

(1985) 01 RAJ CK 0055
In the Rajasthan High Court
Case No : Civil Special Appeal No. 39 of 1977

Prem Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-01-1985

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 256, 257A

Citation : AIR 1986 Raj 33 : (1985) RLW 269 : (1985) 2 WLN 120

Hon'ble Judges : S.N. Bhargava, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : M. Mridul, for the Appellant; R.C. Maheshwari, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—The unsuccessful petitioner has filed this appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 against the order dated March 16, 1977 (reported in 1977 WLN (UC) 158) of the learned single Judge of this Court by which his writ petition under Article 226 of the Constitution was dismissed. The appellant will be referred to as "the petitioner".

2. The facts leading to this appeal He in a very narrow compass. Jagir bonds in the sum of Rs. 12,609, were collected by the petitioner from the Office of the Collector (Jagir), Pali as he had power of attorney from one Karansingh, who claimed to be an ex-Jagirdar. Subsequently, it was discovered that Karansingh was not a Jagirdar and no amount was payable to him by way of compensation under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. The Collector heard the parties and came to the conclusion that the amount of Rs. 12,609/- was wrongly paid to the petitioner on behalf of Karansingh and as such, it was recoverable from him, A demand was made and the petitioner failed to deposit the amount and so, a certificate as required u/s 257A of the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956) (for short "the Act") was issued by the Collector (Jagir), Pali, which gave rise to the proceedings for recovery under

the Act as arrears of land revenue. A warrant of attachment was issued by the Collector, Pali specifying that a sum of Rs. 12,609/- is due both from the petitioner and Karansingh "being unauthorised payment of compensation". The petitioner did not come to know about this until the Tahsildar, Jetaran proceeded to serve upon him a notice dated March 10, 1976 asking him to pay the unspecified amount as he stood surety for Karansingh from whom the money is due. It was stated therein that if the amount is not deposited, it would be realised by attachment and sale of his property. Thereafter, the petitioner filed an application before the Collector, Pali objecting against the threatened recovery proceedings of the amount in dispute. It appears that subsequently, the petitioner was served with an order by the Tahsildar, Jetaran asking him to deposit the amount of Rs. 12,609/- due from him, failing which the sum will be realised by attachment and sale of his property. The petitioner filed the writ petition on October 4, 1976 praying that the respondents may be restrained from proceeding against the petitioner for recovery of the amount paid to him as power of attorney holder of Karansingh and further that if coercive action is taken it may be declared illegal. The writ petition was opposed on behalf of the respondents by filing a reply along with six documents marked as Exs. R1 to R6.

3. The learned single Judge, after considering the contentions that were raised before him, has recorded the following findings :

(1) that no question of any fundamental right is involved in the present case and the petition is not covered by the provisions of clause (1) of the amended Article 226 of the Constitution.

(2) that the remedy provided by Sub-section (3) of Section 257B is certainly "any other remedy" for the purposes of Clause (3) of Article 226 of the Constitution, as substituted by Article 38 of the Constitution (Forty Second) Amendment Act, 1976.

(3) that the amount claimed by the State Govt. has to be deposited in advance under protest before a suit can be filed under Sub-section (3) of Section 257B of the Act but that has not the effect of nullifying the remedy which has certainly been provided by law for the redress of the injury complained of by the petitioner in the present case.

In view of the aforesaid findings, the learned single Judge dismissed the writ petition as abated. Hence the petitioner has filed this appeal as aforesaid.

4. We have heard Mr. M. Mridul, learned counsel for the petitioner-appellant and Mr. R.C. Maheshwari, Addl. Govt. Advocate.

5. The only contention raised before us by the learned counsel for the petitioner-appellant is that the amount of Rs. 12,609/- which is sought to be recovered from the petitioner by the respondents under the provisions of Section 257A of the Act is not recoverable, for, it is neither miscellaneous revenue nor other moneys as envisaged by Section 256 of the Act and so, the proceedings initiated against the

petitioner for the recovery of the amount under the Act are without jurisdiction and null and void. On the other hand, Mr. R.C. Maheshwari, learned Additional Government Advocate has supported the order under appeal on the ground that the sum which is sought to be recovered from the petitioner is recoverable u/s 256 of the Act. He referred to Section 256(a)(ii) of the Act.

6. We have given our due consideration to the rival contentions of the learned counsel for the parties.

7. The material portion of Section 256 of the "Act, for our purpose, is as under :
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"256. Recovery of miscellaneous revenue and other moneys.-- The following moneys may be recovered under this Act in the same manner as an arrear of revenue --

(a) all sums of money declared by this Act or by any law for the time being in force, other than the Rajasthan Public Demands Recovery Act, 1952 (Rajasthan Act 5 of 1952) --

(i)...

(ii) to be a demand or public demand or to be recoverable or realisable as a demand or a public demand or as an arrear of a demand or a public demand."

A perusal of Section 256 shows that it does with recovery of miscellaneous revenue and other moneys. It enumerates various kinds of revenue and moneys which can be recovered as arrears of revenue. According to Clause (a) of Section 256 the sums of money which have been declared to be recoverable as arrears of revenue under the Act or any other Act, but not under the Rajasthan Public Demands Recovery Act, 1952. It is also not a sum of money payable to the State Government on account of any other dues under any law or rule having the force of law, as envisaged by Section 256 (b) of the Act. Jagir bonds of Rs. 12,609/- were wrongly given to the petitioner as power of attorney holder of Karansingh as the amount was not payable to the latter. u/s 256(a) all sums of money declared by the Act or by any law for the time being in force, other than the Rajasthan Public Demands Recovery Act, 1952 can be recovered under the Act in the same manner as an arrear of revenue. The demand of Rs. 12,609/- is not a sum recoverable under any other Act as an arrear of land revenue. Learned Additional Govt. Advocate could not succeed in satisfying us that the sum which was wrongly paid to the petitioner, as in law it was not payable to him, falls within Clause (ii) of Section 256(a) or any other clause of the Act. Having regard to the specific words used in Section 256 of the Act, the sum which was erroneously paid to the petitioner being the amount of Jagir bonds payable to the ex- Jagirdar Karansingh who was not entitled to get the amount as compensation can fall u/s 256(a)(ii) of the Act referred to by the learned Addl. Govt. Advocate. If this is so. then no application u/s 257A of the Act could be made by the Collector (Jagir) and for that matter, no proceedings for the recovery of that

amount could be taken by the Tahsildar. Jetaran under Sections 256 and 257A of the Act Sections 256A and 257 came up for consideration before a Division Bench of this Court in Purshottam Dass v. Collector, Jhunjhunu, ILR (1966) 16 Raj 1191, wherein it was observed as under :--

"The effect of Section 257B of the Rajasthan Land Revenue Act undoubtedly in cases which properly fall under Ch. X of the Act is that where a proceeding is lawfully initiated against a person u/s 256 or u/s 257 of the Act, he must make the payment, even though it be under protest and then it should be open to him to file a suit for the refund of the amount as paid under protest, provided that such a suit would be competent under Sub-section (4) of that section. It is equally true however that before the stringent provisions of this section can be properly called into application, the particular demand must fall within the four walls of Section 256 or Section 257 and where such a foundation is lacking, the provisions of Section 257B cannot possibly be availed of."

It is clear that the stringent provisions of Section 256 or Section 257 can only be resorted to if the amount is recoverable u/s 256 of the Act as an arrear of revenue. We have already held that the amount that was paid to the petitioner is not recoverable u/s 256 of the Act. The foundation, in our considered opinion for taking action under the provisions of Section 257B of the Act is completely lacking and on that score, the learned single Judge was not right in coming to the conclusion that the petitioner could resort to the remedy of suit u/s 257B of the Act as it is the remedy provided under law

8. In this view of the matter, no proceedings for the recovery of Rs. 12,609/- could be taken against the petitioner under Sections 256 and 257A of the Act and respondents Nos. 2 and 3 had no jurisdiction to start recovery proceedings against the petitioner. For the reasons mentioned above, the judgment of the learned single Judge cannot be sustained.

9. The result is that we allow the appeal, set aside the order dated March 16, 1977 of the learned single Judge by which he dismissed the writ petition. The respondents are restrained from recovering the amount of Rs. 12,609/- which is said to have been erroneously paid to the petitioner-appellant. In the circumstances of the case, the parties are left to bear their own costs of this appeal. It is, however, made clear that if the respondents have any other remedy available to them other than under the Act, this order will not prejudicially affect their rights and it will be open to them to resort to it in accordance with law.