

(1961) 07 GUJ CK 0016
In the Gujarat High Court

Mahmed Husen Kurban Husen Mithborwala

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-07-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 58
Forest Act, 1927 — Section 82

Citation : (1962) 3 GLR 666

Hon'ble Judges : R.B. Mehta, J;J.M. Shelat, J

Bench : Division Bench

Judgement

J.M. Shelat, J.—Although in the petition the petitioner challenged the aforesaid warrant and the order of detention on various grounds Mr. Oza, for the petitioner, confined himself on four points upon which he stated he would challenge the aforesaid order of detention. The four points urged by Mr. Oza were as follows:

(1) That Section 3(2) and Section 5 of the Revenue Recovery Act (No. 1 of 1890) were ultra vires as offending against Articles 19(1)(b) and (e) and Articles 20 and 21 of the Constitution as these two sections conferred absolute and uncontrolled power in the Revenue authorities in determining the arrears due and in issuing a certificate that the amount of Rs. 9000/- and odd was due and payable by the detenu; that Section 5 of the Act was ultra vires as no judicial or quasi-judicial Tribunal was set up to decide any dispute about the amount due as arrears by the detenu; that an unfettered discretion was given u/s 5 of the Act to the District Forest Officer to request the Collector to issue a certificate; that that power was arbitrary and uncontrolled; and that Section 3(2) of the Act was ultra vires as the certificate issued by the collector thereunder was made conclusive proof of matters therein contained and therefore the subject was not allowed to agitate the contents of such a certificate in any higher or superior forum.

(2) That the amount due from the detenu was not recoverable as arrears of revenue that there was no provision under the rules of the State of Santrampur or in the agreement to treat the amount due by the detenu as arrears of land

revenue.

(3) That the third respondent having issued a warrant for the imprisonment of the detenu in a civil jail the power of the fourth respondent to detain him in his custody under Part I of Section 157 of the Land Revenue Code was exhausted and therefore the subsequent detention by him of the detenu in civil jail was without authority and therefore invalid.

(4) That the properties of the surety having been attached the revenue authorities were not entitled to have recourse to the coercive machinery provided for under the Land Revenue Code against the detenu; and that these acts on the part of the revenue authorities were mala fide as they were adopted with a view to oblige the surety.

2. In order to appreciate these contentions we will have to turn to the Indian States (Application of Laws) Order 1948 the provisions of the Forest Act and the Land Revenue Code. As we have already observed the two installments which became due on the 15th of May and the 15th of December 1948 were admittedly not paid by the detenu. On the State of Santrampur having integrated with the State of Bombay as it then was on the 10th of June 1948 the State of Bombay became entitled to recover the amounts due under the aforesaid two installments from the detenu. Under the Indian States (Application of Laws) Order 1948 which came into force on the 28th of July 1948 certain statutes were made applicable to the former territory of the Santrampur State under Schedules I and 11 of that Order. Amongst other statutes the Indian Forest Act 1927 and the Revenue Recovery Act 1890 were made applicable.

It was incidentally argued by Mr. Oza that as the third installment became due on the 15th May 1948 that is to say before the coming into force of the Indian States (Application of Laws) Order 1948 the Indian Forest Act and the Revenue Recovery Act could not be made applicable at any rate to the installment which became due on the 15th May 1948. His contention was that the Indian States (Application of Laws) Order 1948 was not retrospective in character and therefore the State had no right to provide a fresh remedy or machinery for recovery provided for in these two Acts in respect of the debt which had become due on a date before these two Acts were made applicable to the territory of the former State of Santrampur. There is in our view a clear fallacy in this contention for the debt which became due under the third installment on the 15 of May 1948 continued to be a debt due on and after the 28th of July 1948 when the two statutes were made applicable to the territory of the former State of Santrampur. The debt remained in arrears on the 28th July 1948 and thereafter and therefore no question of any of these two statutes being retrospectively made applicable can possibly arise as the debt due remained payable on and after the 28th July 1948 and could be enforced under these two statutes on their being made applicable to the territory of the former State of Santrampur.

3. This being the position u/s 82 of the Indian Forest Act 1927 all monies payable

to the Government under the Act or any Rules made thereunder or on account of the price of any forest-produce could if not paid when due be recovered under the law for the time being in force as if they were arrears of land revenue. The two installments which the detenu failed to pay were monies due on account of the price of the forest produce and therefore the Forest Officers as also the Revenue Officers were entitled by virtue of this section to recover the amounts due under the two installments as arrears of land revenue in accordance with the provisions of the Revenue Recovery Act and the Land Revenue Code.

4. Section 2(3) of the Revenue Recovery Act 1890 defines a defaulter as meaning a person from whom an arrear of land revenue or a sum recoverable as an arrear of land revenue is due and includes a person who is responsible as surety for the payment of any such arrear or sum. The amount due and payable under the agreement between the detenu and the State of Santrampur not having been paid by the detenu and by virtue of Section 82 of the Indian Forest Act that amount being recoverable as an arrear of land revenue there can be no question that the detenu as also his surety were defaulters within the meaning of Section 2(3) of the Revenue Recovery Act.

5. Section 3 of the Act which is challenged by the petitioner as ultra vires lays down the procedure for the recovery of public demands by enforcement of process in districts other than those in which they become payable. That section provides that where an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to a collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum became payable the Collector may send to the collector of the other district a certificate stating the name of the defaulter and such other particulars as may be necessary for his identification and the amount payable by him and the account on which it is due. Such a certificate is to be signed by the collector making it and save as otherwise provided by the Act such a certificate is made conclusive proof of the matters therein stated. It may be observed that the conclusiveness of the certificate so issued by the collector is with regard to the name of the defaulter the particulars regarding his identification the amount payable by him and the account on which it became due.

6. Section 4 of the Act then provides that when proceedings are taken against a person u/s 3 that person if he were to deny his liability to pay the amount or any part thereof but if he were to pay the same under protest made in writing at the time of payment and signed by him or his agent may institute a suit for the repayment of the amount or the part thereof so paid. Such a suit would have to be instituted in a civil court having jurisdiction in the local area in which the office of the collector who made the certificate is situate and in that suit the plaintiff may notwithstanding anything in Section 3 of the Act give evidence with respect to any matter stated in the certificate. Thus though the certificate has been given a conclusive character under Sub-section (2) of Section 3 it does not debar a person from filing a suit u/s 4 challenging his liability to pay the amount

stated in such a certificate.

7. It is however Section 5 of the Act under which the collector Godhra appears to have acted in this case. That section deals with recovery by collectors of sums recoverable as arrears of revenue by other public officers or by local authorities. It provides that where a sum is recoverable as an arrear of land revenue by any public officer other than the collector the collector of the District in which the office of that officer is situate shall on the request of such officer or authority proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own District. Section 5 also empowers the collector to send a certificate of the amount to be recovered by the collector of another District as if the sum were payable to himself. Thus a public officer to whom an amount recoverable as an arrear of land revenue is payable is authorised to request the collector of his own District to proceed to recover such an amount as if it were an arrear of land revenue which had accrued in his own district. The collector can proceed to recover such an amount himself or where necessary may send a certificate of the amount to be recovered to the collector of another District as if the sum were payable to himself. Section 5 lays down a machinery under which even though an amount is due to a public officer other than the collector recoverable as an arrear of land revenue on a request made by such a public officer that amount is recoverable by the collector himself or he may send a certificate to the collector of another District as if the sum were payable to himself. It would seem that the proceedings contemplated both u/s 3 and Section 5 of the Act are proceedings in the nature of execution or realization proceedings and therefore the collector in issuing the certificate or in realizing the amount stated therein acts as an executing authority which cannot go behind the certificate or re-open such a certificate. It would seem that it is for this reason that the contents of the certificate have been made conclusive.

8. It was contended by Mr. Oza that Section 3(2) and Section 5 of the Act confer absolute power upon a public officer other than the Collector and the collector in fixing the arrears due from a defaulter and in issuing a certificate which has been made conclusive under Sub-section (2) of Section 3. As we have already pointed out what is made conclusive is the amount found due from the accounts maintained by the officer in this case the Forest Officer; or where the amount is fixed by the collector from the Revenue Accounts as the case may be. Where the case is u/s 3 and a certificate is issued under the provisions of that section the legislature has provided a clear remedy by way of a suit u/s 4 of the Act where under the person from whom a demand is made is entitled to challenge his liability either wholly or in part. The certificate contemplated by Section 5 of the Act is the one which is issued to the collector of another district for the purpose of recovery of the amount found due and payable to the public officer other than the collector. Such a certificate has to be as nearly as possible in the form prescribed in the Schedule of the Act. The certificate has to set out the amount payable the account on which such an amount is payable the name and address of the person who is liable to pay such an amount. Finally subject to the

provisions of the Revenue Recovery Act 1890 the amount in question is recoverable by the collector as if it were an arrear of land revenue which had accrued in his own district. Such a Collector by that certificate is then requested to recover such an amount and remit it to the collector issuing the certificate. The form of certificate shows that it is nothing more than transmitting a case for arrears of land revenue for recovery and execution to another collector. Neither Section 3 nor Section 5 of the Act confers any power either upon the collector of the District or a public officer other than the collector to ascertain or fix the amount due by a defaulter as arrears of land revenue. Since Mr. Oza challenged the right of fixation of such amount either by the public officer or the collector as the case may be it would be some other provision either under the Land Revenue Code or under the Forest Act which would have to be challenged by him and not Section 3 or Section 5 of the Revenue Recovery Act as neither of the two sections confers any right or power upon the collector or the public officer to ascertain the amount due. The Revenue Recovery Act as its preamble sets out was enacted for the purpose of facilitating and making better provision for recovery of certain public demands. The calculations of arrears of land revenue are however governed by the provisions of the Land Revenue Code and the procedure provided therein.

9. Chapter XI of the Land Revenue Code deals with the realization of the land revenue and other revenue demands. u/s 146 power has been given to the State government to determine the debts etc. on which the land revenue shall become payable. u/s 147 any amount made payable u/s 146 if not paid becomes an arrear of land revenue and the person responsible for it becomes a defaulter. Section 148 provides for penalty payable by such a defaulter. u/s 149 a statement of account certified by the collector is made conclusive evidence for the purposes of Chapter XI as regards the arrears of the amount of land revenue due by the person who is the defaulter. In respect of such a certified statement it is made lawful under this section for the collector of one District to proceed to recover the demand of any other District as if the demand arose in his own District. Section 150 of the Code then provides for process by which an arrear of land revenue can be recovered and includes arrest and imprisonment of the defaulter as provided in Sections 157 and 158. Section 152 then provides that a notice of demand may be issued on or after the day following that on which the arrear accrues. Under that section the State Government has been given power to frame rules for the issue of such notices to fix the costs recoverable from the defaulter as an arrear of revenue and to direct by what officer such notices should be issued. Under Sections 154 and 155 power has been given to the collector to attach and sell movable and immovable properties belonging to the defaulter for the recovery of such arrears. u/s 157 power has been given to arrest and detain a defaulter any time after an arrear becomes due. Under the first part of that section such a defaulter can be arrested and detained in custody for 10 days in the office of the collector or a mamlatdar or a mahalkari; and under the second part of that section it is provided that if on the expiry of those

10 days the amount due by the defaulter is not paid then or if the collector deems fit on any earlier day such a defaulter may be sent by the collector with a warrant in the form of Schedule C for imprisonment in the civil jail of the district. The proviso to that section lays down that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such a defaulter. The proviso thus fixes the maximum time for which a defaulter can be arrested and detained in a civil jail. By bringing in the maximum limit provided for u/s 58 of the CPC the maximum time for which a detenu can be thus arrested and detained in a civil jail would be six months.

10. Section 187 of the Code then sets out various sums including the sums declared by the Code or by any other Act or Regulation for the time being in force or by any contract with the government to be leviable as an assessment or as a revenue demand being leviable under the provisions of Chapter XI. Thus it is clear that u/s 187 the monies due and payable by the detenu being the arrears of land revenue were leviable under the provisions of Chapter XI, Sections 203 and 204 provide for appeals against the orders passed by the collector and other revenue officers first to the commissioner and thereafter to the State government. Thus an order passed by the collector issuing any of the processes under Chapter XI or u/s 157 is made challengeable in appeal under Sections 203 and 204 of the Code. If an order passed by a revenue officer is ultra vires or invalid it would always be open to a suit or to bring a suit for a declaration that such an order is either unconstitutional or without jurisdiction. Such an order would be treated as a nullity giving rise to no right whatsoever not even a right of appeal and therefore Section 11 of the Revenue Jurisdiction Act would not apply to such an order.

11. Thus a certificate issued u/s 3 of the Revenue Recovery Act can be challenged by a suit as provided for by Section 4 of that Act and in such a suit the plaintiff would be entitled to challenge his liability either wholly or in part although the certificate issued u/s 3 of the Act is made conclusive in respect of the contents thereof. An order passed under the provisions of Chapter XI of the Land Revenue Code can also be challenged in appeal as provided for by Sections 203 and 204 of the Code. It is true that in a case falling u/s 5 of the Revenue Recovery Act it would be the public officer other than the Collector who would ascertain and fix the amount due by a defaulter. It is also true that u/s 149 of the Land Revenue Code a statement of account certified by the Collector is made conclusive about the contents thereof. But this fact alone cannot render either Section 3 or Section 5 of the Revenue Recovery Act ultra vires. Mr. Oza was not able to point out in what way either of these two sections infringed any of the Articles of the Constitution. But it was argued that these sections are invalid because ordinarily it would be a judicial tribunal which would decide a dispute between a subject and the government as to the amount due under an agreement as the one we have before us. Mr. Oza contended that inasmuch as it would be a public officer other than the collector who would fix the amount due

here was a case of usurpation of power of a judicial tribunal by the executive. In support of his contention he relied upon certain observations in *Ram Krishna Dalmia v. Mr. Justice N.R. Tendolkar* 59 Bom. L.R. 769 . In our view that decision has no application to the facts before us. We may observe that the amount due by the defaulter in the case before us was and has to be fixed by the District Forest Officer. There is no provision in the Revenue Recovery Act where under the Forest Officer has to fix the arrear due by the defaulter. If he has the power to fix the amount he would do so under the provisions of the Indian Forest Act or the Rules made thereunder. But none of the provisions of the Indian Forest Act has been challenged by the petitioner either in his petition or before us. In fact neither Section 3 nor Section 5 of the Revenue Recovery Act deals with the fixation of the arrears due by a defaulter. These sections as already observed provide the procedure and machinery of recovery of arrears due when already ascertained by means of a certificate to be issued by the collector on the request of a public officer. Thus a certificate would be issued by the collector on a request therefore by a public officer in the case before us by the District Forest Officer and then the collector would transmit the case of recovery with his certificate to the collector of another district where the defaulter is residing or has his properties. Section 3 and Section 5 of the Revenue Recovery Act in our view must be looked at from the point of view of the object of that Act. The object of the Act as stated before is to make better provision for the realization of arrears of land revenue without having recourse to protracted litigation. It is from that point of view that the Act provides just as Section 149 of the Land Revenue Code provides that a certificate or a statement of account certified by the collector showing a certain amount due would be conclusive. Thus a special rule of evidence giving conclusiveness to these documents is provided for in the Act. Such a provision in no sense can be said to be in violation of the subjects fundamental rights. In a sense when a subject enters into a contract with the government and the subject-matter of the contract is one touching the land revenue or the arrears of land revenue it can be said in view of these provisions that he had agreed that the accounts maintained either by the public officer other than the collector or the collector shall be conclusive and binding upon him. In this sense no question that such a provision is ultra vires as of offending against any of the fundamental rights of the subject can arise. Yet as we have pointed out notwithstanding the conclusiveness of accounts and the certificate there is a right to sue u/s 4 of the Revenue Recovery Act and a right of appeal under Sections 203 and 204 of the Land Revenue Code. It is no doubt true that if a suit were to be filed as contemplated by Section 4 of the Revenue Recovery Act the suitor would have to deposit an amount equivalent to the arrears of land revenue and to that extent his right to sue has been hampered. But such provisions are found in several revenue and fiscal Acts. It is therefore not possible to accede to the contention of Mr. Oza that the powers conferred on the collector in issuing a certificate are unbridled or absolute or that the sections impugned are bad because of any usurpation of power by the executive officers or that these sections are in any sense in violation of Article 19 of the

Constitution. In fact it is difficult to say how these sections can be said to be in infringement of any of the fundamental rights guaranteed by Article 19. Even as regards the fixation of the arrears found due from a defaulter We may point out that Section 214 of the Land Revenue Code confers upon the State Government power to make rules for the purpose of carrying out the purposes and objects of the Code and for the guidance of all persons in matters connected with the enforcement of the Code and for cases not expressly provided for in the Code. In particular there is the power of the State Government to frame rules under Sub-sections (2)(b) and 2(O) of Section 214 for regulating the assessment of land to the land revenue the alteration and revision of such assessment the recovery of land revenue; and for prescribing the records registers accounts maps and plans to be maintained for the purposes of the Act and the manner and the forms in which they should be prepared and maintained. The registers records and accounts which presumably would be the basis of ascertainment of arrears of land revenue due from a defaulter have to be maintained thus according to the rules framed by the State Government u/s 214 of the Code and in accordance with the forms prescribed thereunder. It cannot therefore be rightly contended that while ascertaining the amounts due the collector possesses absolute and unbridled powers.

It was next contended though somewhat feebly that by reason of the powers conferred upon the public officer or the collector as the case may be the fundamental right of the detenu of freedom of movement under Article 19(1)(d) of the Constitution was violated. It was also contended that the detention and arrest of the detenu was in violation of Article 21 of the Constitution. In our view such a contention cannot have any substance. In *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, it has been held that there can be no violation of a fundamental right under Article 21 where there are statutory provisions under which a warrant of arrest can be issued for recovery of arrears due to government and where such provisions constitute a procedure established by law. That was a case under the Indian Income Tax Act and it was held that both Section 13 of the Bombay Act II of 1876 and Section 46 of the Indian Income Tax Act under which action had been taken against the assessee constituted a procedure established by law and therefore no question of a violation of fundamental rights under Article 21 can arise at all. That decision is also an authority against the contention raised by Mr. Oza that the authority of the public officer or the collector to ascertain the arrears amounted to discrimination within the meaning of Article 14 of the Constitution. Such a contention was in fact raised before the Supreme Court where it was argued that Section 46(2) of the Income Tax Act provided two different and alternative methods of recovery of dues and clothed the collector with unfettered and unguided power to apply either of the two methods inasmuch as it enabled the collector at his will to discriminate between two defaulters who were similarly situated and thus violated the equal protection clause of the Constitution. That contention was negated by the Supreme Court.

12. It was next contended by Mr. Oza that the third respondent having issued a warrant for the imprisonment of the detenu in civil jail the power of the fourth respondent to detain him in his custody was already exhausted and therefore the detention of the detenu by the fourth respondent and his sending him subsequently to civil prison was ultra vires. Like the other contentions of Mr. Oza there is no substance in this contention also. As we have pointed out u/s 157 of Land Revenue Code the collector has the power to arrest and detain a defaulter for 10 days in his office. Under that section if on the expiry of those 10 days the amount due by the defaulter is not paid or if the collector deems fit on any earlier day such a defaulter may be sent by the collector with a warrant in the form of Schedule C for imprisonment in civil jail within his jurisdiction. It was contended by Mr. Oza that when the fourth respondent sent the detenu to the Baroda Central Prison he waived his power under the first part of Section 157 of the Land Revenue Code and therefore when the Superintendent of that prison declined to accept the custody of the detenu on the ground that the warrant was for civil jail the fourth respondent had no authority to take the detenu back in his custody under the first part of Section 157 and send him to civil jail thereafter under the second part of Section 157. The facts however show that this contention cannot stand at the outset the Collector of Godhra issued a warrant u/s 157 of the Code Mr. Oza conceded that that warrant was validly issued. It was after the recovery case was transmitted to Baroda because the detenu had left Godhra and gone to Baroda and it was after the detenu had failed to pay the arrears that the fourth respondent issued a warrant of arrest against the detenu at Baroda where he was. It was again conceded by Mr. Oza that the fourth respondent had jurisdiction to issue such a warrant u/s 157 of the Code. According to the affidavit of the fourth respondent he thought it unsafe to detain the detenu either in his office or in the office of the Mamlatdar Baroda and therefore he sent the detenu with a civil jail warrant to the Nazir of the District Court at Baroda and the Superintendent of the Baroda Central Prison. A police officer was requested to assist in arresting and escorting the detenu to the civil jail as a precautionary measure to avoid any untoward incident. It would seem that the Superintendent of the prison declined to accept the custody of the detenu as the warrant was for civil bail. The Nazir also declined to take the custody of the detenu because the subsistence allowance had not been paid. The result was that the police officer brought the detenu back to the fourth respondent who then detained him in his custody. It cannot be said in these circumstances that the detenu was not in the custody of the fourth respondent all throughout. There was in fact no change in the custody of the fourth respondent to the custody either of the Superintendent of the Central Prison or the Nazir of the District Court for neither of them had accepted the custody of the detenu. It is obvious therefore that the detenu was all throughout under the detention and custody of the 4th respondent. On the 12th of September 1960 subsistence allowance was paid by the Collector Godhra and thereupon the Nazir of the District Court Baroda accepted the custody of the detenu and the detenu thereafter remained in the custody of that Nazir. Until that took place there was

no question of the fourth respondent having sent the detenu for imprisonment in a civil jail as contemplated by the second part of Section 157. The contention of Mr. Oza on this aspect of the case must therefore fail.

13. These were all the contention raised on behalf of the detenu by Mr. Oza. In our view none of them can be said to have any justification.