(1980) 09 J&K CK 0002

In the Jammu And Kashmir High Court

Mian Bashir Ahmed APPELLANT

Vs

Dy.Commr., Food and Supplies and others RESPONDENT

Date of Decision : 24-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Land Revenue Act, 1996 — Section 91R

Citation : AIR 1981 J&K 28 : (1980) JKLR 524 : (1981) KashLJ 211

Hon'ble Judges : MUFTI BAHA-UD-DIN FAROOQI;AG.C.J., J and I.K.KOTWAL, J

Bench : Division Bench

Advocate : H.M. Sadiq, Advocates appearing for the Parties

Judgement

(1) By means of this petition under Article 226 of the Constitution of India the petitioner has challenged the validity of the proceedings for the

recovery as arrears of land revenue of a sum of Rs. 28,60381 allegedly due and payable on account of the advances made for the supply of meat

on hoof to the Government. The argument of the learned counsel for the petitioner is that the recovery proceedings are void, illegal and without

jurisdiction. The argument is founded upon Sec. 91 of Jammu and Kashmir Land Revenue Act. 1996 Sec. 91 so far as relevant, provides ;

In addition to any sums recoverable as arrears of land revenue under this Act or any other enactment for the time being in force, the following sums

may be so recovered, namely :

....

(r) all sums payable to the Government which the Government may from time to time by notification in the Government Gazette declare to be

recoverable as arrears of land revenue.

(2) It is admitted that in pursuance of Cl. (r) the Government has issued a notification declaring sums payable to the Supplies Department to be

recoverable as arrears of land revenue. He, however, contended that the word 'payable' connotes what is admitted or what has been found due by

a competent court of law. He urged that in the present case the petitioner has neither admitted his liability for the impugned amount not even such

an amount has been found by a competent court to be due from him and, consequently, the proceedings for recovery of the amount as arrears of

land revenue are void, illegal, and without jurisdiction. In support of his argument he relied upon a judgment of the Supreme Court in Union of India

Vs. Raman Iron Foundry. AIR 1974 SC. 1265.

(3) The word 'Payable' has nowhere been defined in the land Revenue Act A key to its meaning is provided by the provisions of Sec. 90 of the

Act. Sec. 90 provides as under :

An officer whose duty it is under any law or rule having the force of law to realise a sum of money and the same is lawfully recoverable as arrears

of land revenue may request an Assistant Collector of the first Class under whose jurisdiction the person from whom it is recoverable resides or

holds any property to realise the same as arrear of land revenue. With such request such officer shall forward to the Assistant Collector a

certificate showing the correct amount due upto the date of such certificate :

Provided that no arrears which are more than eight years old shall be realised summarily under this section.

(4) On the terms of this section the amount sought to be recovered must be an ascertained amount and must be certified to be due by a competent

authority When we use the expression 'competent authority' we mean to say an officer whose duty it is under law or rule for the time being in force

to realise the sum of money. In the present case, the impugned amount is an ascertained amount due on account of the advances made by the

Government to the petitioner. The Deputy Commissioner Food and Supplies, whose duty it was to realise the amount, has certified the amount to

be due from the petitioner. In the circumstances we are not inclined to agree with the learned counsel for the petitioner that the amount could not

be treated as payable in terms of Cl. (r) of Sec. 91oftheJ&K Land Revenue Act.

(5) In the case Raman Iron Foundry the amount sought to be recovered

represented the damages. The Supreme Court held that the damages

could not be said to be payable so long as they had not been found due and assessed by the competent court of law. In the present case damages

are admittedly not being recovered by the Government. The judgment of the Supreme Court is, therefore, clearly distinguishable, and does not

advance the case of the petitioner.

(6) Needless to add, the recovery proceedings were started as far back as the year 1976. For all these years the petitioner has never. cared to

challenge the recovery proceedings The petition is extremely belated. The petitioner cannot legitimately invoke the jurisdiction of this court under

Art. 226 of the Constitution of India at this late stage.

For all these reasons we are not inclined to admit this petition, which is dismissed accordingly.

