(1961) 03 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1952 of 1960

Nitya Nand APPELLANT

Vs

The Estate Officer, Capital Prject, Chandigarh and Another RESPONDENT

Date of Decision : 26-03-1961

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1961) 03 P&H CK 0009

Hon'ble Judges : P.C. Pandit, J;Dulat, J

Bench : Division Bench

Advocate : B.S. Bindra and G.S. Grewal, for the Appellant; A.M. Suri, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—The petitioner, Nitya Nand, has approached this Court under Article 226 of the Constitution on the following allegations. Under the order of the Estate Officer, Capital Project, Chandigarh, all the Khardar trees and bushes standing in the entire Capital area were put to auction by the then Naib Tehsildar, Capital Project, on 27th of November, 1959, and the petitioner gave the highest bid of Rs. 8,000/- which was accepted at the spot; a sum of Rs. 2,000/- was deposited, at the time of the acceptance of the bid, the balance being payable in three installments of Rs. 2,000/- each. When the second installment fell due, the petitioner was served with a notice directing him to deposit the second installment of Rs. 2,000/- against the sale dated 27th of November 1959 of trees and bushes standing in Sectors 7 and 7 East of Chandigarh, although the trees and bushes standing in the entire area of Chandigarh had been auctioned under the order of the Estate Officer. The petitioner went to the Estate Officer offering to deposit the amount of Rs. 2,000/- but the Naib Tehsildar insisted that the petitioner should-write that the money was being deposited for the purchase of trees and bushes of Sectors 7 and 7E only. On petitioner''s refusal to do so the authorities refused to accept the amount of the installment. On inspecting the file through his counsel, the petitioner was surprised to find that the record had been changed so as to make it appear that the auction relating to Sectors 7 and 7E alone was held and not in respect of the entire Capital area. The petitioner was then restrained by means of a notice dated 24th January 1960 from cutting the trees and bushes. On approaching the Estate Officer, the latter agreed with the petitioner that there had been some tampering of the record by someone. Nevertheless the petitioner was asked to enter into compromise by stating that he had under a mistaken notion given bid for the whole Capital area whereas the auction in fact related only to Sectors 7 and 7E. The petitioner''s request to the Government as well as to the Estate Officer and the Naib Tehsildar seeking redress bore no fruit and even a notice sent through a lawyer remained unacknowledged. In July 1960 the counsel ultimately served a notice on the Collector, Ambala district, u/s 80 of the CPC stating that he would move the civil Courts by means of a suit for perpetual injunction against the Punjab State, the Estate Officer and the Naib Tehsildar, Chandigarh. As a counterblast to this notice, the petitioner was served with a summons directing him to appear before the Naib Tahsildar-cum-Assistant Collector, Second Grade, Chandigarh (respondent No. 2) on 18th December 1960 which was a Sunday. In the said summons the petitioner was ordered to deposit the balance of Rs. 6,000/- failing which he was threatened with proceedings for the recovery of the amount as arrears of land revenue. The petitioner was again served with a similar notice directing him to appear on 28th December 1960 on which date the petitioner made a representation to respondent No. 2 through a lawyer denying the petitioner''s liability to pay Rs. 6,000/- and also pleading that the said amount could not be recovered as arrears of land revenue. This representation was rejected by respondent No. 2 who directed proceedings for the recovery of the amount in question as arrears of land revenue. The petitioner was also told that he had been summoned to deposit the amount and not to raise objections. According to the petitioner, respondent No. 2 was proceeding to recover the sum of Rs. 6,000/- as arrears of land revenue by arrest and detention u/s 69 of the Land Revenue Act and also by distress of the petitioner''s immovable property. It is in these circumstances that the present petition has been moved with a prayer for a suitable writ restraining the respondents from proceeding with the realisation of the amount as arrears of land revenue.

2. On behalf of the respondents it has been denied that the auction in question related to the trees standing in the whole of the Capital area. It is asserted that the Naib Tehsildar Capital had by his order dated 18th November 1959 ordered the auction of the Khardar trees and bushes in Sectors 7 and 7E only. It is explained that the Estate Officer had accorded sanction on 29th October 1959 to the auction of Khardar trees and bushes in Sector 7E on receipt of a report of the Patwari endorsed by the Naib Tehsildar. Notices of auction dated 18th November 1959 and 27th November 1959 were issued for the auction of Khardar trees and bushes only in Sectors 7 and 7E and not for the whole Capital. These auction notices have been alleged to have been signed by Shri Nitya Nand petitioner. It

was admitted that the petitioner''s was the highest bid and that he actually deposited Rs. 2,000/- on the fall of the hammer. It has been asserted that the petitioner was asked on 2nd of January 1960 to deposit the first installment in respect of the auction of the trees standing in Sectors 7 and 7E. It is emphatically denied that up to that date he had ever asserted or pointed out that the trees of the whole of Chandigarh Capital had been auctioned to him. The version given by the petitioner about his visit for the deposit of the first installment has also not been admitted. The inspection of the file, however, by the petitioner through his counsel has been admitted, but it has been strongly denied as baseless the assertion that the record had been changed. It is also admitted that on 2nd January 1960 a notice was given to the petitioner to deposit the installment of Rs. 2,000/- failing which the cutting of trees would be stopped. On his failure to deposit the amount, the petitioner was stopped from cutting the trees by means of a notice dated 24th January 1960 because he was actually removing trees without paying the installment. It is pleaded that the petitioner had in fact taken away trees worth several thousands of rupees in an unauthorised manner. The allegation about the Estate Officer having agreed about the tampering of the record has been described to be absolutely false and baseless. Receipt of notice u/s 80, Civil Procedure Code, was also admitted. It was pleaded that on the advice of the Legal Remembrancer the Government directed the Estate Officer to recover the amount, and it is in pursuance of that direction that notices were served on the petitioner to pay Rs. 6,000/-. It is pleaded that the proceedings are perfectly lawful and intra vires. It is also contended that the petitioner has an alternative course open to him by making the payment under protest and filing a suit u/s 87 of the Punjab Land Revenue Act. Section 98 of the Punjab Land Revenue Ace has also been relied upon as conferring authority on the Collector to recover the amount in question as arrears of land revenue. The petitioner having already served a notice on the Government u/s 80 of the Civil Procedure Code, it is pleaded that he can, if the law permits him, file a suit in a civil court.

3. The petitioner has, to begin with, contended that the auction was really for the trees and bushes standing in the whole of the Capital area and that the respondents are wrong in asserting that it was confined to the trees standing in Sectors 7 and 7E. I regret my inability to go into this disputed question of fact. It is admitted by the petitioner that on inspection of the record he found that the auction was, noted in the file as relating to Sectors 7 and 7E and not to the whole of the Capital area. If that is so, then the question would arise as to whether these records have been tampered with later as alleged by the petitioner or they represent the correct factual position. The petitioner has not cared to refer to any notices for the auction which would support his contention. It is true that the respondents have also failed to draw my attention to the auction notices which, according to them, were signed by Shri Nitya Nand, though such a plea is contained in para 1 of the written statement. At any rate, I do not think it is a fit case in which this Court should embark on an enquiry into

a question of fact raised by this plea.

4. This brings me to the legal question as to whether the amount on account of the balance of the price of the trees can be realised as arrears of land revenue. The petitioner has referred me to the dictionary meaning of the word ''revenue'' and had tried to get support for his contention. The counsel has also made a reference to section 8 of the Capital of Punjab (Development and Regulation) Act (XXVII of 1952). It is only sub-section (2) of section 8 which seems to deal with the question of recovery of amounts as an arrear of land revenue. According to this sub-section, in the case of any default in the payment of an amount payable under this Act, the outstanding amount in default together with any sum, if any, directed to be paid by way of penalty under sub-section (1) may be recovered in the same manner as an arrear of land revenue. The petitioner has contended that the amount which may be due as price for the sale of trees in question is not payable under this Act with the result that this section cannot be relied upon for the impugned action on the part of the Naib Tahsildar.

5. On behalf of the respondents, Shri Suri has also made a reference to the dictionary meaning of the word ''revenue'' and has, in addition, referred me to Law Lexicon and Halsbury''s Laws of England, Volume 28, Hailsham Edition He has also tried to get some support from, section 98(b) of the Punjab Land Revenue Act which provides that revenue due to the Government on account of pasture or other natural produce of land may also be recovered as arrears of land revenue. In so far as the Capital of Punjab (Development and Regulation) Act is concerned, Shri Suri has relied on section 3 which deals with the power of the State Government in respect of transfer of land and buildings in Chandigarh. Sub-section (1) of this section empowers the Government to sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government. The consideration money for such transfer is to be paid to the State Government in such manner as may be prescribed. It is submitted that the sale of trees would be considered to be the sale of land and, therefore, reading the provisions of sections 3 and 8 together, the price of the trees can be realised as arrears of land revenue.

6. In my opinion, the dictionary meaning of ''revenue'' cannot be of much help in the instant case, the word ''revenue'' being of varying import, the precise meaning of which must from the very nature of things depend on the context in which this word is used. Law Lexicon is equally inconclusive.

7. In annexure ''A'' attached to the petition, when the petitioner was asked to deposit the outstanding amount in the office of the Assistant Collector II Grade on 18th December 1960, he was intimated that failing such deposit proceedings u/s 67 of the Land Revenue Act would be taken against him. This section lays down the processes by which arrears of land revenue may be recovered. The same threat was repeated in the second intimation by which the petitioner was asked to appear before the Assistant Collector on 28th December 1960. The expression ''land revenue'', as defined in the Punjab Land Revenue Act, section

3(6), includes assigned land revenue and any sum payable in respect of land, by way of quit-rent or of commutation for service to the Government or to a person to whom the Government has assigned the right to receive the payment. It is obvious that this expression is not exhaustive and it has been defined so as to include certain items. The question naturally arises; does it include the price of trees sold by the Estate Officer to the petitioner? Arguments at the Bar have not drawn my attention to any decided case or to any statutory provision or even any principle of law which should include such a price within the expression ''land revenue''. The argument that the sale of trees should be considered to be sale of land has not appealed to me. Nor is the decision in Sukhnandan v. Manakchand 10 I.C. 473 cited by Shri Suri of much help. The word ''revenue'', as I have already indicated, is a word of somewhat indefinite import, but in the Punjab Land Revenue Act, in my opinion, it should be construed to connote the amount to be received by the Government for State purposes. It appears to me that from the very nature of things ''land revenue'' suggests that it is a sort of compulsory exaction by the State in the exercise of its sovereign power, no matter by what name it is called, and it must be realisable on account of the ownership of the land. As at present advised, I am inclined to think that any money which is realisable on account of a contract of sale of trees cannot be considered to be a part of land revenue. The provisions of the Capital of Punjab (Development and Regulation) Act also do not cover the price of sale of trees. The special provision made for realisation of the price of land or buildings should, in my opinion, be strictly construed, and so construed prima facie it does not seem to include the sale of trees. The point, however, is not free from difficulty and the matter is one of first impression. It would, therefore, be desirable that this question should be decided by a larger Bench.

8. In the result, I would direct that the papers be laid before the Hon''ble the Chief Justice for constituting a larger Bench.

ORDER

Dulat, J.

9. Nitya Nand brought a petition under Article 226 of the Constitution to this Court alleging that at an auction held under the orders of the Estate Officer, Capital Project, Chandigarh, he, the petitioner, had purchased the thorny bushes and trees standing in the entire capital area for Rs. 8,000/-, and paid Rs. 2,000/- at the time of the bid and offered to pay the balance in installments of Rs. 2,000/- each, but that later the Capital Project authorities alleged that only the bushes and trees in Sectors 7 and 7-E of Chandigarh Capital had been sold to the petitioner, and that although at one time the authorities concerned had agreed to look into the matter afresh, they had subsequently ignored the petitioner''s claim and started proceedings to recover the balance of the sale-price as arrears of land revenue, while refusing to allow the petitioner to collect the thorny bushes and trees standing in the whole area of the Capital. This, according to the petitioner, the Capital Project authorities were not entitled to do. The real

dispute, therefore, was whether only the bushes and trees in Sectors 7 and 7-E had been sold to the petitioner, Or whether all the trees and bushes in the whole of the Capital area had been sold. Into this disputed question of fact Dua J., who heard the writ petition declined to enter, and quite properly, because the question involved required the hearing of a good deal of evidence. In the alternative, it was contended on behalf of the petitioner, that, in any case, assuming the facts to be as alleged by the Capital Project authorities, they still could not recover the balance of the price as arrears of land revenue. This question, Dua J. thought, required consideration by a larger Bench, and the case has, therefore, come up before us.

10. The only question is whether the auction price in respect of the thorny bushes and trees in Sectors 7 and 7-E, as alleged by the respondents, can be recovered as arrears of land revenue. It is now admitted by Mr. Bindra, appearing for the petitioner, that such rights are specifically mentioned in section 42 of the Punjab Land Revenue Act, which speaks of forest, quarry, unoccupied, waste-land and spontaneous produce or other accessory interest in land. The trees and bushes sold in this case stand admittedly on Government land and are obviously of spontaneous growth. Section 98 of the Punjab Land Revenue Act says that in addition to any sums recoverable as arrears of land revenue under the Act or under any other enactment for the time being in force, certain other amounts may also be recovered as arrears of land revenue, and clause (b) of that section runs:

Revenue due to the Government on account of pasture or other natural products of land, or on account of mills, fisheries or natural products of water, or on account of other rights described in section 41 or section 42 in cases in which the revenue so due has not been included in the assessment of an estate.

In the present case, of course, no question of assessment arises, because the estate is Government owned. As I have said, the rights in question are mentioned in section 42, and on the face of it, therefore, the income due to Government on account of the rights is recoverable as land revenue. Mr. Bindra''s sole contention now is that, properly speaking, the sale-price of the thorny bushes and trees standing on Government land is not revenue, because it is not recurring income. This argument assumes that the thorny bushes and trees when they are once sold and carried away by the purchaser, there would be no more such bushes and trees growing on the land and they are, therefore, not a source of revenue. It is clear that what has been sold is the right to remove the thorny bushes and trees standing on some Government land, and there is no reason to think that once removed such trees and bushes will not grow again and will not again be disposed of in the same manner by Government, and it is, therefore, not possible to agree, without clear evidence to establish the fact that the disposal of the disputed bushes and trees is disposal of certain property once for all, and that what has been disposed of is not the spontaneous growth of land recurring from time to time, Prima facie, therefore, the income derived from the disputed sale is revenue due to Government on account of rights described in section 42 of the Land Revenue Act and is, therefore, recoverable as arrears of land revenue. It may be that in certain circumstances the sale of trees cut and stored and later disposed of by Government may not properly be describable as revenue, but in the present case it appears that Government has derived revenue by sale of certain spontaneous growth on their land, and the revenue thus accruing falls within the terms of section 42 of the Land Revenue Act. In my opinion, therefore, the sale-proceeds are recoverable as land revenue being, as I have already mentioned, revenue accruing to Government in respect of certain rights specifically mentioned in section 42 of the Land Revenue Act.

11. No other question arises in the case. The learned Single Judge has rightly declined to enter into the real dispute between the parties which centres round the fact whether the sale in the present case was only of trees and bushes in Sectors 7 and 7E, or whether the sale covered such bushes and trees standing in the whole of the capital area. This is a dispute which can be settled properly in an ordinary Court and the petitioner must seek his remedy in such Court. This petition, therefore, as it stands, must fail and I would dismiss it, but in the circumstances I leave the parties to bear their own costs.

P.C. Pandit, J.

12. I agree.

