

(2013) 10 P&H CK 0418

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 21629 of 2012 (O&M)

M.C. Somani

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0418

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—Rule D.B.

Learned counsels for the respondents accept notice.

At the request of learned counsels for the parties, the writ petition is taken up for final disposal.

2. The petitioners have approached this Court vide the present writ petition under Article 226 of the Constitution of India to impugn the action of respondents No. 5 and 6 purportedly in exercise of the powers under the provisions of Section 3(1) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 (hereinafter referred to as the Act) by issuance of recovery certificates Annexures P11 and P12.

3. The short ground on which the notices have been impugned is that the petitioners have not been put to any prior notice of the proposed action which is against the said Act and, thus, there is violation of the principles of natural justice. The second limb of the submission is that the proceedings should take place first qua the immovable property, if mortgaged, and only when the same does not satisfy the claim would action against other properties be called for.

4. Learned counsel for the petitioners seeks to rely upon the judgment of the Hon'ble Supreme Court in S.K. Bhargava Vs. The Collector, Chandigarh and

Others, which is stated to have also been followed in different judgments of this Court. It would suffice to reproduce paras. 7 and 8 of the said judgment which read as under:-

"7. It is clear from the perusal of the above quoted Section that before a certificate can be issued by the Managing Director under sub-section (2) of Section 3, he must determine the "sum due" from the defaulter as enjoined upon him by Section 3(1)(b). It is difficult to appreciate the contention of the learned counsel for the respondent Financial Corporation that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the question as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director u/s 3(1)(b) to determine as to what is the amount due from the defaulter. There can be no doubt that any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined and the Collector will have the right to recover the same as arrears of land revenue.

8. In our opinion, even though Section 3 does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the words "determine" and "sum due" implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realisation, but it is the "sum due" as determined by the Managing Director which alone is recoverable. As already observed, this determination cannot be done without notice to the alleged defaulter."

5. The legal principle is, thus, clear that the Managing Director/respondent No. 6 had to determine the "sum due" as there were civil consequences resulting into passing of a final decree and, thus, the right of hearing was mandatory.

6. Learned counsel for respondents No. 5 and 6 seeks to contend that the aforesaid requirement stands complied with vide Annexure R5/1 dated 21.05.2010. However, a reading of this letter shows that all what has been done is to intimate the Directors of the company (the petitioners are such Directors) that since no settlement has been possible inter se the State Bank of Patiala/respondent No. 7, respondent No. 5 and the borrowers, the dues should be cleared. There is not even a whisper of any proposed action under the said Act or calling upon the petitioners to respond as to why the recovery certificates should not be issued. The second limb of the submission would have arisen only if such

a notice would have been issued and the petitioners would have raised a plea to be dealt with by respondent No. 6.

7. We are, thus, of the view that the impugned recovery certificates are required to be quashed on the short ground of absence of any hearing or specific notice under the said Act.

Ordered accordingly.

We, however, make it clear that the aforesaid will not preclude respondents No. 5 and 6 from proceeding in accordance with law under the provisions of the said Act, if they so desire.

The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.