

(1959) 02 CAL CK 0021
In the Calcutta High Court
Case No : Civil Revn. Case No. 254 of 1956

Ram Ranjan Rakshit

APPELLANT

Vs

The Chief Administrator, Rehabilitation Finance
Administration, New Delhi and Others

RESPONDENT

Date of Decision : 05-02-1959

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 34, 35
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 135
Rehabilitation Finance Administration Act, 1948 — Section 13(5), 15, 2
Revenue Recovery Act, 1890 — Section 2(3), 3, 3(3)

Citation : AIR 1960 Cal 416 : 64 CWN 126

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Kashi Kanta Maitra, for the Appellant; Nirmal Chandra Chakravarty and D.N. Basu for Nos. 3 to 5, Prafulla Roy and Amiya Kumar Mukherjee for Nos. 1 and 2 and Sisir Kumar Basu, for No. 7, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is a petition under Article 226 of the Constitution by Ram Ranjan Rakshit against the Chief Administrator, Rehabilitation Finance Administration, New Delhi, the Collector of Krishnagar, the Certificate Officer of Krishnagar and other respondents. The petitioner guaranteed a loan taken by one borrower, Nikhil Bhusan Ghose, from the Rehabilitation Finance Administration. This was done under the provisions of the Rehabilitation Finance Administration Act, 1948, which was a statute, passed for giving financial assistance on reasonable terms to displaced persons to enable them to settle in business and industry. The petitioner guaranteed this loan. The borrower failed to repay the loan whereupon the Chief Administrator, under the Rehabilitation Finance Administration Act, proceeded to realise it from the petitioner under Certificate proceedings. In the course of the Certificate proceedings, the petitioner objected and filed his objections before the Certificate Officer. His

objections have been overruled. From the order of the Certificate Officer, the petitioner preferred an appeal before the Collector of Nadia who also dismissed his objections and confirmed the order of the Certificate Officer.

2. On 11-11-1955, the Certificate Officer made the order:

"You may pay the dues under protest and file a suit. There is no scope of hearing objections in this Certificate. Legal steps will be taken against you if you fail to pay the dues".

3. More or less, on the same ground, the Collector confirmed this order on or about the 2nd of December 1955. The petitioner challenges the order of the Certificate Officer and the Collector.

4. A number of preliminary points of objection have been taken by the respondents. The first objection is that the necessary party has not been joined in this application. It is argued that u/s 3 of the Rehabilitation Finance Administration Act, 1948, the Rehabilitation Finance Administration is a Corporation, being a body corporate by the name of the Rehabilitation Finance Administration, with perpetual succession and a common seal. This Corporation as such is not made a party. The constitution of this Corporation laid down by Section 4 of the Act indicates that it is composed of a Chairman, called the Chief Administrator, three officials, appointed by the Central Government and three non-officials nominated by the Central Government. Now, as I have said, this Administration as the Statutory Corporation is not made a party to this application, Instead of the Corporation, the Chief Administrator himself is made a respondent in this application. It is said that the Chairman does not and cannot represent the Corporation. Therefore, it is contended that the application is defective on the ground that the main relief sought is against the act of the Corporation which is not made a party. Technically speaking the objection is sound but, I would not like to dismiss this application on that" ground alone,

5. The second preliminary objection against this petition is that the petitioner's application is not bona fide and that he has suppressed facts and made false statements in the petition. On this branch of the objection, the argument is confined to two major points. The first is that in paragraph 6 of the petition, the petitioner stated that no document embodying any terms of guarantee and/or letter of guarantee was executed by him. It is pointed out that this statement is a downright falsehood because there is a solemn letter of guarantee duly signed by him, a copy of which is annexed to the affidavit-in-opposition of Sri Ananta Kumar Mitra on behalf of the Chief Administrator, Rehabilitation Finance Administration. This letter is dated 5-5-1951. I shall have occasion later to refer to the terms of this guarantee but it is enough here to state that the petitioner duly signed this letter of guarantee in the presence of witnesses and this letter of guarantee is addressed to the Rehabilitation Finance Administration, New Delhi. It is, therefore, a false statement that the petitioner made in paragraph 6 of his petition when he said that he executed no letter of guarantee. On behalf of the

petitioner, reference is made to paragraph 8 of the petition in extenuation of the guilt of falsehood where it is said that the petitioner stated there that as far as he remembered, he only addressed a letter of consent and did not sign any letter of guarantee. I do not think it is possible to split the hair on this question of fact after the categorical statement made by the petitioner in paragraph 6 where he had said expressly and clearly that no document or letter of guarantee was executed by him. This statement is serious enough but there is one more which is equally serious, if not more. In paragraph 18 of the petition, the petitioner states that he filed an objection on 1-10-55 objecting to the legality of the Certificate proceedings and his liability to pay. Now, this date, "1-10-55", bears a manuscript correction where the typed figure "11" is corrected by hand as "10" and attested by the learned Advocate for the petitioner on the margin of the original petition. It now appears that the petition of objection was, in fact, made on 1-11-55, and it was wrongly corrected into 1-10-55. In the argument on behalf of the respondents, it has been contended that this correction was not without motive and the motive that is attributed is one to avoid limitation. In fact, the objection before the Certificate Officer was filed on 1-11-55 which was beyond the period of limitation permitted u/s 9 of the Public Demands Recovery Act. This again is a serious mis-statement whose repercussion will presently be seen on the question of merits which I shall soon discuss.

6. I would, on so serious mis-statements in the petition, gravely doubt whether any relief should at all be given to the petitioner.

7. I shall however dispose of this application on merits and not on technicalities. Coming to the main question of merit, the argument on behalf of the petitioner is that he as a guarantor cannot be proceeded against under Certificate proceedings. Secondly, it is argued that no opportunity was given to the petitioner to make objections and to have his objections heard.

8. Now, taking the second point first about denial of opportunity, the fact is that the petitioner was permitted to file his objections. The order complained of noticed the objections but came to the conclusion that there was no scope of hearing of objections in the Certificate proceedings under the Revenue Recovery Act. This does not mean that the petitioner got no opportunity to file his objections or to have his objections heard. In fact, the Certificate Officer noticed his objections and came to the conclusion that such objections were not permissible under the Revenue Recovery Act, I therefore, overrule the objection, that the petitioner got no opportunity to file his objection or to have This objection heard. If his objections were allowed to be filed and if they were wrongly decided, that was not a failure of jurisdiction on the part of the Certificate Officer or the Collector. It could, at best, be a case of a wrong or erroneous decision in law. I have however come to the conclusion that this decision was right in law.

9. The first objection on the merit requires careful examination. In fact, this is the only point seriously argued on behalf of the petitioner. The proceedings under the Public Demands Recovery Act taken by the Collector of Nadia are challenged

as ultra vires on the ground that the petitioner is not a borrower within the meaning of the Rehabilitation Finance Administration Act, 1948. Section 2(c) of that Act says that a borrower means "an individual, Company, Association or body of individuals whether incorporated or not, to whom a loan has been advanced under this Act". Naturally, the loan not being advanced to the petitioner, he says that he is not a borrower under that Act. It may be noticed here that u/s 13(6) of the Rehabilitation Finance Administration Act, 1948, the Administration is authorised to take security for any loan as it may consider necessary. In other words, there is statutory permission in that provision for the Administration to call for a surety or a guarantee as in this case from the petitioner. Section 15 of that Act proceeds to prescribe the mode of recovery and says:

"If the amount or loan or any instalment thereof or interest thereon which is due, in accordance with the terms of the contract or under the provisions of Section 14, has not been repaid, the Administration may -

(a) without prejudice to any other remedy provided by law, recover such loan, instalment or interests as arrears of land revenue""

etc. etc. This leads to the conclusion that the loan could be recovered as arrears of land revenue.

10. It is, therefore, now necessary to proceed to examine the machinery for realising such loan as arrears of land revenue. The Collector at Delhi proceeded under the Revenue Recovery Act, 1890. That is an Act made for the better provision for recovering certain public demands. By section 2(3) of the Revenue Recovery Act, 1890, the word, "defaulter", means a person from whom an arrest of land revenue is due and "includes a person who is responsible as surety for the payment of any such arrear". On the facts, it is undisputed that the borrower in this case was a defaulter. By this definition, the defaulter includes the petitioner who was responsible as surety for the payment of such sum.

11. The Collector of Delhi proceeded u/s 3 of the Revenue Recovery Act 1890. He signed the Certificate, stating the debt due from the petitioner and sent it to the Collector of the district of Nadia u/s 3(3) of the Revenue Recovery Act, 1890, because the petitioner as well as his assets are in the district of Nadia in the State of West Bengal. It is material to note the exact language of Section 8(3) of the Revenue Recovery Act, 1890 which is:

"The Collector of the other district shall on receiving the Certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district".

The Collector of Nadia proceeded under the Public Demands Recovery Act to enforce it as an arrear of land revenue. Printed notices under Sections 5 and 6 of the Public Demands Recovery Act were used against the petitioner to which the petitioner filed his objections as indicated before.

12. Now, on the first branch of this argument, it is clear that the petitioner is a defaulter within the special meaning attributed to that expression u/s 2(3) of the Revenue Recovery Act, 1890 which means not only a borrower but also his guarantor or surety. So far as a Certificate debtor is concerned, even Section 3(1) of the Public Demands Recovery Act says that it means the person named as debtor in a Certificate filed under such Act. The Certificate which was made by the Collector of Delhi under the Revenue Recovery Act and not under the Public Demands Recovery Act and sent to the Collector of Nadia who took appropriate action on it, showed the petitioner as a certificate debtor. I have said elsewhere in this judgment that Sections 4, 5 and 6 of the Public Demands Recovery Act do not in strict term apply to this case but only by a legal fiction. It is, therefore, clear that the petitioner's objection that a guarantor is outside the scope of the Certificate proceedings cannot be sustained.

13. But the more serious contention of the petitioner is that after having proceeded under the Public Demands Recovery Act, the Collector or the Certificate Officer should have followed the procedure laid down under that Act, namely, to not only permit objections to be filed but also hear them on merits. It is contended that the decision of the Certificate Officer and the Collector saying that there was no scope for objections under the Public Demands Recovery Act was erroneous in law. The reason for that decision is to be found in Section 4(1) of the Revenue Recovery Act, 1890, which reads as follows:

"When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a Certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid".

The Certificate Officer and the Collector both took the view that the Certificate was conclusive proof of the matters therein stated under the special provisions of Section 3(2) of the Revenue Recovery Act, 1890 Section 3(2) of the Revenue Recovery Act says:

"The Certificate shall be signed by the Collector making it or by any officer to whom such Collector may, by order in writing delegate this duty and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated".

Now, this is a significant provision which is absent from the Public Demands Recovery Act where it is not said that the Certificate is a conclusive proof of the matters stated therein. In fact, a full procedure is prescribed in which the Certificate could be challenged by objections before the Certificate Officer. The result of making a certificate under the Revenue Recovery Act conclusive proof of the matters stated therein is that it is not liable to be challenged in any other manner except by a suit after depositing the money u/s 4(1) of that Act To hold

that a certificate under the Revenue Recovery Act 1890 is liable to be challenged by the procedure of objections open under the Public Demands Recovery Act will be to repeal the whole effect of Section 4(1) of the Revenue Recovery Act. read the permissive word "may" in Section 4(1) of the Revenue Recovery Act as the only permissive inroad on the otherwise conclusive nature of the certificate u/s 3(2) of this Act. I am, therefore, of opinion that the only relief the petitioner can have under the Revenue Recovery Act is u/s 4(1) by a suit as laid down there and not by way of objections u/s 9 of the Public Demands Recovery Act.

14. It is true that the Collector of Nadia had to proceed under the Public Demands Recovery Act but that is only "as if it were an arrear of land revenue which had accrued in his own district" u/s 3(3) of the Revenue Recovery Act of 1890. That means that the local Public Demands Recovery Act comes only as a legal fiction "as if it were". It only means this that for purposes of realisation it will be treated "as if it were an arrear of land revenue which had accrued in his own district". Sections 4, 5 and 6 of the Public Demands Recovery Act therefore do not apply in strict terms but are applied only notionally by way of that legal fiction. In other words, the machinery of realisation under the Public Demands Recovery Act could be invoked but without derogating from special provisions contained in the Revenue Recovery Act of 1890. The primary Act that governs realisation of this demand as a land revenue is the Revenue Recovery Act of 1890 and what the Public Demands Recovery Act does is to provide only the auxiliary machinery and not the substantive rights such as reopening a conclusive certificate by objections. I shall make here a reference to Section 7 of the Revenue Recovery Act, 1890, which makes it clear that:

"Nothing in the foregoing sections shall be construed-

(a) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land revenue or of sums recoverable as arrears of land revenue" etc.

It was therefore argued on behalf of the petitioner that Section 7(a) of the Revenue Recovery Act preserves and protects the provisions of the Public Demands Recovery Act and hence the petitioner's right to file objections u/s 9 of the latter Act. The language of Section 7(a) of the Revenue Recovery Act no doubt says that it does not "affect the provisions for the recovery of land revenue contained in any other enactment" but from this provision the conclusion for which the applicant contends does not follow. This statutory provision in Section 7(a) of the Revenue Recovery Act means that it does not affect the other Acts for the recovery of land revenue or sums recoverable as arrears of land revenue. That means where other Acts apply by their own force the Revenue Recovery Act will not supersede them but will continue to be applicable as before. But here the Public Demands Recovery Act does not apply on its own force and on its own terms. It is only being resorted to "as if it were an arrear of land revenue which had accrued in his own district" by A legal fiction introduced in Section 3(3) of the Revenue Recovery Act. In other words where a certificate is initiated and

originates under the Public Demands Recovery Act then the provisions of the Public Demands Recovery Act will apply and will not be affected by the Revenue Recovery Act. But where, as here the certificate originates and is initiated under the Revenue Recovery Act, it is that Act which will apply. One principle of construction is that a Statute should be so construed, wherever possible, as to avoid repugnancy or conflict with another Statute. Here there is no question of the proceedings being initiated under the Public Demands Recovery Act at all. The proceedings were and are under the Revenue Recovery Act of 1890.

15. A Certificate under the Revenue Recovery Act and a Certificate under the Public Demands Recovery Act have many points of significant difference. A Certificate under the Revenue Recovery Act is u/s 3(3) thereof "conclusive proof" of the matters therein stated. This is not so in the case of a Certificate under the Public Demands Recovery Act which can be objected to before the Certificate Officer and that objection can be investigated by the Certificate Officer. Secondly, there is no comparable provision in the Public Demands Recovery Act like Section 4(1) of the Revenue Recovery Act except the provision of suit u/s 34 of the Public Demands Recovery Act and on the limited grounds specified in Section 35 thereof. These are the major points of difference between the certificates and their procedures under the two Acts.

16. The petitioner's objection, that if he is proceeded against under the Revenue Recovery Act, then only that Act should be applied and if he is proceeded against under the Public Demands Recovery Act, then the latter Act should only be applied but that he cannot be subjected to the proceedings and provisions of both the Acts at the pleasure of the Authorities, is more attractive than sound. The petitioner's basic assumption in this argument that both the Acts are being selectively applied to him is inherently fallacious. It is the Revenue Recovery Act which governs his case or else he as guarantor would never have been liable.

17. Even on the merits, it appears that the petitioner has no case. The only point of merit is said to be that by reason of the long time and indulgence given to the borrower, the Government has discharged the guarantee of the petitioner. This argument is based on the principle of discharge of guarantee under the Contract Act. The argument, however, is completely met by the very terms of the letter of guarantee. The letter of guarantee expressly refers to the terms and conditions of the borrower's agreement with the Government dated 21-7-1950, by clause 16 whereof it was stipulated that the Administration, in case of failure of the borrower to pay, would be entitled to realise, in addition to other remedies at law such loan as arrears of land revenue. The guarantee proceeds to say that the petitioner "hereby guarantees due repayment of the said loan and agrees and undertakes that the amount of the loanshall be recoverable" from the petitioner. The guarantee also states:

"I agree that failure on your part to enforce any of your remedies against the borrower or to observe and perform any of the stipulations contained in the said agreement or any time or other indulgence given by you to the borrower or any

other dealing between you and the borrower, shall not have the effect of releasing me from my liability under this guarantee. I also agree that this guarantee shall in no way be affected by your taking or varying or giving up any securities held by you from time to time in respect of this loan".

On the express terms of the guarantee such as this, I am satisfied that there has been no manifest injustice in this case against the petitioner and that the petitioner cannot claim discharge of his guarantee on the ground of indulgence alleged to have been granted by the Government to the borrower. This disposes of the only question of merit.

18. Before I conclude, I would only revert to the fact that the alleged objections which were filed by the petitioner before the Certificate Officer were, in fact, filed on 1-11-55. This puts an end to the whole case of the petitioner. u/s 9 of the Public Demands Recovery Act, even if it did apply, such objections were already barred by limitation. Hence his objections could not in any event be heard even under the Public Demands Recovery Act by the Certificate Officer or on appeal by the Collector on the ground of limitation. Therefore, there is little or no substance in the petitioner's case that his objections were not heard. The position therefore is that even if the petitioner could claim the benefit of raising objections under the Public Demands Recovery Act, his objections were already barred by the limitation specified in Section 9 of that Act. He therefore suffers no legal injustice which this Court can correct under Article 226 of the Constitution.

19. For these reasons, this application must be dismissed and the Rule, discharged. There will be no order as to costs.

20. On the submission of the learned Advocate for the petitioner, I direct that the interim order and the undertaking will continue for a period of three weeks from this date.