

(1998) 04 AHC CK 0102

In the Allahabad High Court

Case No : C.M.W.P. No. 37222 of 1996 and 5 other Writ Petitions

Prem Chandra Jain

APPELLANT

Vs

Collector, Firozabad and others

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 3
Civil Procedure Code, 1908 (CPC) — Section 98
Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 183, 3(5)
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 17(4)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 287A

Citation : AIR 1998 All 359 : (1998) 3 AWC 1950

Hon'ble Judges : R.R.K. Trivedi, J; R.K. Mahajan, J; Palok Basu, J

Bench : Full Bench

Advocate : Arun Prakash, for the Appellant; V.K. Goyal, for the Respondent

Final Decision : Disposed Off

Judgement

R.R.K. Trivedi, J.—It appears that the maintainability of this bunch of writ petitions under Article 226 of the Constitution of India was doubted by one of the Hon'ble Judges constituting the Bench. Consequently, the arguments were heard by the Bench on the aforesaid point. Hon'ble R. K. Mahajan, J., by his order dated 19.12.96 dismissed all the writ petitions. The penultimate paragraph of the order reads as under :--

"We are of the considered view that this Court under Article 226 of the Constitution of India cannot convert itself into a civil court for determining the issues. The-truth has to be sifted by Court of fact. i.e., civil court and not by the High Court. The plea that the amount cannot be recovered as arrears of land revenue has no relevance at all and if the petitioners want to contest this point, we are of the view that they should deposit the amount under protest citation

and cannot contest this point, we are of the view that they should deposit the amount under protest citation and cannot contest the case. Therefore, aforesaid writ petitions are not maintainable."

Hon"ble Palok Basu, J., on the other hand, after noticing the order of Hon"ble R. K. Mahajan, J., has observed as under :

"Hon"ble R. K. Mahajan, J., has written one judgment for the petitions serialised 1 to 6 and another for Serial No. 7. So far as this Court is concerned, separate Judgment does not appear necessary at this stage in all the petitions for the reasons mentioned below."

After the aforesaid observations. Hon"ble Palok Basu, J., has noticed the questions raised in each of the writ petitions separately and has issued notice to opposite parties to show cause why the petitions be not admitted/allowed fixing the date and the parties counsel appearing for the parties were given time of file counter-affidavit and rejoinder-affidavit. The learned Judge also granted interim relief staying the recovery proceedings on certain conditions. The order of Hon"ble Palok Basu, J.. is also of the same date, i.e., 19th December. 1996. Hon"ble Palok Basu, J., on the same day then passed the following order :

"In view of the difference of opinion, the papers of these seven cases be laid before Hon"ble the Chief Justice for nominating another third Hon"ble Judge."

This order has not been signed by Hon"ble R. K. Mahajan, J., The order bears only signature of Hon"ble Palok Basu, J., Hon"ble the Chief Justice by order dated 2nd January, 1997 nominated Hon"ble Mr. Justice B. M. Lal (as his lordship then was) for his opinion. It appears that Hon"ble B. M. Lal, J., could not give his opinion, then Hon"ble Mr. Justice Om Prakash was nominated by Hon"ble the Chief Justice on 5.8.97. However. Hon"ble Om Prakash, J., (as he then was) could also not give his opinion, then by order dated 16.2.98 Hon"ble Chief Justice nominated this Court for giving opinion. This is how this matter has come before me.

2. Before proceeding to consider the merits of the questions involved for giving opinion, in the facts and circumstances narrated above, it has become necessary to consider whether the case has been properly referred for opinion of third Judge of this Court in terms of Chapter VIII. Rule 3 of the Rules of the Court. 1552 (hereinafter referred to as "Rules"). Rule 3 of Chapter VIII, reads as under :

"3. Procedure when Judges are divided in opinion.--When a case (to which the provisions of the Code of Criminal Procedure do not apply), is heard by a Division Court composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority, if there shall be a majority. Should the Judges be equally divided, they may state the point upon which they differ and each Judge shall record his opinion thereon. The case shall then be heard upon that point by one or more of the other Judges as may be nominated by the Chief Justice and

the point decided according to the opinion of the majority of the Judges who have heard the case including those who first heard It."

In the present case, the points, upon which the Hon''ble Judges constituting the Bench had divided opinion have not been formulated.

Only one Hon''ble Judge has given his final opinion dismissing the writ petitions whereas another Hon''ble Judge has issued notices to the opposite parties to appear and to show cause why the petitions be not admitted/allowed and had granted time to parties to file counter-affidavits and rejoinder-affidavit and has also granted interim relief. The Hon''ble Judge while doing so has specifically observed that so far as this Court is concerned, separate judgment does not appear necessary at this stage in all the writ petitions/meaning thereby that no final opinion upon the point/points of difference has been recorded.

3. The order referring the matter for opinion of third Judge has not been signed by both the Hon''ble Judges. Though learned counsel for the parties have not addressed this Court on question as to whether reference to third Judge is in terms of Rule 3 of Chapter VIII of the Rules, however, on noticing the aforesaid facts, it became necessary for this Court to consider the propriety as to whether it will be proper and possible to give opinion in the facts and circumstances narrated above. A Full Bench of this Court in case of M/s. Shriram Industrial Enterprises Ltd. Vs. The Union of India and others, , had occasion to consider the provisions of Chapter VIII. Rule 3 of the Rules in detail. In paragraph 87 of the Judgment after noticing various authorities on the point, the Full Bench has held as under :

"There can be no doubt that the proper course for the Judges who have dissented in their respective opinions while hearing a writ petition is not to pass final order either allowing or dismissing the same but to state their point of difference after expressing their opinions. However, it will still be open to them to state the point upon which they have differed even if they have passed final orders. If the point of difference is not stated, it will be for the third Judge (or Judges) to whom the case is referred to ascertain the same and to give his (or their) opinion thereon."

In Union of India and another v. Joginder Singh Bhasin and another. 1996 (3) AWC 1504. a subsequent Full Bench of this Court has taken the view that as no separate point of law was referred by the Judges of the Bench, having difference of opinion, the reference was incompetent. But the view expressed thereon was in the context of Section 98 of C.P.C.. as the reference had arisen from a First Appeal from Order and the same is not applicable to the present case.

4. In view of the aforesaid pronouncement of the legal position by the Full Bench in case of M/s. Shriram Industrial Enterprises Ltd. (supra), there remains no doubt that though Hon''ble Judges have failed to slate the point/points upon which they have differed, the third Judge to whom the case is referred may formulate the point for giving opinion.

5. However, the difficulty in the present case is that only one Hon"ble Judge has given his opinion on the points on which he has held the writ petitions not maintainable. The another Hon"ble Judge, on the other hand, has only observed that it is not necessary to give separate judgment at this stage. In the circumstances, the serious question for consideration is as to whether the order passed by one Hon"ble Judge issuing notice to the opposite parties to appear, granting time to the counsel for parties for filing counter-affidavits and rejoinder-affidavits and granting interim relief can be taken to be an expression of opinion on the point/points of difference. The Full Bench in case of M/s. Shriram Industrial Enterprises Ltd. (supra), in para No. 83 has dealt with this aspect of the question also and has held as under :

"A careful examination of the standard texts and authorities referred to above shows that even according to the wider view, leaving aside the stricter or narrower view, an adjudication, in order to constitute a judgment, must decide any question or Issue in the case or any of the rights of the parties. Further, the form of adjudication or the language used is not material, what is to be seen is its effect on the suit or proceeding in which it is made.

If that be the real meaning of the word judgment, it follows as a corollary that there can be only one judgment in a case. Two contradictory Judgments or judgments in variance with each other will not have the effect of deciding any question or issue in the case or of deciding any of the rights of the parties. It is also plain that such judgments can neither be enforced nor be given effect to. Therefore, if two Judges constituting a Division Bench give contradictory decisions or decisions at variance with each other, in law, such decisions cannot be called as Judgments as they do not decide any question or Issue in the case or proceeding nor do they decide any of the rights of the parties, the real test being what is the effect of the" two decisions on the case or proceedings in which it is made, the language or phraseology used being wholly immaterial having no bearing. In such a situation, the decision so rendered will only amount to opinions of the respective Judges. This principle will, however, not apply where on account of some statutory provisions like Section 98, C.P.C. contradictory .decisions by their own force lead to decision of any question or issue in the case for any of the rights of the parties."

6. The two orders passed by Hon"ble Judges constituting the Bench, if considered in the light of the legal position expressed by the Full Bench, the position which emerges is that Hon"ble R. K. Mahajan, J.. for the reasons recorded in his order has dismissed the writ petitions. However. Hon"ble Palok Basu. J.. has not thought it proper to dismiss the writ petitions at this Stage and he has only issued notices to the parties to appear and granted time to the parties to exchange counter-affidavit and rejoinder-affidavits and also granted interim relief. In other words, it may be said that Hon"ble Palok Basu. J., has expressed opinion to consider and decide the writ petitions on merit after hearing parties. The form of the adjudication or the language used is not material. The

nature of the order has to be ascertained on basis of its effect on the writ petitions in which it is made. Natural effect of the order of Hon''ble Palok Basu. J., is that the writ petitions have been held to be maintainable though at this stage and the Hon''ble Judge has not thought it proper to dismiss the writ petitions in limine.

7. The last question for consideration in this connection is effect of order dated 19.12.96 directing that the papers of the present writ petitions be placed before Hon''ble the Chief Justice for nominating third Judge which has been signed by only one Hon''ble Judge. From a close reading of Rule 3 of Chapter VIII it appears that it not necessary that for placing the record of such case before Hon''ble the Chief Justice for nominating third Judge, the order should be signed by both the Hon''ble Judges constituting bench. Even in absence of such order the record of the case, in which the Judges constituting the bench are equally divided in their opinion, has to be placed before Hon''ble the Chief Justice by the office for obtaining necessary orders, so that the opinion may be given by their Judge for effective determination of the issues involved. Thus, the fact that the order was not signed by another Hon''ble Judge is not of any legal consequence and does not effect the present reference. Even otherwise, once the Hon''ble Justice in exercise of his powers has allotted the case to a Judge for his decision any such irregularity existing on record before the Hon''ble Chief Justice passed the order, ceased to have any legal effect.

8. As the reference of the writ petitions to this Court has been found in order, the next step to be taken is to formulate the points of difference for giving opinion by this Court. Hon''ble R. K. Mahajan. J.. at the beginning of his order has mentioned three questions for consideration :

"(1) Whether the High Court under Article 226 of the Constitution of India should ordinarily in recovery matters interfere in realisation of loans from the defaulters or amount due to the instrumentality of the State and recovery certificates have been Issued for realisation of the amount as arrears of land revenue u/s 3 of U. P. Public Moneys (Recovery of Dues) Act. 1972 ;

(2) Whether in the case of discretion under Article 226 of the Constitution of India the Court should entertain these writ petitions without availing the alternative forums to agitate the matters ; and

(3) Whether the allegations in the writ petitions against the action of the authority described as arbitrary or coercive and any such thing as to bring within the ambit of Article 226 of the Constitution should the High Court entertain these writ petitions more so when everyday such types of writ petitions are filed and mentioned."

From the aforesaid, firstly it appears that the learned Judge was mainly concerned about the propriety to entertain the writ petitions in which recovery of the public money is involved which contain allegations of arbitrariness against the authorities and which are being frequently filed in this Court. Secondly,

petitioners have approached this Court without availing the remedies available to them before other forums. Thus the opinion required to be given by this Court is on the aforesaid two questions.

9. Firstly, the question of alternative remedies available to petitioners for the reliefs sought in the present writ petitions is being considered. Before considering this question, the provisions of Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 (hereinafter referred to as "Act"), has to be considered. Section 3 of the Act provides circumstances in which recovery of certain dues may be made as arrears of land revenue. Section 3 of the Act reads as under :

"(1) Where any person is a party :

(a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him. by the State Government or the Corporation, by way of financial assistance ; or

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of. or relating to hire-purchase of goods sold to him, by a banking company or a Government company, as the case may be. under a State Sponsored Scheme ; or

(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern ; or

(d) to any agreement providing that any money payable thereunder to the State Government (for the Corporation) shall be recoverable as arrears of land revenue ; and such person :

(i) makes any default in repayment of the loan or advance or any installment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof makes any default in the refund of such grant or portion or any installment thereof : or

(iii) otherwise fails to comply with the terms of agreement,

then in the case of the State Government, such officer as may be authorised in that behalf by the State Government by notification in the Official Gazette and in the case of Corporation or a Government company the Managing Director (or where there is no Managing Director then the Chairman of the Corporation, by whatever name called) thereof, and in the case of a banking company, the local agent thereof, by whatever name called, may send a certificate to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrears of land revenue.

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) No suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1).

(4) in the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or the Corporation, no arbitration proceeding shall lie at the instance of either party either for recovery of any such sum claimed to be due under the said sub-section or for disputing the correctness of such claim :

Provided that whenever proceedings are taken against any person for the recovery of any such sum, he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in respect of the amount so paid, and the provisions of Section 183 of the Uttar Pradesh Land Revenue Act, 1901, or Section 287A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as the case may be, shall mutatis mutandis apply in relation to such reference or enforcement as they apply in relation to any suit in the civil court.

(5) Save as otherwise expressly provided in the proviso to subsection (4) of this Section or in Section 183 of the U. P. Land Revenue Act, 1901 or Section 287A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 every certificate sent to the Collector under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any application under the Arbitration Act, 1940) or in any reference to arbitration and no injunction shall be granted by any Court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act."

10. From perusal of the provisions of sub-section (4) and sub-section (5) of Section 3 of the Act. It is clear that as expressly provided in sub-section (5) of Section 3 of the Act or Section 183 of the U. P. Land Revenue Act, 1901. or Section 287A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. every certificate sent to the Collector under sub-section (1) of Section 3 of the Act is final and cannot be called in question in any original suit or by making any application. Under proviso to sub-section (4) of Section 3 and u/s 183 of the U. P. Land Revenue Act, 1901, and u/s 287A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. the condition precedent is to deposit the whole amount mentioned in the certificate under protest for availing remedy. An important question is whether in the facts and circumstances of the present cases, the aforesaid remedies could be termed as adequate alternative remedy,

11. Hon"ble Supreme Court as far as back in 1958 through a Constitution Bench in case of State of U. P. v. Mohammad Noon, AIR 1958 SC 86. observed as under :

"In the next place, it must be borne in mind that there is no rule, with regard to

certiorari as there is with mandamus, that it will be only where there is no other equally effective remedy. It is well-established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute..... The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies. If any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been Issued in spite of the fact that the aggrieved party had other adequate legal remedies."

12. Thus from the aforesaid ruling, it is clear that exhaustion of alternative remedy is not an absolute bar. It is only a rule of policy. convenience and discretion and thus it has to be Judged in each cases as to whether relief sought under Article 226 may be granted or not. The second relevant aspect of the matter is that the adequate remedy available should be equally convenient, beneficial and effective. If it is not so. It cannot be termed to be adequate alternative remedy. It could not be disputed that once recovery certificate has been issued, a remedy available under the Statute could be available to petitioners only on depositing of the entire amount under protest. Hon''ble Supreme Court in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, : *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, ; *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, 3, has held that the alternative remedy cannot be adequate as the deposit of the full amount is required before filing appeal. This Court in case of *Pratap Chand Purshottam Das Vs. State of Uttar Pradesh and Another*, , in paragraph No. 10 held as under :

".....Further the alternative relief in the present case cannot be considered as equally adequate and efficacious, because, under the proviso to Section 9 of the Act, the petitioner is required to deposit the entire amount of tax before his appeal can be entertained. The alternative relief, therefore, is more onerous....."

Similar view was taken by this Court in case of *Firm Cobardhan Das Kailasnath v. Collector of Mirzapur*. AIR 1956 AH 721 (DB). Paragraph No. 15 of the judgment is being reproduced below :

"On behalf of the respondent it was urged that the appellant had an alternative remedy by a regular suit and that his petition under Article 226 should not be entertained on that ground. In our opinion this is a fit case in which this Court may interfere because if the appellant were thrown upon his remedy by way of a suit, he may have to give due notice to the respondent before he could get any relief and if he were to do that he might will be arrested before he could file a suit. In the circumstances we think that the appellant was entitled to claim a relief from us under Article 226."

Hon"ble Supreme Court in case of Ram and Shyam Company Vs. State of Haryana and Others, , in paragraph No. 9 has held as under :

"Before we deal with the larger issue, let me put of the way. the contention that found favour with the High Court in rejecting the writ petition. The learned single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise Vs. Jainson Hosiery Industries, , rejected the writ petition observing that the petitioner who invokes the extraordinary jurisdiction of the Court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him. "We remain unimpressed. Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact. In the very decision relied upon by the High Court in the The State of Uttar Pradesh Vs. Mohammad Nooh, it is observed that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy." it should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the Stale. Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits....."

13. In case of Mohd. Ismail Vs. Abdul Rashid and Others, this Court observed in paragraph No. 11 as under :

"The other preliminary objection was that the petitioner should have filed an objection against the recovery of the tax from the petitioner"s property before the Tahsildar. But here again the learned counsel was not able to point out any provision of law under the Income Tax Act or the Land Revenue Act or the U. P. Zamindari Abolition and Land Reforms Act authorising the petitioner to file an objection before the Tahsildar or the Collector. In the complete absence of any provision of law. permitting the filing of objections it cannot be said that the petitioner had any other suitable remedy which it failed to avail itself of."

14. In the present cases, sub-section (5) of Section 3 of the Act bars the entertainment of any application questioning the recovery certificate before revenue authorities. The petitioners thus could not file even application before the revenue authorities for giving reliefs prayed in the writ petition. This could be done only after depositing the entire amount under protest.

15. The present writ petitions have been held to be not maintainable on basis of the judgment of Hon"ble Supreme Court in case of Seth Banarsi Doss (Dead) by

Seth Banarsi Dass (Dead) by LRs Vs. District Magistrate and Collector, Meerut and others, From the facts of the aforesaid case before Hon"ble Supreme Court, it appears that the recovery certificate was issued under sub-section [4] of Section 17 of U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. for recovery of the amount of sugarcane case and purchase tax and other Government dues from the sugar mills. From perusal of sub-section (4) of Section 17 of the above Act, it is clear that there is no provision creating a bar against making an application questioning recovery certificate as contained in sub-section [5] of Section 3 of the Act. Thus, the case is distinguishable. Even in the aforesaid case before the Apex Court, inspite of the objections raised, the auction sale was held on 2nd January, 1974 which was confirmed by the Collector on 16th January, 1974. which could be set aside by the Hon"ble Supreme Court by judgment dated 8.2.1996. I.e.. after 22 years. This long period taken in removing the injury already caused reveals that the remedy of making any objection/application before the revenue authorities cannot be of any avail. In the present writ petitions, some of the petitioners filed objections questioning the legality and correctness of the recovery certificate. A direction has also been claimed in the writ petitions to the revenue authorities to decide the objections. In my opinion, in such circumstances, writ petitions could not be legally dismissed in limine without inviting any objection from the respondents and without calling for a counter-affidavit as to why the objections filed by the petitioners could not be decided. Hon"ble Supreme Court in case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , in paragraph No. 8 has held as under :

The High Court may, in exercise of its discretion, decline to exercise Its extraordinary Jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, highhanded, arbitrary or unjust is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any complicated questions of fact for determination, and the claim could not be characterised as frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the Court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried."

Further in paragraph No. 13 it has been observed :

".....Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The question of fact raised by the petition in this case are elementary."

In present writ petitions. It is difficult to say at this stage that the claims raised are frivolous, vexatious or prima facie unjust. Even the questions of facts raised are elementary in nature and their correctness could be ascertained by affidavits filed by parties, without entering into any deeper appreciation of oral and documentary evidence. Considering the aforesaid view expressed by Hon'ble Supreme Court, in my opinion, the petitions cannot be rejected on the ground of alternative remedy,

16. Last question for consideration is about the propriety of entertaining the present writ petitions. Ours is a poor country, more than 40% of the population is still reeling below poverty line. The schemes initiated by the Central Government and the State Government are for the benefits of such masses and the object is to promote their economic conditions. The recovery of the amount of the loans given under such scheme, by the Nationalised Banks or the Financial Corporations, as arrears of land revenue is very harsh procedure. Purpose of such schemes will be defeated, if such persons are put to worst positions by depriving them of "home or other properties which they already possessed. At the same time, the recovery of the public money swiftly and without delay is necessary for well being of the national economy. Thus, in order to save the larger public interest and to protect the individual interests of the poor and under-privileged, a balanced approach should be adopted.

17. As clear from narration of facts given in the orders, in some of the petition, recovery of the dues of town area regarding Tahbazari as arrears of land revenue has been challenged. This Court in *Mitmtqj Ali v. Sub-Divisional Magistrate and another* 1970 ALJ 114. held that dues of Tahbazari on breach of contract committed by the contractor cannot be realised as arrears of land revenue. This view has been consistently followed thereafter by several Division Benches. 28 years have passed but the authorities have not appreciated the law interpreted by this Court and are still making attempt to recover such amount as arrears of land revenue. This is not permissible in law. Some of the petitioners have questioned the recovery proceedings on the ground that there was no agreement contemplated u/s 3 of the Act under which amount can be recovered as arrears of land revenue. In some writ petitions, it has been challenged that the amount of loan was not given under any sponsored scheme or as financial assistance and the amount cannot be recovered as arrears of land revenue. Examinations of such facts, which are elementary in nature, can be very well done in the writ petitions on basis of the affidavits and documents filed by the parties. The writ petitions thus were not liable to be thrown at this stage. The petitions could be heard on merits and pending decision, interest of the revenue could be protected by putting petitioners to conditions. Even big companies take loan of heavy amounts from the financial institutions and commit default. To save such industries from being destroyed at the hands of the creditors and financial institutions Legislature intervened by enacting Sick Industrial Companies [Special Provisions] Act. 1985. The object is to save them and to give them breathing time so that they may make efforts to recover. There is no such law to protect

the poor and small people in like situations. They are small borrowers if they failed in their attempt to provide them self-employment on basis of the financial aid received, the purpose of giving financial help to such persons will not be served by rendering them without home and small property they possessed. They also deserve same sympathy and treatment and. In my opinion, this Court should not feel shy in protecting the interest of such poor people by entertaining writ petitions and giving them breathing time to arrange the money and pay the loan. The population of this State is over 15 crores. The number of the Courts and Judges provided is Insufficient to cope with the growing number of cases. Thus, if there are arrears and the Court is full of cases, these poor people cannot be blamed. Courts are functioning right from morning till evening and are doing their best to dispense justice and they should continue with this irrespective of the difficult conditions in which they are working. In my opinion, in the facts and circumstances of the present writ petitions, Hon''ble Palok Basu, J., adopted the correct and proper approach by asking the respondents to file counter-affidavit and directing petitioners to serve un-served respondents and granting conditional interim order.

18. The writ petitions are thus found maintainable at this stage. Let the record of these writ petitions be placed before the appropriate bench for further orders.