
(1955) 06 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No's. 3 to 5, 105 and 106 of 1955

Manohar Lal and Others

APPELLANT

Vs

The State of Pepsu and Others

RESPONDENT

Date of Decision : 21-06-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Nabha Dasondh Rules, 1944 — Rule 10, 14
Opium and Revenue Laws (Extension of Application) Act, 1950 — Section 4, 5
Patiala Recovery of State Dues Act, 2002 — Section 3(1)
Revenue Recovery Act, 1890 — Section 3

Citation : (1955) 06 P&H CK 0005

Hon'ble Judges : Passey, C.J.;Chopra, J

Bench : Division Bench

Advocate : S.S. Nehra and Atma Ram, for the Appellant; Lachman Das, General, for the Respondent

Judgement

Chopra, J.—An identical question of law is involved in the above noted five petitions under Article 226 of the Constitution and they are, therefore, disposed of by this order.

2. Manohar Lal, Petitioner in three of the petitions, used to work a kiln at Rohta, a villager in the erstwhile Nabha State. Certain sums were; found due from him to the State as Royalty for different years with respect to this kiln. These sums are being realized from him by the Collector, Patiala. In the new administrative set up, Rohta, the place of Petitioner's residence and where the property from which the amount is. being recovered is situate, falls within Patiala. District.

3. Vidya Sagar Petitioner got certain agricultural land at Bhadaur belonging to the State; on lease for the year 1951-52 for Rs. 34,000/-The lease-money due to the State is being recovered from the Petitioner by the Collector, Barnala, within whose district the land is situate and the Petitioner resides. A brick-kiln at Bhadaur in the joint ownership of the Petitioner and Nathi Ram, another Petitioner, has been attached.

4. The main point urged in these petitions is that the Patiala Recovery of State Dues Act, 2002, under which the recovery is being made, stands repealed by Section 4, Opium and Revenue Laws (Extension of Application) Act, 1950, and hence the proceedings taken under the former Act are void and without jurisdiction. In the alternative, it is contended that Section 3(1), Patiala Recovery of State Dues Act (hereinafter called the impugned Act) is hit by the provisions of Article 14 of the Constitution and is, therefore, unconstitutional and void.

5. The impugned Act was promulgated in the erstwhile Patiala State in the year 2002 Bk. with a view to consolidate and amend the law relating to the recovery of State dues, and it became the law for the Patiala and East Punjab States Union, on its formation in 1948, by virtue of Section 3 of Ordinance No. 1 of 2005" and shortly thereafter by Section 3 of Ordinance No. 15 of 2005 which repealed the earlier Ordinance.

6. In 1950 comes the Opium and Revenue Laws (Extension of Application) Act, 1950. Its S. 2 extended the application of the Revenue Recovery Act, 1890, (1 of 1890), which was already in force in certain parts of India, to the rest of India, including this State, and by virtue of its Section 4 the laws in the State corresponding to Act 1 of 1890 stand repealed. It is, therefore, contended that the Patiala Recovery of State-Dues Act," 2002, stands repealed and that the recovery could only be made as provided by the newly applied Act 1 of 1890.

Learned Counsel for the Petitioners, however, forget that this Act, 1 of 1890, had no application, to the present cases and, therefore, the question of repeal of any corresponding Law does not arise.

7. Section 3 of the Revenue Recovery Act, (1 of 1890) relates to cases 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 is payable. The Collector in such a case may send to the Collector of that other District a certificate in the given form stating the name" of the defaulter and the amount payable by him.

Section 5 of this Act provides for cases where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector, or any local authority. In such cases the Collector of the District in which the office of that officer or authority is situated shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of the Act, as if the sum were payable.

8. Neither of the only two main and operative sections or anything else in the Act, applies to a case where a sum recoverable as an arrear of land-revenue is payable to a Collector by a defaulter residing or holding property in the Collector's own district. The present are admittedly cases of this type.

9. State Royalty for different periods, with respect to a kiln, is being realised from Manohar Lal and that has given rise to three of the petitions "on. his behalf. Rule 10 of the amended. Nabha Dasondh Rules of 1944 enjoins that the amount due to the State with respect to a kiln shall be estimated and fixed every year by the Collector of" the District in which the kiln is situated.

By Rule 14 the Dasondh is payable to the Collector of the District and recoverable as an arrear of land-revenue. After the formation of the Union " this amount became payable to the Collector, Patiala, and is being realised by him in, his own district.

10. Similarly, in the other two cases the lease-money due from Vidya Sagar, which is payable to the Collector, Barnala, and is recoverable as an arrear of land-revenue is being realized by the Collector within his own district.

11. The impugned Act provides for the recovery of all kinds of State dues within the State, while; the Central Act (1 of 1890) simply relates to the "recovery of certain demands", particularly when the recovery is to be made outside the District where the sum falls due. Act 1 of 1890 does. not lay down the procedure to be followed in the recovery proceedings.

These are left - to be guided by local laws of the place where the certificate is sent or the 1 realization is actually proceeded with. Nor does the Act (I of 1890) determine the "State Dues" or the public demands" which may be recoverable as arrears of land-revenue. For that too one has to look to some other legislation. Each State has a separate law for the recovery of land-revenue or sum recoverable as arrears of land-revenue.

These laws are not to be affected by the all; India Act (1 of 1890), so far as they are not in conflict with its provisions. Section 4 of Act 33 of 1950 by which certain Acts, including Act 1of 1890, are enforced in this State repeals only those local laws which correspond to these Acts. The two Acts in question here do not wholly correspond; either of them, to a great extent, supplements the other. As already observed, so far as the present cases are concerned there is no conflict between the two Acts and the question of the Central Act repealing the local law does not arise.

12. Article 14 of the Constitution is relied upon for the alternative contention that Section 3(1) of the impugned Act is ultra virus the Constitution inasmuch as it gives the State a privileged position in the matter of realising its dues as compared to an ordinary citizen. The argument is that like an ordinary creditor the State as well should obtain a decree from a Civil Court for the recovery of its dues, and there ought to be no discrimination between the State and its subjects in this connection.

The contention is without substance and can be readily rejected. In the first instance equality before the law assured under the Article is equality of all persons. When the State is acting in its public capacity and in exercise of its

ordinary governmental functions it will not, in my opinion, come within the description of a "person", as the term is used in the article. Even if it were, "equality before the law" only means" that amongst equals the law should be equal and should be equally administered, and that the like should be treated alike.

Equality before the law does not mean that persons who are different and can be discriminated as a class with regard to their position and character, should, in every respect, be treated as if they were the same. Reasonable classification and grouping is always permissible.

13. For the collection of State dues, such as taxes etc, summary modes of collection are not justified but essential, for without such means no Government can exist. Prompt payment of State dues is always important for the public welfare, as it is vital" to the existence of an efficient Government. The idea that every defaulter, whether of the State or of an ordinary creditor, is equally entitled to the usual delays of litigation does not stand to reason.

With the continuing increase in number and complexity of the governmental functions, it is all the more necessary that there should be ways and means for prompt payment of State dues. The classification between the State and its subjects in the matter of realisation of its dues can-not, therefore, be regarded as arbitrary or unreasonable.

14. In Vidya Sagar"s case, it is lastly urged that the Petitioner is not liable to pay the lease money as he never got possession of the land leased out to him, and also that this position" was accepted by the Collector in one of his orders These are matters which do not arise for decision of this Court in a petition under Article 226 of the Constitution. For that the Petitioner should seek his remedy at the proper place.

Controversial points of fact which cannot" be decided without elaborate enquiry. and without reference to evidence which the parties may have to lead, cannot be taken up and decided in a petition under Article 226. If the Collector has decide and ordered that in fact no amount is due from the Petitioner, the order can be brought to the notice of the executing authorities. The Petitioner in that case should not have rushed to this Court for relief.

14. No other point is urged in any of the petitions. The petitions are, therefore, dismissed with costs. Counsel fee shall be Rs. 30/- in each case.

Kesho Ram Passey, C.J.

15. I agree.