(1986) 06 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 1194 of 1980

Onward Trading Co. APPELLANT

Vs

Tahsildar, Fort Tondiarpet, Madras and Another RESPONDENT

Date of Decision : 25-06-1986

Acts Referred:
Revenue Recovery Act, 1890 — Section 3, 5

Citation : AIR 1988 Mad 254 : (1987) 66 STC 326

Hon'ble Judges : Nainarsundaram, J

Bench : Single Bench

Advocate : K. Ramagopal, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Nainarsundaram, J.—The petitioner is facing revenue recovery proceedings in the State of Tamil Nadu for arrears of sales tax, which

became due in the State of Maharashtra. The notice impugned is that of the first respondent, dt 9-1-1980 calling upon the petitioner to pay the

arrears of sales tax dues referred to above. Mr. K. Ramagopal learned counsel for the petitioner, would urge three points, covering interference in

writ jurisdiction. The first point is for the sales tax arrears which became due in the State of Maharashtra the process under the Revenue Recovery

Act, 1890 (Act 1 of 1890) hereinafter referred to as ''the Act'', cannot be initiated here in the State of Tamil Nadu. Such a contention was raised

and was repelled in Tarachand v. Tahsildar (1983) 52 STC 324. In view of the above pronouncement, I am not able to sustain this contention

urged by the learned counsel for the petitioner.

2. Secondly, learned counsel would submit that the certificate for recovery under the Act has been admittedly issued by the Assistant

Commissioner, Sales Tax III Bombay City division, under the power delegated to him by the Collector of Bombay and the present sales tax

arrears cannot be characterised as arrears of land revenue payable to such Collector so as to enable him to delegate the power, to issue the

certificate, since the power of delegation is available only under S. 3 of the Act, in respect of an arrear of land revenue or a sum recoverable as an

arrear of land revenue, payable to the Collector and the power of de legation is not available in respect of any other sum recoverable as an arrear

of land revenue by any public officer other than the Collector or by any local authority, as set out in Section 5 of the Act. The distinction which the

learned counsel wants to make is that while Section 3 of the Act contemplates an arrear of land revenue or a sum recoverable as an arrear of land

revenue payable to a Collector in respect of which under sub-section (2) thereof there could be a delegation of power with reference to the

issuance of the, requisite certificate, in contrast under S. 5 of the Act, no such power of delegation is available and permissible in respect of any

sum recoverable as an arrears of land revenue by any public officer other than the Collector or by any local authority. Section 3 reads thus:

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 arrear 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 (or by any officer to whom such Collector may by order in writing, delegate this duty),

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 as if it were an arrear of land

revenue which had accrued in his own district.

Section 5 of the Act reads as follows: -

5. Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities: -

Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of

the district in which the office of that officer or authority is situate shall on the request of the officer or authority, proceed to recover the sum as if it

were an arrear of land revenue which had 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 this Act, as if the sum were payable to himself.

On an assessment of the language of both the provisions, I do not find any warrant to sustain the distinction advanced by the learned counsel for

the petitioner. The last set of expressions occurring in Section 5, namely under the foregoing provisions of this Act, as if the sum were payable to

himself"" is portent indeed and will certainly bring into play the provisions of Section 3 for the purpose of delegating the power of issuance of the

requisite certificate to any other officer, even in respect of any sum recoverable as an arrear of land revenuer by any public officer other than a

Collector or by any local authority. My attention has not been drawn to any authority which has expressed specifically a view different from the

one which I have expressed above. Hence this contention also stands eschewed.

3. Thirdly, learned'' counsel for the petitioner would submit that assuming that the Collector has got the power of delegation the delegation could be

only for the purpose of signing the certificate and nothing more and the certificate should emanate from the Collector only. Section 3(2) of the Act,

which empowers delegation and which by the force of the language of Section 5 will certainly be attracted to proceedings under S. 5 speaks about

the collector signing the certificate made by him and it further speaks about the delegation of this duty. This duty in the context could only mean the

composite duty of making and signing the certificate; and not only the duty of bare signing the certificate already made by the Collector. To say that

the power of delegation must be confined only to the signing of the certificate, to made by the Collector would be practically negating the very

intendment and purpose of the provision of delegation. For a bare signing of a certificate, already made by the Collector, I do not think the

provision of delegation was enacted Hence, I am not able to accept this contention.

4. I must record here that in the affidavit filed in support of the writ petition, what all has been averred with regard to the contentions, run as follows

in Para 20 thereof.

I further submit that u/s 3 of'' the Revenue Recovery Act, the Collector of the District to whom the arrear is payable, hag to issue the certificate to

the Collector in whose jurisdiction the defaulter resides or his property is situated. ''The Assistant Commissioner of Sales Tax has no jurisdiction to

issue the certificate to the Collector of Madras and such certificate will not confer jurisdiction on the first respondent to initiate proceedings under

the Revenue Recovery Act (Act 1 of 1890). Hence, the proceedings initiated by the first respondent are illegal and without jurisdiction.

As we could see from the above averments, they have not touched specifically the contentions as they have been advanced before me. Yet, I

permitted the counsel to make his submissions and I have dealt with them as above. I have not sustained any of the contentions and accordingly the

writ petition fails and the same is dismissed. No costs.

5. Petition dismissed.

