

(2013) 01 AHC CK 0288

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56175 of 2011

Mahrajwa and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Constitution of India, 1950 — Article 14
Revenue Recovery Act, 1890 — Section 3, 4, 5
Uttar Pradesh Agricultural Credit Act, 1973 — Section 11, 12, 25
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 276, 278, 279, 279(1), 279(2)

Citation : (2013) 1 ADJ 426 : (2013) 119 RD 717 : (2013) 1 UPLBEC 56

Hon'ble Judges : S.U. Khan, J;S.P. Mehrotra, J;R.K. Agarwal, J

Bench : Full Bench

Final Decision : Allowed

Judgement

R.K. Agrawal, S.P. Mehrotra and S.U. Khan, JJ.—Finding conflict in the decisions of two Division Benches of this Court, namely Chinta Mani Vs. State of U.P. and Others, , and Mange Ram and Another Vs. State of U.P. and Others, , the learned Single Judge has referred the following question for decision by a Larger Bench.

Whether decision in Mange Ram and Another Vs. State of U.P. and Others, , in so far as it takes the view that there is no provision under any of the Acts for levying any collection charges for mere issuance of citation or sale proclamation is correct; or, the decision in Chinta Mani Vs. State of U.P. and Others, , holding that provisions of sub-section (2) of Section 279 do not contain any provision for an absolute waiver of recovery charges where the citation has been issued under sub-section (1) and the charging Section empowers the Collector to raise such demand subject to the rules and provision of Revenue Recovery Act U.P. Act No. 37 of 2001, is correct.

Brief facts of the case:

The petitioners had taken an agricultural loan for the purchase of a tractor from U.P. Sahkari Bank Ltd., Rath, district Hamirpur, respondent No. 4. When the loan was not paid a recovery certificate was sent by the respondent No. 4 to the District Magistrate, Hamirpur for its realisation. Pursuant thereto the Tehsildar, respondent No. 3 issued a citation on 23.1.2011 calling upon the petitioner to appear and show cause as to why the sum of Rs. 6,39,640/- be not recovered as arrears of land revenue. The petitioners approached this Court by means of Writ Petition No. 8158 of 2011 challenging the citation dated 23.1.2011. This Court vide judgment and order dated 11.2.2011 disposed of the writ petition with the direction to the petitioners to deposit the amount in instalments. The Court observed that in case all the instalments are deposited as per the schedule, the petitioners may approach the Collector concerned for waiving of recovery charges and in the event of any such application being filed the same shall be dealt with in accordance with law by the authority concerned. In compliance of the order dated 11.2.2011, the petitioners had deposited the entire dues with the respondent No. 4 i.e. the Bank and thereafter moved an application before the respondent No. 3 for waiving the collection charges. The District Magistrate, respondent No. 2, vide order dated 7.9.2011 had rejected the application of the petitioners stating therein that the amount of Rs. 5,83,000/- has been deposited by the petitioners directly with respondent No. 4 Bank and accordingly, a sum of Rs. 58,300/- is recoverable as collection charges and there is no provision for waiving of collection charges. The petitioners thereafter approached this Court by means of the present writ petition seeking a writ, order or direction in the nature of certiorari quashing the order dated 7.9.2011 passed by the District Magistrate, respondent No. 2 on the ground that the recovery charges can be recovered by the Revenue authorities only when the amount due has been recovered by them and not when the amount has been deposited directly with the bank and, therefore, the respondent No. 2 has illegally rejected the application for waiving the recovery charges. When the writ petition came up for consideration before the learned Single Judge, the learned Single Judge finding conflict of opinion between the two Division Benches mentioned above, referred the aforementioned question for decision by a Larger Bench.

Law laid down by two Division Benches

Mange Ram & Anr. (supra)

2. In Mange Ram's case the Division has held as follows:

There is no provision under any of the Acts for levying any collection charge for mere issuance of citation of sale proclamation. The cost of these items have been taken adequate care in the U.P.Z.A. & L.R. Rules and as such there is no scope for any additional charge in this respect.

Chinta Mani (supra)

3. In Chinta Mani's case the Division Bench of this Court has held as follows:

20. The contention on behalf of the appellant that no such collection charges can be realised, to our mind, does not appear to be correct inasmuch as sub-section (2) also empowers the Collector to realise costs of recovery even where the processes adopted is by serving a writ of demand or a Citation to appear. Subsection 2 of Section 279 does not contemplate that some other actual process apart from the issuance of Citation should be undertaken for raising a liability of recovery charges. Subsection 2 would apply independently to clause (a) of sub-section 1. The provisions of the Revenue Recovery Act 1890 and the Rules framed thereunder as noted above supplement the aforesaid procedure for realising collection charges as well.

21. The impact of the said provisions have not been noticed in any of the other cases that have been relied upon by the learned Counsel for the petitioner. The judgment in detail with regard to realisation of collection charges which has been referred to in para 16 of the decision in the case of Mirza Javed Murtaza (supra) is in relation to the processes of sale of immovable property under Rule 284 of the U.P.Z.A. & L.R. Rules. The Division Bench observed that the loan that was sought to be recovered therein was extended by the U.P. Financial Corporation and the Managing Director of the Corporation can only ask the Collector to recover the amount as arrears of land revenue. The Court further went on to observe that what would be the actual cost of the proceeding would naturally be ascertained when the costs are actually incurred. The said observations were made in relation to Rule 284 of the U.P. Zamindari Abolition and Land Reforms Rules which are in relation to sale of immovable property. The ratio of the said decision would not be attracted hereunder inasmuch as that was a case where a process of distress by sale of immovable property had been undertaken. The said decision has nowhere considered the impact of subsection 2 of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act as referred to herein above. In view of the said position as also the subsequent amendments as noticed above, the ratio of the said decision would, therefore, not apply on the facts that have emerged in the present case.

22. Accordingly, we are of the opinion that so far as the law is concerned, the provisions of sub-section 2 of Section 279 do not contain any provision for an absolute waiver of recovery charges where a Citation has been issued under sub-section 1 of the said provision. The charging Section itself empowers the Collector to raise such demand subject to the rules and the provisions of the Revenue Recovery Act (U.P. Act No. 37 of 2007) referred to herein above.

23. There are no provisions introduced in the U.P. Zamindari Abolition and Land Reforms Act 1950 for the levy of 10% collection charges but the Revenue Recovery Act 1890 has been amended as noted above. There is no challenge to the vires of the amendments introduced through U.P. Act No. 37 of 2007. Accordingly, we do not propose to examine the issue any further.

Statutory Provisions:

The Revenue Recovery Act, 1890.

...

3. Recovery of public demands by enforcement of process in other districts than those in which they become payable.--(1) 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 arrears accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating-

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein, together with the costs of the recovery, as if it were an arrear of land revenue which had accrued in his own district.

(3-a) The costs of the recovery under sub-section (3) shall be such as may be specified by the State Government by notification but the amount of such costs shall not exceed ten per cent of the amount stated in the certificate.

...

4. Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities.--(1) Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, such officer or authority may send to the Collector of the district in which the office of that officer or authority is situate or of any other district in Uttar Pradesh where the defaulter is or has property, a certificate in such form as may be prescribed by rules made in this behalf.

(2) Save as otherwise provided by this Act, the certificate shall be conclusive proof of the matter therein stated.

(3) The Collector shall, on receipt of the certificate under sub-section (1), proceed to recover the amount stated therein, together with the costs of the recovery as if the amount stated in the certificate were payable to himself and such costs were also an arrear of land revenue.

(3-a) The costs of the recovery under sub-section (3) shall be such as may be specified by the State Government by notification but the amount of such costs shall not exceed ten per cent of the amount stated in the certificate.

(4) The provisions of Section 4 shall have effect in relation to such certificate as if it were a certificate sent under sub-section (1) of Section 3.

U.P. Zamindari Abolition & Land Reforms Act, 1950

278. Certified account to be evidence as to arrears of land revenue.-

A statement of account certified by the tahsildar shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrears of land revenue of its amount and of the person who is the defaulter:

Provided that in any village in respect of which an order u/s 276 has been made such statement, may, in respect of an individual defaulter, be certified by the Land Management Committee.

279. Procedure for recovery of an arrear of land revenue.--(1) An arrear of land revenue may be recovered by any one or more of the following processes:

- (a) by serving a writ of demand or a citation to appear on any defaulter;
- (b) by arrest and detention of his person;
- (c) by attachment and sale of his movable property including produce;
- (d) by attachment of the holding in respect of which the arrear is due;
- (e) by lease or sale of the holding in respect of which the arrear is due;
- (f) by attachment and sale of other immovable property of the defaulter; and
- (g) by appointing a receiver of any property, movable or immovable of the defaulter.

(2) The costs of any of the processes mentioned in sub-section (1) shall be added to and be recoverable in the same manner as the arrear of land revenue.

282. Attachment and sale of movable property.--(1) The Collector may, whether the defaulter has been arrested or not, attach and sell his movable property,

(2) Every attachment and sale under this Section shall be made according to the law in force for the time being for the attachment and sale of movable property in execution of a Civil Court.

(3) In addition to the particulars mentioned in Clauses (a) to (o) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (V of 1908), articles set apart exclusively for the use of religious worship shall be exempted from attachment and sale under this Section.

284. Attachment, lease and sale of holding.--(1) The Collector may in addition to or instead of any of the other processes hereinbefore specified either of his own motion or on the application of the Land Management Committee, attach the holding in respect of which an arrear is due.

(2) Where any holding is so attached the Collector may, notwithstanding anything contained in this Act, but subject to such conditions as may be prescribed, let out the holding, for such period not exceeding ten years commencing from the first day of July next following as he deems fit, to any person, other than the defaulter, who pays the whole of the arrear due on the holding and agrees to pay the same amount of land revenue during this period of the lease as has been payable by the defaulter in respect of the holding immediately preceding its attachment.

(3) If during the period of lease, the lessee commits defaults in payment of the land revenue due under lease, the arrear may be recovered from him by any one or more of the processes mentioned in Clauses (a) to (e), (f) and (g) of sub-section (1) of Section 279 and his lease shall also be liable to be determined.

(4) Upon the expiry of the period of lease the holding shall be restored to the tenure-holder concerned free of any claim on the part of the State Government for any arrear of revenue in respect thereof.

(5) If the Collector is satisfied that no suitable person is forthcoming to take the land on lease under sub-section (2) then notwithstanding anything contained in this Act he may sell the holding free from all encumbrances in such manner as may be prescribed and appropriate the proceeds in satisfaction of the arrears, and refund the excess, if any, to the defaulter.

(6) The Collector shall report to the Board of Revenue any sale made under sub-section (5).

U.P. Zamindari Abolition and Land Reforms Rules, 1952

243. The fee charged for the issue of a writ of citation to appear shall be rupees two. This fee shall be added to the arrears to which the writ of citation is issued and shall be included in the amount specified therein.

248. The fee levied for a warrant of arrest in Z.A. Form 70 shall be rupees five.

255. Every attachment and sale of movable property in realization of revenue u/s 282 shall, unless the officer ordering the attachment otherwise directs, be made by a qurkamin. The fee levied for a warrant of attachment (Z.A. Form 71) shall be 75 Naye Paise.

Note.--Entries in the counterfoils and outerfoils of Z.A. Form 71 will be made at the tahsil and will be submitted to the collector or Assistant Collector Incharge of the Sub-division for signature on the warrant of attachment in the outerfoil. After orders have been passed by the Collector or the Assistant Collector in charge of the sub-division, the book will be returned to the Tahsildar for necessary action. The outerfoil will after attachment, be kept with the Nathi in cases, further proceedings of sale and is, the counter foil the Tahsildar will make an entry giving reference to the Nathi.

259. When the sale officer goes to any place to conduct a sale and no sale takes

place, the fees chargeable to meet the costs of his deputation shall be according to the following scale:

284. (1) When the land is put up for sale a charge shall be levied on account of the costs of every sale, upon such amount not exceeding the total sum due for recovery as may be realised by the sale at the following rates.

(i) Where such amount does not exceed 200 rupees at the rate of one rupee for every 100 rupees or portion of 100 rupees.

(ii) Where such amount exceeds 200 rupees but does not exceed 1,000 rupees, 2 rupees for the first 200 rupees and at the rate of 50 naye paise per every 100 rupees or portion of 100 rupees in excess of 200 rupees;

(iii) Where such amount exceeds 1,000 rupees, six rupees, for the first 1,000 rupees and at the rate of one rupee for every 500 rupees or portion of 500 rupees in excess of 1,000 rupees.

(2) When immovable property other than the land is put up for sale, a charge shall be levied upon such amount not exceeding the total sum due for recovery as may be realized by the sale at the rate of three naye paise per rupee of the sale proceeds, fractions of a rupee being excluded.

(3) When the same officer goes to any place to conduct a sale and no sale takes place, a charge shall be levied to meet the cost of his deputation according to the following scale:

The Uttar Pradesh Agricultural Credit Act, 1973.

10.B. Distraint and sale of produce and movables.--(1) Where any sum in respect of any financial assistance granted to an agriculturist remains unpaid on the date on which it falls due, the bank granting the financial assistance may apply to the Tahsildar having jurisdiction for the recovery of the sum due, together with expenses of recovery, by distraint and sale of the movable property or the crop or other produce charged in favour of the bank.

(2) The provisions of the Limitation Act, 1963, shall apply in relation to an application under sub-section (1), as if such application were a suit in a Civil Court for sale of the movable property for enforcing recovery of the sum referred to in that sub-section.

(3) On receipt of an application under sub-section (1), the Tahsildar or any other official authorised by him may, notwithstanding anything contained in any other law for the time being in force, take action in the manner prescribed for purposes of distraining and selling the property referred to in that sub-section.

(4) Any sum so recovered shall be transferred to the bank after deducting the expenses of recovery and satisfying the Government dues or other prior charge, if any.

11. Recovery of dues of a bank through a prescribed authority.--(1)

Notwithstanding anything contained in any law for the time being in force, an officer specified by the State Government by notification in the Gazette (hereinafter referred to as the prescribed authority) may, on the application of a bank by order, direct that any amount due to the bank on account of financial assistance given to an agriculturist be paid by the sale of the land or any interest therein or other immovable property which is charged or mortgaged for the payment of such amount:

Provided that no order of sale shall be made under this sub-section unless the agriculturist has been served with a notice by the prescribed authority calling upon him to pay the amount due.

(1-A) The provisions of the Limitation Act, 1963, shall apply in relation to an application under sub-section (1), as if such application were a suit in Civil Court for sale of the land or interest therein or other immovable property for enforcing recovery of the sum referred to in that sub-section.

(2) An order passed by the prescribed authority shall, subject to the result of appeal u/s 12, be final and be binding on the parties.

(3) Every order passed by the prescribed authority in terms of subsection (1) or by the appellate authority u/s 12 shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court by the Civil Court having jurisdiction.

11-A. Recovery in the case of personal security.--(1) Where any amount of financial assistance is granted by a bank to an agriculturist and the agriculturist fails to pay the amount together with interest on the due date, then without prejudice to the provisions of Sections 10-B and 11, the local principal officer of the bank, by whatever name called may forward to the Collector a certificate in the manner prescribed, specifying the amount due from the agriculturist.

(2) The certificate referred to in sub-section (1) may be forwarded to the Collector within three years from the date when the amount specified in the certificate fell due.

(3) On receipt of the certificate, the Collector shall proceed to recover from the agriculturist, the amount specified therein together with expenses of recovery, as arrears of land revenue, and the amount due to the bank shall be paid after deducting the expenses of recovery and satisfying any Government dues or other prior charges, if any.

Explanation.--For the purposes of this Section, the expression "Collector" means the Collector of the district in which the agriculturist ordinarily resides or carries on the activities referred to in clause (a) of Section 2 or where any movable or immovable property of the agriculturist is situate, and includes any officer authorised by him in that behalf.

25. Power of State Government to make rules.--(1) The State Government may,

by notification in the Gazette, make rules for carrying out the purposes of this Act including any rules prescribing fees in respect of any proceeding under this Act.

(2) Every rule made under this Section shall be laid as soon as may be after it is made, before each House of State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or more than one successive sessions and if, during the said period both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Uttar Pradesh Agricultural Credit Rules, 1975.

12. Application for distraint and sale of the Movables: Sections 10B and 25.--(1) Where any charge has been created on any movable property or the crop, or other produce in favour of a Bank in respect of any financial assistance granted to an agriculturist, and the whole or any part of the amount due in respect thereof remains unpaid, the Bank may apply to Tahsildar having jurisdiction, for distraint and sale of such property, crop or other produce.

(2) Every application under sub-rule (1) shall be in Form B. The application shall be accompanied by sufficient number of copies thereof alongwith copies of notices in Form C for service on the agriculturist or his heirs or legal representatives, as the case may be.

(3) A fee at the rate of ten per cent (or at such other rate as the State Government in the Revenue Department may from time to time fix in this behalf), on the amount of the claim shall be payable in respect of every such application. The amount of fee shall be deposited in Government Treasury under the Head "-65-Other Administrative Services-Other Services-(20) Other Miscellaneous-Receipt", and the Treasury Challan shall be attached to the application as evidence of payment of the prescribed fee.

(4) An attested copy of the document creating the charge shall be filed alongwith the application referred to in sub-rule (1). But the Tahsildar may summon the original document as and when he considers it necessary.

13. Notice of demand: Sections 10B and 25 .--On receipt of the application referred to in Rule 12 the Tahsildar shall cause to be noted thereon, the date of its presentation, and if he is satisfied that the application is in order, he shall cause to be served on the agriculturist or his heir or legal representative, a written notice of demand in Form C, calling upon him to pay the amount specified in the notice within a period of fifteen days from the date of service thereof or to show cause why the property charged be not distraint and sold.

14. Service of demand notice.-Section 10B and 25.--The notice referred to in

Rule 13, shall be served by delivering a copy to the agriculturist or his heir or legal representative or to any adult male member of his family at his usual place of residence or to his authorised agent, or when such service cannot be so effected, by affixing a copy of the notice on some conspicuous part of his residence, or by registered post.

(15) Distraint of the property charged: Sections 10B and 25.--If the amount specified in the notice or any part thereof remains unpaid after the expiry of the time allowed therefor, or if no cause is shown, or where the cause shown is considered by the Tahsildar to be insufficient, the Tahsildar shall cause the property charged to be distrained.

...

(23) Application for sale of land or interest therein: Sections 11 and 25.--(1) Where any charge or mortgage has been created on any land or interest therein or on any other immovable property in favour of a bank in respect of any financial assistance granted to an agriculturist and the whole or any part of the amount due in respect thereof remains unpaid, the bank may apply to the Prescribed Authority for the sale of such land, or interest therein or other immovable property.

(2) Every application by a Bank under sub-rule (1) shall be in Form D. The application shall be accompanied by sufficient number of copies thereof alongwith copies of notices in Form E for service on the agriculturist or his heirs or legal representatives, as the case may be.

(3) A fee at the rate specified in Rule 12(3) shall be payable on every application referred to in sub-rule (1). The amount of fee shall be deposited in Government Treasury or the State Bank of India under the Head mentioned in Rule 12(3) and the Treasury Challan shall be attached to the application as evidence of payment of the prescribed fee.

(4) An attested copy of the document creating the charge or mortgage shall be filed alongwith application referred to in sub-rule (1). But the Prescribed Authority may summon the original as and when it is considered necessary.

29. Utilisation of the amount recovered: Section 11-A and 25.-

The amount recovered under Rule 21 or Rule 28 shall be utilized in the following manner:

(a) Firstly, for meeting the expenses of recovery which shall be charged at the rate of ten per cent (or at such other rate as the state Government in the Revenue Department may from time to time fix in this behalf) on the amount of the claim;

(b) Secondly, for payment of the Government dues or other prior charges, if any;

(c) Thirdly, for payment of the dues of the bank

(d) The balance, if any, shall be paid to the person from whom the recovery was made.

Rival Submissions

4. We have heard the learned Counsel for the parties.

5. Learned Counsel for the petitioners submitted that Section 279 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, hereinafter referred to as "1950 Act" prescribes the procedure for recovery of amount as arrears of land revenue. Sub-section (2) of Section 279 of 1950 Act provides for recovering costs of various processes mentioned in sub-section (1) to be added to and be recoverable in the same manner as the arrear of land revenue. The costs of various processes have been given in Rules 243, 248, 255, 258 and 259 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, hereinafter referred to as "1952 Rules". According to him, even though the amendment has been made in Section 5 of the Revenue Recovery Act, 1890, hereinafter referred to as "1890 Act", by the U.P. Act No. 37 of 2001 whereby the provision has been made as to what amount can be realised if the recovery has been issued under the provisions of 1890 Act and that too when the entire recovery has been made by the authorities proceeding under the Act and not otherwise. He further submitted that if the recovery is being made under the provisions of 1950 Act then the charges for recovery as specified in 1952 Rules can only be made as per specific provision u/s 279(2) of 1950 Act. He has submitted that on a conjoint reading of the various provisions of 1950 Act as also 1890 Act it is absolutely clear that recovery charges as specified in the Rules framed under 1950 Act can only be recovered when the entire recovery has been made by the District Authorities and if the amount has been paid directly to the creditor/lender in that event no recovery charges except the costs of the processes mentioned in the Rules can be realised. He submitted that the decision rendered by the Division Bench in the case of Mange Ram & Anr. (supra) lays down the correct law. He has also relied upon Another Division Bench decision of this Court in the case of Asha Textiles (P.) Ltd. and another Vs. State of U.P. and others, .

6. Learned Counsel appearing for the respondents, however, submitted that under Chapter X of 1950 Act the provisions have been made for determination of land revenue and its realisation. Section 279 of 1950 Act provides for the manner and the process by which an arrear of land revenue can be recovered. There is a difference in recovery of arrears of land revenue and realisation of any dues as arrears of land revenue. The provision of Section 279 of 1950 Act is invoked for recovering the dues as arrears of land revenue alone and the fee charges etc. prescribed under the Rules framed under 1950 Act would not be applicable but realisation of recovery charges under the statutory provisions made in 1890 Act if the recovery is being pressed under that Act or if the recovery is being made under the provisions of U.P. Agricultural Credit Act, 1973, hereinafter referred to as "1973 Act", and the Rules framed thereunder i.e. U.P. Agricultural Credit Rules, 1975, hereinafter referred to as "1975 Rules" which prescribes for

recovery of collection charges at the rate of 10% is recoverable as arrears of land revenue.

7. He further submitted that the cost of recovery charges are fee and not tax and are realisable even though no recovery has been made by the State authorities. He justified this on the ground that the various statutory provisions prescribe for it and further officers of the State are deputed for the realisation of the amount as arrears of land revenue. According to him, even if the recovery has been withdrawn or otherwise or in cases where it is not possible to recover the amount for one reason or the other still the defaulter has to pay the recovery charges. He submitted that the reasoning given in Mange Ram's case is not correct and the decision in that case does not lay down the correct law. In support of the aforesaid submissions he has placed reliance upon the following decisions:

1. Padrauna Rajkrishna Sugar Works Ltd. and Others Vs. Land Reforms Commissioner, U.P. and Others, .
2. Trijugi Narain Tewari and Others Vs. Gorakhpur Kshetriya Gramin Bank and Another, .
3. Kamod Singh Sharma v. State Bank of India, Agra and Others, 1988 ALJ 177 (DB).
4. Jogendra Singh v. State Bank of India, Mainpuri and Another, 1991 ALJ 1058 (DB).
5. Ram Ranjan Rakshit Vs. The Chief Administrator, Rehabilitation Finance Administration, New Delhi and Others, .
6. Mirza Javed Murtaza Vs. U.P. Financial Corporation and Another, .
7. Mahalakshmi Sugar Mills Co. Ltd. Vs. State of U.P. and others, .
8. Smt. Vidya Devi Vs. Collector, Mahoba and others, .

Discussion

8. Section 3 of 1890 Act relates to recovery of arrears of land revenue or a sum recoverable as an arrear of land revenue, payable to a Collector by a defaulter being or having property in a district other than that in which the arrears accrued or the sum is payable. Sub-section (1) stipulates that the Collector of the district where the arrears accrued or the sum is payable may send to the Collector of that other district where the property of the defaulter is situate, a certificate in the prescribed form 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. Sub-section (2) provides that the certificate signed by the Collector shall be the conclusive proof of the matters stated in the certificate. Sub-section (3) provides that the Collector of the other district shall proceed to recover the amount stated in the certificate together with the costs of the recovery, as if it were an arrear of land revenue which had accrued in his

own district. Sub-section (3-a) empowers the State Government to specify the costs of recovery by notification but it would not exceed 10% of the amount stated in the certificate. In exercise of the powers under Sub-section (3-a) of Section 3 of 1890 Act the State Government has issued a notification dated 30.7.2002 specifying 10% as costs of recovery under subsection (3) of Section 3 of 1890 Act.

9. Thus, from the reading of Section 3 of 1890 Act the following position emerges:

(a) There is arrears of land revenue or the sum recoverable as arrears of land revenue.

(b) Such amount is payable to the Collector by a defaulter.

(c) The defaulter is having property in a district other than in which the arrears accrued or the sum is payable.

(d) The Collector has to send to the Collector of that other District a certificate in the prescribed form giving details of the defaulter, his identification and the amount payable. The certificate should be duly signed by the Collector.

(e) The certificate shall be conclusive proof of the matters stated therein.

(f) The Collector of the other district shall proceed to recover the amount stated therein together with the costs of recovery as if it were an arrear of land revenue which had accrued in his own district.

(g) The costs of the recovery has been specified as 10%.

10. Section 5 of 1890 Act relates to recovery of sums as an arrear of land revenue payable by a defaulter to any public officer other than a Collector or to any local authority. Sub-section (1) provides that any sum which is recoverable as an arrear of land revenue by any public officer other than a Collector or any local authority, such officer or authority may send to the Collector of the district in which the office of that officer or authority is situate or of any other district in Uttar Pradesh where the defaulter is or has property, a certificate in the prescribed form. Sub-section (2) makes the certificate to be conclusive proof of the matter stated therein. Sub-section (3) enjoins the Collector to recover the amount stated in the certificate together with the costs of the recovery as if the amount stated in the certificate was payable to himself and such costs were also an arrear of land revenue. Subsection (3-a) empowers the State Government to specify by a notification the amount of costs to be recovered which would not exceed 10% of the amount stated in the certificate. By sub-section (4) the provisions of Section 4 of the 1890 Act has been made applicable.

11. From a reading of Section 5 of 1890 Act the following position emerges.

(a) The amount to be recoverable as arrears of land revenue by any public officer other than a Collector or by any local authority.

(b) Such officer or authority has to send to the Collector of the district in which the office of that officer or authority is situate or of any other district in Uttar Pradesh where the defaulter is or has property, a certificate in the prescribed form.

(c) The certificate shall be conclusive proof of the matters stated therein.

(d) The Collector shall proceed to recover the amount stated in the certificate together with the costs of the recovery as arrears of land revenue.

(e) The costs of recovery has to be specified by the State Government by issuing a notification which shall not exceed 10% of the amount stated in the certificate.

12. On a query being made to the learned Counsel appearing for the State-respondents, it has been stated that the State Government has not yet issued any notification under sub-section (3-a) of Section 5 of 1890 Act. Thus, no costs of recovery can be recovered where the certificate has been sent by any public officer other than a Collector or by an local authority. It implies that the costs of recovery, if any, can be recovered only in respect of arrears of sums payable to the Collector, which is to be recovered as arrears of land revenue and not in respect of other sums which are payable by a defaulter to any public officer or any local authority.

13. Section 278 of 1950 Act provides that statement of account certified by the Tahsildar be conclusive evidence of the existence of the arrears of land revenue payable by the defaulter.

14. Section 279(1) provides procedure for recovery as arrears of land revenue. Cause (a) provides for serving a writ of demand or a citation to appear on any defaulter; Clause (b) provides for arrest and detention of his person; Clause (c) provides attachment and sale of his moveable property including produce. Clause (d) provides attachment of the holding in respect of which the arrear is due; Clause (e) provides lease or sale of the holding in respect of which the arrear is due; Clause (f) provides attachment and sale of other immovable property of the defaulter, and Clause (g) provides for appointing a receiver of any property, moveable or immovable of the defaulter. Sub-section (2) of Section 279 provides for the costs of any of the processes mentioned in sub-section (1) to be added to and be recoverable as arrears of land revenue.

15. Section 282 empowers the Collector to attach and sell moveable property even whether the defaulter has been arrested or not. Certain articles set apart exclusively for the use of religious worship as also the particulars mentioned in clauses (a) to (o) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 has been exempted from attachment and sale.

16. Section 284 empowers the Collector to lease and sale of holding of the defaulter without resorting to other provisions or in addition to the processes mentioned in Section 279.

17. Rules 243 of 1952 Rules provides for the fee to be charged for issue of a writ of citation to appear which has been fixed as rupees two and shall be added to the arrears to which the writ of citation to appear is issued specified therein. Rule 248 provides for fee levied for a warrant of arrest to be rupees five. Rule 255 provides for the fee levied for a warrant of attachment to be 75 naye paise. Rule 258 provides for the costs of every sale of movable property shall be met by levying a sum of six naye paise in the rupee, calculated on the amount of the arrears including the charge on account of the warrant of attachment. Rule 259 provides for the fee chargeable to meet the costs of deputation of the sale officer when he goes to any place to conduct a sale and no sale takes place. It provides for charging 50 naye paise when the amount of recovery does not exceed Rs. 50; one rupee when the amount exceeds Rs. 50 but does not exceed Rs. 1,000 and three rupees when such amount exceeds Rs. 1,000.

18. Rule 268 provides for the cost incurred of preparing live-stock for sale, cost of feeding the live stock while in the custody of the pound keeper to be paid out of the sale proceeds.

19. Rule 284 provides for levy of charge on account of costs of every sale. It provides one rupee for every 100 rupees or portion of 100 rupees where the amount does not exceed 200 rupees and where such amount exceeds 200 rupees but does not exceed 1,000 rupees, 2 rupees for the first 200 rupees and at the rate of 50 naye paise per every 100 rupees or portion of 100 rupees in excess of 200 rupees, and where such amount exceeds 1,000 rupees, six rupees, for the first 1,000 rupees and at the rate of one rupee for every 500 rupees or portion of 500 rupees in excess of 1,000 rupees. Sub-rule (2) of Rule 284 deals with sale of immovable property other than land. It provides for levy of three naye paise per rupee of the sale proceeds as costs. Sub-section (3) deals with contingencies where no sale takes place. It provides for levy of charge to meet the cost of deputation of the sale officer as Rs. 1.50 if the amount for recovery does not exceed Rs. 100, Rs. 3.00 where it exceeds Rs. 100 but does not exceed Rs. 1,000 and Rs. 6.00 when it exceeds Rs. 1,000/-. Thus, 1952 Rules provide for charges to be levied for the various processes issued for recovery of any amount as arrears of land revenue as also the charges to be levied if no sale takes place. It is applicable if the authorities take recourse to the provisions of 1952 Act and 1952 Rules.

20. Uttar Pradesh Agricultural Credit Act, 1973, hereinafter referred to as "1973 Act", is applicable to an agriculturist who is engaged in agriculture and covers loans taken by the said agriculturist from any bank. Section 10-B empowers the bank granting financial assistance to an agriculturist which remains unpaid on the date it falls due, to apply to the Tahsildar having jurisdiction for the recovery of the sum due together with expenses of recovery by distraint and sale of the movable property or the crop or other produce charged in favour of the bank subject to provisions of the Limitation Act, 1963. On receipt of the application the Tahsildar or any other official authorised by him may take action in the manner

prescribed for the purpose of distraint and selling the movable property or the crop or other produce charged in favour of the bank. Section 11 of the 1973 Act empowers the prescribed authority specified by the State Government to recover the amount due to the bank on account of financial assistance given to the agriculturist by the sale of the land and any interest therein and other immovable property which is charged or mortgaged for the purpose of such amount. The provisions have been made subject to the provisions of Limitation Act, 1963. Section 11A deals with recovery of outstanding financial assistance granted by a bank to an agriculturist by forwarding a certificate to the Collector. Subsection (3) empowers the Collector to recover the amount specified therein together with expenses of recovery, as arrears of land revenue and the amount so recovered shall be paid to the bank after deducting the expenses of recovery and satisfying any Government dues or other prior charges, if any. Section 25 of the 1973 Act empowers the State Government by notification in the Gazette to make Rules for carrying out the purposes of this Act including prescribing of any fee in respect of any proceeding under this Act.

21. Rule 12 of the Uttar Pradesh Agricultural Credit Rules, 1975, hereinafter referred to as "1975 Rules", prescribes the procedure for making an application for distraint and sale of the movables by the bank. The bank is to make an application to the Tehsildar concerned in the prescribed form and a fee at the rate of 10% on the amount of the claim is to be paid in respect of every such application to be deposited in Government Treasury under the Head "065-Other Administrative Services-Other Services-(20) Other Miscellaneous-Receipts" and the Treasury Challan is to be attached to the application as evidence of payment of the prescribed fee. The application has to be accompanied by attested copy of the document creating the charge.

22. Rule 13 provides for service of notice on defaulter agriculturist or his heir or legal representative in the prescribed form calling upon him to pay the amount specified in the notice within a period of fifteen days from the date of service thereof or to show cause why the property charged be not distraint and sold.

23. Rule 14 provides the mode of service of notice of demand. Rule 15 provides for distraint of the property charged, if the amount specified in the notice remains unpaid.

24. Rule 23 provides for application by the bank for sale of land or interest therein in respect of the unpaid amount. A charge or mortgage should have been created in respect of the land or interest therein for the application to be made for sale. A fee at the rate of 10% is to be paid in the Government Treasury or the State Bank of India under the specified head and the Treasury Challan has to be attached alongwith application. The application has to be accompanied by an attested copy of the document creating a charge or mortgage.

25. Rule 29 provides for utilisation of the amount recovered. From the amount recovered the expenses of recovery is to be charged at the rate of 10%,

thereafter Government dues have to be paid and thereafter the dues of the bank is to be paid out of the amount so recovered and the balance, if any is to be paid to the person from whom the recovery has been made.

26. From the reading of the provisions of 1973 Act and 1975 Rules, we find that it provides for realisation of recovery charges from the defaulter agriculturist twice, firstly the Bank has to deposit 10% as fee at the time of making of the application for making recovery and secondly @ 10% for meeting the costs of recovery, which appears to be unjustified. At best the costs of recovery could be levied at only one stage. The cost of recovery at the rate of 10% mentioned in Rule 29 is referable to the fee provided in Rules 12 and 23 of 1975 Rules.

27. From the scheme of 1890 Act, 1950 Act and 1973 Act as also 1952 Rules and 1975 Rules one thing is amply clear that while Sections 3 and 5 of 1890 Act and Rule 29 of 1975 Rules speak of the cost of recovery to be realised alongwith the arrears it is necessarily to be understood and restricted to where the arrears have been recovered by the concerned authorities. If the authorities have not been able to recover the amount of arrears through coercive process undertaken by them, then there is no question of realising the cost of recovery from the defaulter. The issuance of recovery certificate is a ministerial job. If no concrete further steps have been taken and the arrears have not been realised by them and instead the defaulter pays the amount of arrears directly to the creditor or to the person to whom it is due then it cannot be said by any stretch of imagination that the State authorities have recovered the amount of arrears. In that event, there is no question of realising the cost of recovery/recovery charges from the defaulter either under the 1890 Act or under the 1975 Act. The provisions of Section 3 of the 1890 Act and Rule 29 of 1975 Rules have to be read accordingly.

28. In the case of Padrauna Rajkrishna Sugar Works Ltd. (supra) the Apex Court has held that the Collector is not required to follow any sequence of processes of recovery as mentioned in Section 279 when the recovery of sums of money is being made as arrears of land revenue. The sequence is to be followed only in cases where recovery is of arrears of land revenue.

29. In the case of R.S. Vaish (supra) a learned Single Judge of this Court has held that so far as the municipal areas are concerned U.P. Land Revenue Act is still in force unaffected by the U.P. Zamindari Abolition and Land Reforms Act and, therefore, the recovery of the arrears of land revenue would in the eye of law, be proceedings under the Land Revenue Act and not under the U.P. Zamindari Abolition and Land Reforms Act. This Court has further held that the provisions of Land Revenue Act do not prohibit a stranger, a third party, from filing an objection that the property sought to be attached does not belong to the defaulter, without making any deposit. The aforesaid case has no application to the facts of the present case.

30. In the case of Trijugi Narain Tewari (supra), a Division Bench of this Court has held that the provisions of Section 11A of 1973 Act is not violative of Article

14 of the Constitution of India and further fixing of 10% recovery charges was within the rule making power of the State Government and if a person has defaulted and the Government is thrown to the remedy of recovering it as arrears of land revenue one fails to understand as to why should the collection charges be not realised from such a person.

31. In the case of Kamod Singh Sharma (supra), a Division Bench of this Court has followed the earlier decision in the case of Trijugi Narain Tiwari (supra) and has upheld the provisions of Section 11A of the 1973 Act. Similar view has been taken by the Division Bench in Jogendra Singh (supra).

32. In the case of Ram Ranjan Rakshit (supra) the Calcutta High Court has held that the primary Act that governs realisation of demand as a land revenue is the Revenue Recovery Act, 1890 and the Public Demands Recovery Act provides only the auxiliary machinery and not the substantive rights and where the certificate is initiated and originates under the Public Demand Recovery Act then the provision of Public Demands Recovery Act will apply and will not be affected by the Revenue Recovery Act. Likewise where the certificate originates and is initiated under the Revenue Recovery Act it is that Act which will apply.

33. In the case of Mahalakshmi Sugar Mills Co. (supra), this Court has held that no coercive action for realisation of the alleged collection charge from petitioners be taken and the respondents would redetermine the costs of recovery, if any, according to the processes issued and in determining the amount they shall also afford opportunity to the petitioners.

34. In the case of Mirza Javed Murtaza (supra), a Division Bench of this Court has held that no collection charges is payable if no property is sold for recovery of loan. It has held as follows:

Where the State Financial Corporation sent a certificate u/s 3 of the Act to the Collector for recovery of the loan advanced by it as arrears of land revenue, it cannot include the collection charges in the certificate, in view of Rule 284 of U.P. Zamindari Abolition and Land Reforms Rules,. The costs of the collection proceedings are not known when the certificate is sent to the Collector by the Corporation asking the Collector to recover certain sum from the debtor as an arrear of land revenue. It can merely ask the Collector that the sum mentioned in the certificate be recovered together with costs of the proceedings. What would be the actual costs of the proceedings would naturally be ascertained when the costs are actually incurred. So, the charge can be levied only when the sale of the property actually takes place.

35. In the case of Smt. Vidya Devi (supra), a learned Single Judge of this Court has held that there is no provision in 1950 Act and 1952 Rules providing for realisation of 10% collection charge and the cost of process which has been provided u/s 279(2) alone is recoverable.

36. In the case of M/s. Asha Textiles Pvt. Ltd. (supra), this Court has followed its

earlier decision in the case of *M/s. Chemopulp Tissues Limited v. State of U.P. and Others*, Civil Misc. Writ Petition No. 4307 of 1981 decided on 20.1.1992 and has held that the recovery charges cannot exceed more than Rs. 3.75 and the demand of the respondents in excess thereof is wholly untenable.

37. From the aforesaid decisions, it is absolutely clear that it has to be seen as to under what Act the recovery has been initiated. Whether it is under 1890 Act, 1950 Act or 1973 Act. If the recovery proceedings have been initiated under 1890 Act then in that event if the recovery is being made u/s 3 of the Act then cost of recovery would be 10% of the amount stated in the certificate. However, if recovery certificate has been issued but no recovery had been made by the State authorities, who had issued the recovery certificate as for example the defaulter directly deposits the amount or the recovery certificate is withdrawn or cancelled for any reason whatsoever then in that event there is no question of charging any costs of recovery. At best the fee for the process mentioned in 1952 Rules can be levied. However, if the recovery certificate has been issued u/s 5 of 1890 Act then there is no question of any cost of recovery being realised as the State Government has not yet issued any notification specifying any rate. If the recovery has been issued under 1973 Act then in that case realisation of recovery charges by the State authorities can be made from the defaulter only where the entire amount had been recovered by the authorities of the State. If the recovery as arrears of land revenue is being made by invoking the provisions of 1950 Act then in that event the fee prescribed under 1952 Rules for various process for realisation of arrears of land revenue while selling moveable and immovable properties and also where properties are not sold alone is payable. It appears that this aspect of the matter was not brought to the notice of the Hon"ble Judges who decided the case of *Chinta Mani* (supra). We are, therefore, in respectful agreement with the view taken by this Court in the case of *Mange Ram & Anr.* (supra) and hold that the decision in the case of *Chinta Mani* (supra) does not lay down the correct law.

38. Before parting with the case, we may mention here that we have not gone into the question as to whether recovery charges of 10% fixed u/s 3 of 1890 Act or the fee of 10% to be deposited by the bank while making an application under Rule 12 and 23 of 1975 Rules or the costs of recover @ 10% specified in 1975 Rules bears any correlation with the expenditure incurred by the State Government in recovering the dues as arrears of land revenue as there is no pleadings on this issue in the writ petition. Let the papers be placed before the appropriate Bench for further orders.