
(1977) 03 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Petition No. 1656 of 1976

Prem Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-03-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 31

Citation : (1977) WLN 158

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—In this writ petition the petitioner has prayed that the respondents be restrained from proceeding to recover the amount of Rs. 12,609/- from the petitioner under the provisions of Section 257A of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as "the Act").

2. The case of the petitioner is that Jagir bonds in the sum of Rs. 12,609/- were collected by the petitioner from the office of the Collector Jagir, Pali as a Power of Attorney holder of one Karan Singh, who claimed to be an ex-Jagirdar. It was subsequently discovered that Karan Singh 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, after hearing the parties, came to the conclusion that the amount of Rs. 12,609/- which was erroneously paid to the petitioner because such amount was not payable either to Karan Singh or to the petitioner. A demand was made and on the failure of the petitioner to deposit the amount in question, a certificate as required u/s 257A of the Act was issued by the Collector Jagir, Pali which gave rise to the proceedings for recovery under the provisions of the Act as arrears of land revenue. The contention of the learned Counsel for the petitioner is that the alleged demand is not covered by any of the provisions of Section 256 of the Act and that Karan Singh was liable for the aforesaid sum and not the petitioner.

3. Learned Deputy Government Advocate has raised an objection that in view of the amendment of the Constitution by the Constitution (Forty Second) Amendment Act, 1976 the writ, petition has abated because the petitioner has another remedy available to him, of filing a suit as provided by Sub-section (3) of Section 257B of the Act. Article 226, of the Constitution has been substituted by Section 38 of the Constitution (Forty Second) Amendment Act, 1976 and Clause (3) of the amended Article 226 provides that no petition for the redress of any injury referred to in Sub-clause (b) or Sub-clause (c) of Clause (1) of that Article? shall be entertained, if any other remedy for such redress is provided for by or under any other law for the time being in force. Sub-section (2) of Section 58 of the aforesaid Amendment Act, makes the aforesaid provisions of the amended Article 226 applicable to every pending petition before this Court and it provides that if a pending writ petition would not have, been admitted by the High Court under the provisions of Article 226, as substituted by Section 38 of the Forty Second Amendment Act, if such petition would have been made after the appointed day namely, February 1, 1977 then such petition shall abate and any interim order made in any proceeding relating, to such writ petition shall stand vacated. Thus by the application of Clause (3) of the amended Article 226 of the Constitution, read with Sub-section (2) of Section 58 of the Constitution, (Forty Second) Amendment Act, 1976, a pending petition abates, if any other remedy for such redress is provided for by or under any other law for the time being in force, in cases coming within Sub-clauses (b) and (c) of Clause (1) of Article 226.

4. Mr. Mridul, learned Counsel for the petitioner, argued in the first place, that the present case comes within Sub-clause (a) of Clause (1) of Article 226 of the Constitution, as the recover of the amount would, result in deprivation of property within the meaning of Article 31 of the Constitution and thus the writ petition was for enforcement of a fundamental right conferred by Part III of the Constitution. The submission of, the learned Counsel is that in such a case, inspite of the existence of another remedy, the court should not refuse to entertain the writ petition. In the second place, he submitted that the remedy of a filing suit has not been provided under the provisions of the Act, but as a matter of fact the provisions of Sub-section (4) of Section 257B of the Act takes away the right of filing suit. Another submission made by learned Counsel is that the remedy of-filing a suit available under Clause (3) of Section 257B of the Act does not provide "such redress" as may be available to the petitioner under the present proceedings under Article 226 of the Constitution.

5. As regards the first contention of the learned Counsel it would be sufficient to observe that a demand for refund of the amount erroneously paid to the petitioner cannot be said to be deprivation of property without the authority of law. Jagir bonds in the sum of Rs. 12,609/- were admittedly collected by the petitioner from the office of the Collector Jagir, Pali although the same were not payable according to law. As such a demand for the refund of the said amount is neither deprivation of property nor it suffers" from lack of authority of law. The

question raised by the petitioner that he is not liable to refund the said amount as he is alleged to have paid the same to Karan Singh will be a matter of inquiry and decision by a competent civil court on the basis of the evidence that may be led in the suit which may be filed by the petitioner u/s 257B(3) of the Act. Thus 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. Section 257B of the Act provides as under:

Section 257B. Payment under protest and further remedy-

(1) If proceedings are taken under this chapter against any person for the recovery of any sum as money referred to in Section 256 Or Section 257, such person may at any time, before any property attached in such proceedings is knocked down at a sale thereof, pay the amount claimed and at the same time deliver a protest signed by himself, or by his authorised agent to the revenue officer, taking such proceedings.

(2) When any amount is paid under protest under Sub-section (1), such amount along with the protest shall be forwarded to the officer or authority at whose instance proceedings were so started.

(3) Subject to the provision contained in Sub-section (4), the person making a payment under protest in accordance with Sub-section (1), shall have the right to institute a suit for the recovery of the whole or a part of the sum so paid under protest.

(4) No suit under Sub-section (3) shall lie or be instituted if any law, under which the sum of money paid under protest is due, provides a remedy, whether by way of suit, appeal, application or other proceedings, to the person from whom such sum was recovered.

(5) No appeal or reference shall lie, from an order of a revenue officer passed in proceedings taken under this chapter for the recovery of sums of money referred to in Sections 256 and 257.

A perusal of the aforesaid "provisions make it clear that Sub-section (3) of Section 257B of the Act authorises the person, against whom proceedings are taken for the recovery of any sum of money referred to in Section 256 or 257 and who makes payments of such amount under protest under Sub-section (1) of Section 257B, to institute a suit in a civil court for the recovery of the amount paid by him under protest. Sub-section (4) of Section 257B only takes away the remedy either by way of suit, appeal or application or other proceeding. But in case the law under which the sum of money paid under protest is due does not provide for any other remedy, then the remedy provided by Sub-section (3) of Section 257B namely, of filing a suit in a civil court for the recovery of the amount paid under protest is certainly available. In the present case, it has not been argued before the that any other remedy is available to the petitioner within the meaning of Sub-section (4) of Section 257B of the Act and in the

absence thereof, the petitioner would certainly have a right to institute a suit for the recovery of the amount which he may pay under protest under Sub-section (1) of Section 257B. In my view 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 Section 38 of the Constitution (Forty Second) Amendment Act, 1976.

6. As regards the last contention of the learned Counsel, it may be observed that the other remedy provided by the provisions of Sub-section (3) of Section 257B of the Act does not cease to be another remedy for the redress of the threatened injury alleged by the petitioner, merely because Section 257B provides a pre-condition for availing of the remedy envisaged under Sub-section (3) of that section. Under Sub-section (1) of Section 257B, the person who desires to take advantage of the remedy provided by Sub-section (3) thereof shall have to make payment of the amount under protest; before the property attached in such proceedings is knocked down at a sale. The imposition of such a pre-condition regarding making payment of the amount under protest does not have the effect of obliterating the remedy provided by that law for the redress of the injury complained of by the petitioner.

7. The case of the petitioner falls under either Sub-clause (b) or (c) of Clause (1) of the amended Article 226 and there is no question of an infringement of any fundamental right in the present case as I have already held above and in such a case the provision of another remedy under any other law is a complete bar to the entertainment of a writ petition under the amended Article 226. Merely because the amount claimed by the State Government has to be deposited in advance under protest before a suit can be filed under Sub-section (3) of Section 257B of the Act 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.

8. This petition was pending on the appointed day namely, February 1, 1977. The provisions of Clause (3) of Article 226, as substituted by Section 38 of the Constitution (Forty Second) Amendment Act are attracted to the present case on account of the application of Sub-section (2) of Section 5, 8 of the aforesaid Amendment Act and as a consequence thereof the writ petition has abated and is dismissed as such.