notice and the same did not suffer from any lack of jurisdiction. Though there is no elaborate discussion, the position succinctly stated by the learned judge is fully in accordance with the view we have expressed.

26. A Division Bench of the Madras High Court in T.V. Srinivasa Aiyangar Vs. V. Jagannatha Aiyangar and Another, held that there is no conflict between the Madras Regulation of 1828 (7 of 1828) and the Madras Hereditary Village Offices Act of 1895. The right of suit which is given by S. 13 of the latter ACT is not in any way inconsistent with the continuance of the power of superintendence, Control and revision given to the District Collector by S. 3 (third) of Regulation VII of 1828. It is only by virtue of this Regulation that a Revenue Divisional Officer gets authority to exercise the powers of "Collector" under Act III of 1895. Consequently the District Collector's power of revision created by the same

Regulation, unless it is expressly taken away must be held to continue. Once again this decision supports our conclusion.

27. A Full Bench of the Madras High Court in *P. Sivasankarasubramania Pillai and Others Vs. Revenue Divisional Officer, Tuticorin and Others*, accepted the power of superintendence, control and revision given to the Collector under S.3 (3) of Regulation VII of 1828. It was further held that the power of revision by the District Collector under S. 3 (3) of that Regulation is confined to the ambit of the provisions of the Revenue Recovery Act, 1864 but cannot extend to Collateral matters or objects alien to the enactment in question. Thus this Full Bench upheld the revisional powers conferred on the District Collector under S.3 (3) of the 1828 Regulation. It was further held that S. 3 of that Regulation provides that the Subordinate, Deputy or Assistant Collector shall ex officio have authority to exercise, within the division under his charge, all the powers conferred upon the Collector's under the law then in force or to be enacted in future. This statutory conferment of the power is subject to the important condition that there should be nothing to the contrary expressly declared in such enactment. Consequently, the Subordinate Officers can exercise Ex-officio powers of the District Collector by virtue of the said Regulation under Madras Act III of 1895.

28. Once again a Division Bench of the Madras High Court held in *Periyaswami Padyachi v. Government of Madras*, (1969) 82 MLJ 456 that the District Revenue Officer, to the whom the power of has been delegated, has every wide powers of confirmation, modification or annulment of any order passed by subordinate authority or to issue any further order in the case he may see.

29. Though the above decisions do not specifically deal with the points which had been actually posed before us, the observations contained in them, which we have referred to, would give support to the view we have expressed.

30. We are, therefore, of the opinion that by virtue of S. 3 (1) of the 1828 Regulation a subordinate, Deputy or Assistant Collector can exercise the powers of a District Collector, including the power conferred on him under Ss. 48 and 49 of the Revenue Recovery Act.

31. Now remains the contention that Section 3 of the 1828 Regulation must be deemed to have been impliedly repealed by the Andhra Pradesh District Collector's Powers (Delegation) Act, 1961. It was argued by Sri Dasaratharama Reddy that the 1961 Act is a comprehensive legislation in that the State Government is empowered to authorise any Joint Collector or any other officer of the revenue department not below the rank of Deputy Collector to exercise all or any of the powers vested by or under any law in the District Collector and may in like manner, withdraw such authorisation. Thus this is a comprehensive legislation, while the 1828 Regulation deals with a very limited field. This comprehensive legislation, which is later in date, has also legislated in respect of the limited field covered by S. 3 of the 1828 Regulation. Therefore, though in terms the 1961 Act does not repeal S. 3 of the 1828 Regulation its implied

repeal may be inferred.

32. This argument does not appeal to us. We will give our reasons for it. General repeal by implication is not favoured by Courts. It cannot be presumed that the legislature would not intend to effect the repeal of law without expressing its intention to do so. It may happen that in some Acts there may not be express repeal of earlier enactments or their provisions. However, if the provisions of the new Act cannot be reconciled with those of a pre-existing statute, then the inference is permissible that the legislature intended that the provisions of the existing statute should cease to have effect. This repeal by implication is permissible only if the provisions of the later statute are so inconsistent with or repugnant to the provisions of the then existing statute that the two are incapable of standing together. If it is possible to construe both the provisions harmoniously so as to give effect to both of them, the Courts are bound to adopt such a construction. It is always the duty of the courts to reconcile the earlier statute with the later one excepting when there is a repeal. When there has been no express repeal, the indication is that legislature has treated the earlier law as compatible with the law which is newly made. These principles are enunciated and established more than once in authoritative pronouncements vide para. 709 at page 465 of Vol. 36 of Halsbury's Laws of England Third Edition.

33. In *Municipal Council Palai Vs. T.J. Joseph and Others*, the Supreme Court laid down the following principles Mudholkar, J. who spoke for the Court, laid down in paragraph 9:

"It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old one that the two cannot stand together".

Then the learned Judge referred to the following passage in Crawford on Statutory Construction:

"There must be what is often called such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together. In other words, they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal for the intent of the legislature to repeal the old enactment is utterly lacking."

Then dealing with the other aspect as to whether the two statutes relate to the same subject-matter, Mudholkar, J. extracted the following passage from Crawford:

"And as we have already suggested, it is essential that the new statute covers the entire subject-matter of the old; otherwise there is no indication of the intent

of the legislature to abrogate the old law. Consequently the later enactment will be construed as a continuation of the old one".

Again in paragraph 11 the learned Judge laid down three principles to find out whether there was repugnancy between the two laws. They are (1) whether there is direct conflict between the two provisions; (2) whether the legislature intended to lay down an exhaustive code in respect of the subject-matter replacing the earlier law ; (3) whether the two laws occupy the same field. Then in paragraph 12 it was observed:

"A general statute applies to all persons and localities within this jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and therefore where it is doubtful whether the special statute was intended to be repealed by the general statute the Court should try to give effect to both the enactments as far as possible. To the same effect is the decision of the Full Bench in *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*,

34. Now applying these principles can it be said that the 1961 Act has impliedly repealed S. 3 of the 1828 Regulation? As we have pointed out above, there is no inconsistency between the 1961 Act and S. 3 of the 1828 Regulation. They can exist side by side without any conflict or inconsistency . That is why while enacting the 1961 Act the State Legislature has not repealed S. 3 of the 1828 Regulation. The fields occupied by the two laws are also different. While S. 3 of the Regulation limits its operation to the divisions which are in charge of a Subordinate, Deputy or Assistant Collector, S. 3 of the 1961 Act refers to all or any of the powers vested in the District Collector under any law/ That obviously refers to the exercise of the powers by the District Collector's over the entire district. It may also take within its purview delegation of powers exercisable in parts of the district as well. But that does not affect the ex officio exercise of the District Collector's powers by the subordinate, Deputy or Assistant Collectors in their respective divisions. Thus while the 1961 Act is a general law, S. 3 of the 1828 Regulation is a special law made in respect of exercise of ex officio powers in divisions in charge of subordinate, Deputy, Assistant Collectors.

35. There is also another feature to be noted in this connection. The decisions, orders or sentences passed by the subordinate Collectors under Cl. (1) are under the Superintendence , control and revision of the District Collector by virtue of Cl. (3) of S. 3 of the Regulation. It is not here necessary to express an opinion whether by virtue of Collectors are precluded from exercising their powers in the division in charge of a Subordinate, Deputy or Asst. Collector. Since it is not necessary, we do not express any opinion in this aspect. But according to the first proviso to S. 3 in the 1961 Act, it is clearly laid down that any authorisation under that section shall not prevent the District Collector from exercising in such cases as he deems fit, all or any of the powers exercisable by the Joint Collector or other Officer by virtue of the authorisation. The second proviso proceeds to lay down that once the District Collector exercises his powers, the Joint Collector or

other authorised officer shall not exercise the powers in respect of the same case. Then there is a vital distinction between Cl. 3 of S. 3 of the Regulation and S. 4 of the 1961 Act. Under S. 3 (3) of the Regulation the Collector has the superintendence , control and revision over the decisions, orders or sentences passed under Cl. (1) by the officers mentioned therein. However, under S.4 of the 1961 Act, any order of the Joint Collector or other officer acting in exercise of the powers authorised under S.3 shall be subject to such appeal or revision under the relevant provisions of law as if it is were an order of the District Collector. Thus under the 1961 Act the orders of the delegate are deemed as the order of the District Collector and are subjected to appeal or revision as such. The District Collector himself cannot exercise the powers of appeal or revision as he can do under S. 3 (3) of the Regulation. While S. 3 of the Regulation can operate in respect of the divisions, the provisions of the 1961 Act can operate in other respects. That is to say, there is not only no repugnancy about the two laws, but also they can exist side by side supplementing each other. Certain important features are also different in both the laws. Therefore, it not possible to say that S. 3 (3) of the 1828 Regulation stands impliedly repealed by the provisions of the 1961 Act.

36. These are all the contentions advanced before us by Sri Dasaratharama Reddy while trying to persuade us to answer the question posed by the Division Bench in the negative. We are not able to agree with any one of those contentions for the reasons stated above. We therefore, answer the question by holding that the Revenue Divisional Officer has jurisdiction to issue a warrant of arrest and detection of the defaulter under Sec. 48 of the Revenue Recovery Act. (Act 2 of 1864) within the limits of the division over which he has to charge.

37. The question is accordingly answered and the matter is now remitted back to the Division Bench for consideration of the other points and for the final disposal of the writ petition.

FINAL ORDER OF THE DIVISION BENCH

Chennakesav Reddy , J.

38. The petitioner in this writ petition seeks to obtain his enlargement by the issue of a Writ of Habeas Corpus. He was detained and committed to prison in pursuance of an order passed by the Revenue Divisional Officer, Cuddapah, dated 25-6-1977 under Ss.48 and 49 of the Andhra Pradesh Revenue Recovery Act, 1864, hereinafter referred to as the "Act" the order reads:

"Whereas the Sum of Rs. 33,274-65 (Rupees Thirty Three thousands two hundred seventy four and paise sixty five) only is due on account of A. P. G. S. T. and C. S. T. by M/s. Radhakrishna and Co., Proprietor Sri. M. Reddanna, Edigapalle village, Rayachoty taluk and whereas the undersigned has reason to believe that the said defaulter Sri. M. Reddanna, Edigapalle Village, Rayachoty taluk is wilfully withholding payment of the said arrears and charges (and had been guilty of fraudulent conduct to evade payment of the said arrears and charges) by his

failure to report the turnovers and failed to pay the tax due to Government till such time as the case was detected by the Department as reported by the Deputy Commissioner (Commercial Taxes) , Chittoor, in his D. O. Letter Rc. No. Nil dated 24-6-77. You are hereby directed forthwith to arrest the said defaulter Sri M. Reddana (or/and surety for the said defaulter) (and unless he shall pay to you the sum of Rs. 33,274-65 together with Rs. for cost of this process) to convey him to the Central Jail Rajahmundry and there to deliver him to the Jailors to be detained for the period of two years unless sooner released by an order from this office. For so doing shall be your warrant.

Signature, Sd..... Designation: Revenue

Station : Cuddapah Divisional Officer Cuddapah" Date: 25-6-"77

39. The Petitioner complains that the deprivation of his liberty and confinement is illegal. His case is that he never carried on any business in groundnuts and that he was only a name lender to one S. P. Ramachandraiah of Kalahasthi, who is a dealer in groundnuts. According to him, neither the order of assessment dated 11-2-1976 levying the tax of Rs. 34,640-65 demanding the petitioner to pay the tax within seven days from the date of the receipt of the said notice was served upon him. It is also his case that his house property was attached on 3-3-1976 by the Deputy Commercial Tax Officer, Rayachoti, u/s 27 of the Act, that he had no other property and that he was in the circumstances, neither a defaulter nor a person guilty of fraudulent conduct contemplated by S. 48 of the Act. It is further pleaded that the Revenue Divisional Officer, Cuddapah, had no jurisdiction to issue the warrant of arrest under S. 48 of the Act and it was only the Collector that could exercise the powers u/s 48.

40. In the counter-affidavit filed on behalf of the first respondent, namely, the Revenue Divisional Officer, Cuddapah, it is stated that he was satisfied on going through the report of the Deputy Commissioner, Commercial Taxes, Chittoor, that the petitioner-detenu was guilty of fraudulent conduct in order to evade the payment of taxes due and therefore issued the warrant of arrest on 25-6-'977 under S. 48 of the Act. It is maintained that the warrant of arrest issued by the Revenue Divisional Officer under s. 48 of the Act was legal and valid by virtue of S. 3(1) of the Madras Regulation VII of 1828 (The Madras Subordinate Collectors and Revenue Malversation (Amendment) Regulation, 1828).

41. In the Court-affidavit filed by the Commercial Tax Officer, Cuddapah, the second respondent in the writ petition, it is stated that the demand notice in Form B-3 dated 11-2-1976 was issued to the petitioner and that the Assessing Authority was empowered to restrict the time limit under the Proviso to S. 16(1) of the Andhra Pradesh General Sales Tax Act, hereinafter referred to as the "Sales Tax Act" to seven days and, therefore, the demand notice was a valid one. In any case, it is stated that the fact that the petitioner-detenu had failed to pay the tax for more than a year clearly established that he was wilfully evading the tax due to the State and he was, therefore, guilty of fraudulent conduct. it is

further averred that the arrears of tax cannot be liquidated by the sale of the defaulter's property, that he was withholding payment of arrears of tax wilfully, and therefore, the detention of the defaulter was not illegal.

42. The writ petition came on for hearing before us on 12th Oct. 1977. We referred to question: "whether the Revenue Divisional officer has jurisdiction to issue a warrant of arrest and detention of defaulter under s. 48 of the Revenue Recovery Act (Act II of 1864)", to a larger Bench having regard to the importance of the question and the mistiness surrounding the judicial opinion over the same. A Full Bench of this Court consisting of Sambasiva Rao, JJ., answered the question in the affirmative by their judgement dated 22-12-1977 and remitted back the case to us for consideration of the other points involved in the writ petition. The writ petition is, therefore, now placed before us for final disposal.

43. The learned counsel for the petitioner firstly submits that the notice of demand dated 11-12-1976 was neither served on the petitioner as required under Rule 58 of the Andhra Pradesh general Sales Tax Rules, 1957, nor it was in conformity with the statutory requirements of S. 16(1) of the Sales Tax Act. Therefore, it is pleaded that the petitioner was not a defaulter attracting the application of the provisions of the Revenue Recovery Act.

44. The word "defaulter" has not been defined in the Act. But the meaning of the word "defaulter" can easily be gathered from a reading of Ss. 3, 4 and 5 of the Act. ss. 3, 4 and 5 read:

"3. Landholder when and to who to pay kist. Board of Revenue may alter amounts and dates of payment:--- Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land on or before the day on which it falls due, according to the kistbandi or other enactment, and where no particular day is fixed then within the time when the payment falls due according to local usage: Provided that, except where property is held under a Sanad-i-Milkiyat-i-istimarara or other similar instrument, it shall be lawful for the Board of Revenue, by notification published in the District Gazette, to alter and fix, from time to time, amount of the several kists of instrument, and the dates at which they shall respectively become payable.

Explanation:--- The reference to the District Gazette in this Act, shall in its application to the territories specified in sub- sec (1) of S. 3 of the States Reorganisation Act 1956, (Central Act 37 of 1956), be construed as a reference to the Andhra Pradesh Gazette, until a District Gazette is published for the District in the said territories.

4. Arrear of Revenue:--- When the whole or portion of a kist shall not be paid, the amount of the kist or its unpaid portion shall be deemed to be an arrear of revenue.

5. Arrear of revenue how recovered :---

Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided.

45. Section 3 declares the person who is liable to pay the land revenue; the authority or the officer to whom the land revenue should be paid and time within which it should be paid. Section 4 lays down what arrear of revenue is. It says unpaid shall be deemed to be an arrear of revenue. S. 5 provides for the mode of collection of arrears of revenue. It provides three modes of recovery; (1) by distraint and sale of moveable property; (2) by attachment and sale of immovable property and (3) by arrest and detention of the defaulter. What emerges from a careful scrutiny of the aforesaid when he fails to pay the land revenue due by him to the person empowered to receive the same on or before the date on which it falls due s. 16 (4) of the Sales Tax Act provides for the recovery of the tax arrears not paid by a dealer with the time specified therefore as if it were an arrear of land revenue. the question therefore is; Did the petitioner fail to pay the Tax due within the time specified therefore in the demand notice? The learned counsel urges that neither the order of assessment nor the notice of demand dated 11-2-1976 was served upon the petitioner as required by R. 58 of the Andhra Pradesh general Sales Tax Rules and, therefore, the question of non-payment within the due date does not arise. We have gone through the record and we are satisfied that the notice of demand was served on the petitioner as required by R.58 The record discloses that the whereabouts of the petitioners were not known and, therefore, the notice of demand was served by affixing to the door of his place of business in the presence of the Village Munsif of the village.

46 . There however remains a more formidable contention, namely, that the notice of demand was not in the form and manner prescribed by sub-sec (1) of S. 16 of the Sales Tax Act and therefore was invalid. S. 16 (1) reads:

"16. Payment of tax and other dues payable under the Act:--- (1) The tax assessed under this Act and the penalty levied under Sub-sec. (2) and (3) and (4) of S. 14 shall be paid by the dealer in such manner and within such time, not being less than fifteen days from the date of service of the notice of assessment or of the levy of penalty, as may be specified in such notice;

Provided that the time limit of fifteen days for a notice under this sub-section shall not apply to casual traders:

Provided further that the assessing authority may for good and sufficient reasons to be recorded in writing require the dealers to pay the tax assessed or the penalty levied within such time, not being less than the seven days from the date of service of the notice of assessment as may be specified in the notice."

47. The Sub-section provides that the tax assessed shall be paid by the dealer in

such manner and within such time prescribed therein. The time that shall be prescribed under the sub-section shall not be less than 15 days from the date of service of the notice of assessment. The first proviso, however, provides that casual traders shall not be entitled to the 15 days period mentioned in the sub-section. Under the second proviso, the assessing authority is empowered with a discretion to require the dealer to pay tax demanded within such time not being less than seven days from the date of notice of assessment if there are good and sufficient reasons to be recorded in writing. It is nobody's case that the petitioner is a casual trader. He is, therefore, entitled under sub-sec. (1) to not less than 15 days time from the day of service of notice of assessment for the payment of the tax assessed. But this time of fifteen days may be reduced under the second proviso by the assessing authority for good and sufficient reasons to be recorded in writing to not less than seven days. We have scrutinised the notice of demand dated 11-2-1976 issued to the petitioner and stated to have been served by affixture on the door of the place of his business. It merely states that the tax shall be paid within seven days from the date of service of notice by money order or by cheque in favour of the undersigned, namely, the Commercial Tax Officer, Cuddapah, or by remittance into the Government Treasury or to the Deputy Commercial Tax Officer. It also recites that in default the amount shall be recovered as if it were an arrear of land revenue. There are absolutely no reasons recorded for giving seven days time for the payment of the tax as required by the second proviso to sub-sec. (1) of S. 16. Therefore, the notice of demand dated 11-2-1976 issued to the petitioner in breach of the statutory mandate contained in the sub-section is invalid. In the absence of any valid notice of demand issued under S. 16 (1) of the Sales Tax Act which is a prerequisite to proceed under Sub-sec. (4) of S. 16 to recover the tax as arrear of land revenue, it is imperative to conclude that the petitioner was not in arrear of any land revenue and was not a defaulter within the meaning of the Act. Consequently, the Revenue Divisional Officer had no jurisdiction to proceed and issue a warrant for the detention of the petitioner under Ss. 48 and 49 of the Act. The detention of the petitioner is, therefore, illegal.

48. The learned counsel could not place before us any direct decision on the issue. It appears to have remained untreated so far. We may, however, usefully refer to some of the decisions where opinion in conformity with our conclusion was expressed while construing analogous provisions. The Bombay High Court in *Commissioner of Income Tax, Bombay City Vs. Ramsukh Motilal*, ruled that a notice u/s 34 read with S. 22 (2) of the Indian-Tax Act, 1922, called upon an assessee to submit its return within a period of six days instead of thirty days as required under S. 22 (2) was clearly illegal. The learned Judges further held that failure to give a notice or a defect in a notice given under S. 34 is not a procedural defect but is a failure to comply with a condition precedent to the assumption of jurisdiction. In other words, the learned judges held that the Income Tax Officer would get jurisdiction to assess u/s 34 only after he has given notice as required by that section. This decision of the Bombay High Court was

approved by the Supreme Court in Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others, . The Supreme Court observed:

"The notice prescribed by Section 34 of the Income Tax Act for the purpose of initiating reassessment proceedings is not a mere procedural requirement; the service of the prescribed notice on the assessee is a condition precedent to the validity of any reassessment made u/s 34. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Income Tax Officer without a notice or in pursuance of an invalid notice would be illegal and void."

49. That is the view taken by the Bombay and Calcutta High Courts in Commissioner of Income -Tax v. Ramsukh Motilal 1955 Bom 227 and R.K. Das and Co. Vs. Commissioner of Income Tax, West Bengal, and we think that that view is right. To the same effect is the decision of the Assam High Court in MESSRS. TANSUKHRAI BODULAL Vs. Income Tax OFFICER, NOWGONG, AND OTHERS., and of the Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Nanalal Tribhovandas and Another, .

50. Dealing with a notice given u/s 106 of the Transfer of Property Act, a Division Bench of this Court in The Metal Press Works Ltd. Vs. Guntur Merchants Cotton Press Co. Ltd., held that a lessee has a statutory right to have a valid and proper six months' notice u/s 106 of the Transfer of Property Act and unless and until such notice was served on the lessee terminating the tenancy, the relationship of landlord and tenant continues and the tenant is thereby entitled to remain in possession.

51. It was next contended that the essential ingredients of S. 48 of the Act had not been established and, therefore, the Revenue Divisional Officer had not jurisdiction to issue the warrant in exercise of his power under S. 48. The learned counsel urged that the first requisite for the exercise of power under s. 48 is that the Collector should be satisfied that the arrears of revenue cannot be liquidated by the sale of the property of the defaulter or his survey (sir) and that there was no such satisfaction in the case. The learned counsel placed reliance on a decision of this Court in K. Yadagiri v. Superintendent of Musheerabad Central Jail (1975) 1 AWR 257 to which one of us (Chennakesav Reddy, J.) was a party . We do not consider it necessary to go into the merits of this contention in view of our conclusion reached aforesaid on the first contention that the demand notice itself was invalid and that the Revenue Divisional Officer, Cuddapah, had no jurisdiction to issue the warrant u/s 48 of the Act.

52. In the upshot, the writ petition is allowed and the detenu, Mr. Reddanna, is directed to be set at liberty forthwith. Advocate's fees Rs. 250/-

53. Petition allowed.