

(2002) 03 MP CK 0104

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1125 of 2002

Ram Kumar Gupta and others

APPELLANT

Vs

Central Bank of India and others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Madhya Pradesh Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987 — Section 3
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18

Citation : (2002) 4 MPLJ 105

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Alok Aradhe, for the Appellant; Sunil Kherdikar, for the Respondent

Judgement

Arun Mishra, J.

The petitioners assail the competence to issue recovery certificate by the Central Bank of India u/s 3 of the M.P. Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987 on the ground that of section 18 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the respondent No. 2 has no authority in law to initiate any proceeding against the petitioners under the M.P. Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987. Second challenge is that the petitioner has not been given any opportunity to object as to the sum due which is sought to be recovered from them as an arrear of land revenue.

The petitioners submit that the petitioner No. 1 is the proprietor of M/s. Gupta Agencies, the petitioner No. 1 was granted a dealership of Luna by Kinetic Engineering Company for the city of Balaghat in the year 1984. The petitioner No. 1 approached the respondent No. 1 Bank for financial assistance. Cash Credit Limit to the tune of Rs. 2.5 lac was sanctioned and later on Credit Facility to the extent of Rs. 3 lac was granted in the year 1984. Subsequently, the Cash Credit Limit was enhanced to Rs. 6 lac. Due to adverse market condition, the petitioner No. 1 could not honour his commitments. In 1997, the letter of Credit facility was withdrawn by the Bank. On 8-10-2001 the Branch Manager asked the petitioner

to make the payment of Rs. 14,04,703.49 along with interest. Another letter was issued demanding a sum of Rs. 7,33,520.49 in the year December, 1996. Petitioner submits that section 34 of the Recovery of Debt Due to Banks and Financial Institution Act, 1993 gives an over-riding effect over any other provisions of law except as provided under sub-section (2) of section 34. Thus, recovery cannot be effected by issuance of revenue recovery certificate u/s 3 of the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987. On receipt of the notice of recovery, petitioner filed an objection that the recovery was barred. He was not a party to the novation of the loan agreement and has not extended the guarantee which was initially furnished by him. Warrant of attachment was illegally issued. Sum due has to be ascertained and adjudicated after giving opportunity of being heard, which was not done in the instant case.

An objections were filed before the Tehsildar - Annexure-P/8, P/9 and P/19. Petitioner submits that objections have not been considered and decided.

In the return filed by the respondent/bank; Central Bank of India it is contended that there is no bar to make recovery under the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987. This Court in New Laxmi Oil Mills, Barwaha Vs. Bank of India, Barwaha and Others, , upheld the competence of the State Legislature to enact M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987.

Submission is that recovery of debt Act of 1993 makes the provision of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 inapplicable with respect to the matters which are required to be decided and adjudicated upon by the Debt Recovery Tribunal u/s 18 read with section 19 of the Recovery Act. Section 18 contain bar as to jurisdiction, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters specified in section 17. Section 17 is quoted below:--

17. Jurisdiction, Powers and Authority of Tribunals:- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of the debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day the jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made, by a Tribunal under this Act.

It is clear from a bare reading of section 17 that a Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of the debts due to such banks and financial institutions. u/s 19 procedure is prescribed for filing application. Section 34 of the Recovery Act contains a non-obstante clause which gives overriding effect to the provisions of the Recovery Act on any other law for the time being in force. An application is in the nature of civil suit which may be filed by the Bank if the bank so chooses in case amount is more

than Rs. 10 lac, it cannot be doubted that it has to be filed before the Recovery Tribunal under Debt Recovery Act 1993. The scope of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 is entirely different. No application/regular suit is required to be filed for seeking a decree or order. The bank is itself competent u/s 3 of the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 to draw and issue a recovery certificate, for recovery of dues as an arrears of revenue certificate u/s 3(1) of the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987. The amount can be recovered as per certificate issued. Certificate issued u/s 3(1) may be withdrawn by the authority issuing such certificate at any time. Under sub-section (2) of section 3 of Act of 1987 provides that The Collector or his subordinate officer specified under sub-section (1) on receiving the certificate shall take steps to recover the amount stated therein as arrear of land revenue under the Madhya Pradesh Land Revenue Code, 1959. Sub-section (3) of section 3 provides that no suit for the recovery of any sum due as aforesaid shall lie in a Civil Court against any person in respect of whom a certificate for recovery of such sum has been issued under sub-section (1). In my opinion, there is no conflict between the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 and Debt Recovery Act, 1993. It is open for the bank to issue a revenue recovery certificate, even if amount is more than Rs. 10 lac, if the case falls under the provision of sub-section (1) of section 3, it is open for the Bank to choose remedy of adjudication process before Debt Recovery Tribunal constituted under the Debt Recovery Act 1993 or issuance of Revenue Recovery Certificate under Act of 1987. Thus, in my opinion, section 34 of 1993 Act does not bar and supersede the jurisdiction of the recovery officer and the Bank to issue the certificate for recovery and to effect it under M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987.

Coming to the next submission whether an adjudication is required to be made with respect to the correctness of the Revenue Recovery Certificate, it was held by the Division Bench of this Court in New Laxmi Oil Mills (supra), in para 17 as under:--

17. The matter when examined from another perspective reveals that what sub-section (4) of section 3 of the Act bars is the Arbitration Proceedings when there is an arbitration agreement between such person, on one side, and the Government or the Corporation, on the other, for recovery of sum claimed under sub-section (1) of section 3 of disputing the correctness of such claims unless under the proviso thereof the amount has first been deposited under protest. What the provisions debar is the reference if dispute to arbitrator even if there be an agreement in this behalf, without deposit of the amount first. This provision is not attracted in case there is no agreement for referring the dispute to arbitration. Likewise, sub-section (5) of section 3 bars original suit or application, or reference to arbitration, to call in question the certificate issued u/s 3(1) and restrains the grant of injunction against any action taken, or intended, under the Act. The Act nowhere restrains or bars raising of a dispute either before the Officer empowered to issue the recovery certificate or before the

Recovery Officer with regard to the validity of demand or its maintainability. The Officer empowered to issue the recovery certificate and the "Recovery officer", both, discharge functions under the Statute and cannot invade the rights of the citizens without adherence to the basic principle of permitting the persons likely to be effected to represent against the intended action. The fact that Arbitration even where an arbitration agreement exists and remedy in a Civil Court are, both, barred, leads to irresistible conclusion that before the functionaries under the Act, the affected party can raise objections going to the root of the proceedings such as the debt being not legally due on account of it having become barred by the period of limitation, the transaction being not of loan "Socially Desirable Scheme" or the debt having been waived or wiped out under any provision of law or a provision enforceable under law and the like, and such officer is duty bound to consider and decide all such questions at least summarily though formal notice to show cause may not be necessary. This will check the misuse of the provision and provide the necessary safeguards.

It is clearly laid down by this Court that the Act of 1987 nowhere restrains or bars raising of a dispute either before the Officer empowered to issue the recovery certificate or before the Recovery Officer with regard to the validity of demand or its maintainability. The Officer empowered to issue the recovery certificate and the "Recovery Officer", both, discharge functions under the Statute and cannot invade the rights of the citizens without adherence to the basic principle of permitting the persons likely to be effected to represent against the intended action.

As to the question if an objection is raised as to correctness of the Revenue Recovery Certificate, in Benita Verma vs. State of M.P. and others, 1971 J.L.J. SN 87, it has been observed that without going into the other questions raised in the petition, it is enough for the purposes of this writ petition, that the demand is being made admittedly for an amount which is provisional and which has not yet been finally settled, so far as the respondents are concerned. A coercive demand by way of arrears of land revenue cannot be enforced unless a final decision has been taken and the amount has been finally determined as due from the lessee. As per section 25 of the Act "any rent, royalty, tax, fee or other sum due to the Government-under the Act can be recovered in the same manner as an arrears of land revenue". The amount, therefore, must be an amount due and not merely a provisional amount which may or may not be due. In the facts, the Court was satisfied that the demand made from the petitioner was premature, the matter, admittedly, having not yet been decided finally as to what exact amount was due.

Another Division Bench of this Court in Ghanshyamlal vs. State, 1961 J.L.J. SN 384 held, that under sub-section (2) of section 145 of M.P. Land Revenue Code, 1959 it is not necessary to give any notice to the defaulter before drawing up the statement referred to in sub-section (1). The expression "until the contrary is proved" occurring in sub-section (1) clearly shows that the defaulter is entitled to

an opportunity to contest the correctness of the amount or of his liability or the payment of the amount. The presumption u/s 145(1) is a rebuttable presumption. Section 146 provides that a Tehsildar or Naib-Tehsildar may cause a notice to be served on any defaulter before the issue of any process u/s 147 for the recovery of an arrear. It is at this stage that defaulter is entitled to be heard before any step for the recovery of amount is taken u/s 147. The word "may" used in section 146 has the imperative meaning of "shall". This is made further clear by rule 2 of the rules framed under sections 146 and 147 of the Land Revenue Code which says: "a notice of demand shall issue in duplicate in Form A, and shall be signed and bear seal of the officer issuing it". There can, therefore, be no doubt that the provision as regards notice contained in section 146 is mandatory and without such a notice to the defaulter no proceedings for the recovery of any amount as arrears of land revenue can be taken u/s 147 of the Code.

In *Hindustan Sugar Mills Vs. State of Rajasthan and Others*, , their Lordships held that so as to make an amount recoverable as an arrear of land revenue final adjudication process is clearly contemplated.

Learned counsel for the petitioner has also pressed into service the decision of the Apex Court in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, and *State of Haryana Vs. Ram Kishan and Others*, , to contend that principle of natural justice are inhered in the process when such recovery is to be made.

Petitioner can always raise valid objection whether the amount is recoverable under the provision of section 3(1) of the M.P. Lok Dhan (Shodhya Rashiyan Ki Vasuli) Adhiniyam, 1987. They can always raise an objection whether the recovery is time barred or not and other such valid objection which are permissible to be raised as held in *New Laxmi Oil Mills (supra)* of this Court.

In *Kanaiyalal Prabhudas Maru and Others Vs. Regional Provident Fund Commissioner and Others*, , it was held that defaulter has to be given an opportunity of hearing which has to be dependent on the facts and circumstances of particular case. However, the authority are not bound to take into consideration the improper, impermissible objection so as to frustrate or delay the recovery of the public money. But genuine objection cannot be thrown out at threshold.

In the instant case various objections were raised before the Tehsildar, it is directed that the Tehsildar may consider the objections expeditiously and proceed to make the recovery if permissible speedily.