(1976) 11 MAD CK 0068

In the Madras High Court

Papammal APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 11-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Revenue Recovery Act, 1864 — Section 2, 5, 53, 6, 8

Citation : (1977) 90 LW 538 : (1977) 2 MLJ 157

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

A.D. Koshal, J.—On the 4th of January, 1971 the Labour Court, Madras passed an award holding M/s. Madras National Engineering Work (hereinafter referred as the debtor firm) to be liable to pay a sum of Rs. 3,686.37 to one of their employees named Karunaiprakasam. Machinery belonging to the debtor-firm was at that time lying pledged with the State Bank of India and was sold by the latter to the petitioner for a sum of Rs. 73,000 on the 24th of November, 1971. Having came to know of this fact, the Tahsildar, Sriperumbudrur Taluk issued an order dated 8th July, 1972 u/s 8 of the Tamil Nadu Revenue Recovery Act (hereinafter referred to as the Act), authorising the village munsif concerned to attach the property belonging to the petitioner and to sell the same in public auction if the above mentioned amount was not paid by her. It is that order which is challenged by the petitioner under Article 226 of the Constitution of India with a prayer that it be quashed by a writ of certiorari.

2. It is common ground between the parties that the amount above mentioned was recoverable from the debtor-firm as arrears of land revenue by the Tahsildar for payment to Karunaiprakasam. So the question which arises for determination is as to whether the recovery thereof could be effected from the petitioner. The relevant provisions are contained in Sections 5, 6 and 8 of the Act and are reproduced below:

5. Whenever revenue may be in arrear, it shall be lawful for the Collector, or

other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter''s movable and immovable property or by execution against the person of the defaulter in manner hereinafter provided.

6. If the defaulter held under a sanad-i-milkiyar-i-istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such sanad. In the case of other defaulters, the Collector, or other officer empowered by the Collector in that behalf, may at his discretion, proceed to realize the arrear by the sale of either the movable or immovable property of the defaulter, or of both.

8. In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed:

First--The Collector, or other Officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter, a demand in writing and signed with his name specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The person employed to distrain shall produce the writing which, if the arrear together with the batta due to him, u/s 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.

Second--The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount with interest, batta, and all the expenses of the distress, be previously discharged.

Third--When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence, or on the premises where the property may have been distrained, before the expiration of the third day calculating from the day of the distress.

A bare reading of these provisions makes it quite clear that the Collector or the officer authorised by him in that behalf can recover the arrears of land revenue only by the sale of the movable and immovable property belonging to the defaulter. They nowhere permit such recovery to be made from property belonging to persons other than the defaulter albeit that such persons have in their possession property which earlier belonged to the defaulter. The crucial date for determination of the ownership of property in the defaulter would be the one when process for recovery under the Act is sought to be executed against it. If on that date the property from which the arrears are to be recovered belongs to the defaulter, it may certainly be attached and sold in execution of the Collector''s process If, however, on that date the property has already changed hands and is no longer the property of the defaulter, there is no jurisdiction in the collector to issue process against that property. It is true that in the Case of land in regard to which land revenue has not been paid, the right of the Collector to recover it from that land and even after it has changed hands is not affected by the transfer, but that is so because that right is given to the Collector by other provisions of the Act which are contained in Section 2 thereof and which declare that any land along with the buildings upon it shall be regarded as security of the public revenue. Learned Counsel for the State has not been able to point out any provision of law, whether contained in the Act or elsewhere, which may give the Collector power to follow movable property in the hands of a transferee, and I do not see how the Tahsildar could issue process against any property belonging to the petitioner even though such property was earlier owned by the debtor-firm and was sold to the petitioner subsequent to the date of the Labour Court''s award. This was also the view taken by Ramakrishnan, J., in P. Kannamba v. Board of Revenue (1967) 1 M.L.J. 466.

3. Holding the action of the Tahsildar to be without jurisdiction, I accept the petition and quash the impugned order. The petitioner shall have her costs of the proceedings from the respondent State. Counsel''s fee Rs. 100.

