(1972) 04 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 100 1969

Roshan Lal Sethi APPELLANT

Vs

The Tahsildar, Rajouri and others RESPONDENT

Date of Decision : 17-04-1972

Acts Referred:

Citation : AIR 1973 J&K 50

Hon'ble Judges : Bakshi Ishwar Singh, J

Bench : Single Bench

Advocate : S. A. Salaria, for the Appellant; Amar Chand and Avtar Singh, for the Respondent

Judgement

Bakshi Ishwar Singh, J.—This is a Petition for issue of a writ of certiorari praying the court to quash the order of respondent No. 1 dated 7-

10-1969/24-11-1969.

2. The brief facts of this case are that the petitioner, who is a resident of Rajouri, was appointed a contractor to collect Dharat in the Notified Area

Committee of Rajouri from 31-3-1965 to 30-3-1966. The total amount of contract money payable was fixed at Rs. 62,100/-. The petitioner

alleged that he had made part payments of Rs. 35,525/- and the balance of Rs. 26,575 was payable by him. He further alleged that due to Indo-

Pak conflict in 1965 and large scale infiltrations in the Poonch-Rajouri District his business suffered a big set back as about 90 per cent of

population of Rajouri Tehsil migrated to the other side of the cease-fire line so he could not pay the balance amount. He also alleged that he

represented to the Notified Area Committee about his loss and the difficulties. Pursuant to those representations the Notified Area Committee passed a resolution on 29-1-1966 and recommended to the Government that a remission of Rs.20,000/- should be granted in favour of the

petitioner. This recommendation, according to the petitioner, was supported by the then Director Local Bodies, Shri S. L. Koul. According to the

petitioner, the Government also got a further probe made in the matter and the Secretary to Government, Health Department (In-charge Local

Bodies) had also declared that the petitioner had suffered losses in Dharat realisation due to abnormal conditions Prevailing in 1965 held the

petitioner to be entitled to a remission of Rs. 20,000/-. The details of the present grievance are given by the petitioner in paras Nos. 7 and 8 of the

petition where in he has alleged that in spite of the abovesaid recommendation and declaration of entitlement of the petitioner to a remission of Rs.

20,000/- respondent No. 2 had issued a certificate to respondent No. 1 to recover a sum of Rs.26,575/- as arrears of land revenue. The

petitioner also alleged that the impugned order is passed in violation of the fundamental rights inasmuch as that the Petitioner has been discriminated

in the matter of grant of remission whereas a remission in similar circumstances was granted to the DHARAT contractor by the Town Area

Committee Ranbir Singh Pura and respondent No. 2 has not treated him in the same manner as the Ranbir Singh Pura contractor was treated.

Two further objections are also raised under the hearing ""grounds."" The first being that u/s 101 of the Municipal Act the recovery of Dharat tax

could only be effected by the machinery under the said Act and the same could not be recovered as arrears of land revenue. Secondly, that the

amount of tax was barred by limitation and realisation of an amount which is not legally recovered cannot be effected as arrears of land revenue.

3. In reply to this petition, objections have been filed by respondents Nos. 1 and 3 through Mr. Amar Chand, Additional Advocate General. and

respondent No. 2 through Mr. Avtar Singh, Advocate. An affidavit of Shri Chuni Lal Sharma, Secretary of the Notified Area Committee, Rajouri,

has also been placed on record. These objections and affidavit are identical in nature and raise three preliminary objections: Firstly that an

alternative remedy was available to the petitioner; Secondly, that as the amount pertains to contract the writ petition is not maintainable and thirdly

that the petition does not involve any legal or constitutional point. On facts, these objections alleged that the facts which are alleged by the petitioner in order to show that he suffered a loss were not correct and in fact the business at Rajouri had not at all been affected. It is further

alleged that the resolution passed by the Notified Area Committee was against facts as it was found to be so when a probe into the allegations was

made by the Deputy Director Local Bodies who came to the conclusion that the business had not at all been affected. As such the representation

of the petitioner and the recommendation of the Committee were rightly rejected. As far as the grant of remission to the DHARAT contractor was

concerned it was submitted by respondents Nos. 1 and 3 that the circumstances were very different in R. S. Pura because the Army had got the

whole town vacated during the conflict and the business had come to a dead stop. The position in both the cases being factually different the

question of discrimination did not arise. As regards the recovery Proceedings, respondent No. 2 specifically alleged that he had authorised

respondent No. 1 to recover the amount due from the petitioner. Whether the recovery could be made as arrears of land revenue or not, the

respondents simply said that respondent No. 1 has powers to recover as arrears of land revenue by attachment and sale of the Property of the

petitioner. The applicability of Article 86 of the Limitation Act was also denied.

4. The counsel for the Parties were heard at length. It is a matter of regret that both the Parties have framed their pleadings in a very loose manner.

The petitioner has not Put on record any material document except an attested copy of the notice dated 24-11-1969 served on the petitioner by

respondent No. 1 asking him to deposit the amount of Rs. 26575/- due from him into the treasury on 25-11- 1969. None of the parties has placed

on record the recovery certificate whereby respondent No. 1 was authorised by respondent No. 2 to recover the amount as arrears of land

revenue. So the petition has to be decided on whatever material has been placed on the file.

5. Taking the preliminary objections first, I am of the opinion that none of the objections have any force. Although the Municipal Act provides a

right of appeal u/s 103 but the appeal can be filed against the orders passed u/s 101. The present order does not fall u/s 101 so strictly speaking

no appeal could be filed. Moreover when an illegal recovery is being made and discrimination is alleged then the petition is maintainable irrespective of the fact that an alternate remedy may have been available. Even if recovery is sought to be made of an amount which is due from a

person under a contract and the proceedings are not legal the petition will be maintainable in that case also. The third preliminary objection is very

vague and needs no discussion.

6. As far as the controversy raised by the petitioner that he had suffered a huge loss due to Indo-Pak conflict and certain recommendations were

made b the Notified Area Committee which entitled him to a remission are set at rest by the findings of fact which had been made on enquiry by

the Deputy Director Local Bodies in which he has reported that the conditions of the Rajouri town during Indo-Pak conflict did not warrant any

remission being granted to the petitioner. At the most it can be said that these facts are disputed between the parties and this Court cannot act

upon the disputed facts nor can enter upon any enquiry as to the truth of either case. Similarly the point of discrimination also has no force because

as shown by the respondents, Ranbir Singh Pura and Rajouri were not similarly circumstanced. Ranbir Singh Pura had been got vacated by the

Army and there was no business worth the name during the period in Question whereas Rajouri town was transacting normal business.

7. The only point which merits serious consideration in this case is as to whether an amount due under a Dharat contract can be recovered as

arrears of land revenue. The recovery of the tax amounts can be effected according to the procedure laid down in Section 101 of the Municipal

Act. The relevant portion of the said section for the sake of facility is quoted as under:-

101. (1) When any arrears of tax, water rate, rent, fee or any other money claimable by a council under this Act shall have become due, the

Executive Officer shall, with the least practicable delay cause to be presented to the Person liable for the payment thereof, a bill for the sum

claimed as due.

(2) Every such bill shall specify-

(a) the period for which, and

(b) the property, occupation or thing in respect of which the sum is claimed, and shall also give notice of-

(i) the liability incurred in default of payment, and

(ii) the time within which an appeal may be preferred as hereinafter provided against such claim.

(3) If the sum for which any bill has been presented as aforesaid is not Paid into the Municipal Office or to a person authorised by any bye-law in

that behalf to receive such payments. within fifteen days from the presentation thereof, the Executive Officer or any officer authorised by the

Executive Officer in this behalf, may cause to be served upon the person liable for the payment of the said sum a notice of demand.

(4) If the person liable for the payment of the said sum does not within fifteen days from the service of such notice of demand either-

(a) pay the sum demanded in the notice, or

(b) show cause to the satisfaction of the Executive Officer or such officer as the Executive Officer may authorise in this behalf, or

(c) prefer an appeal in accordance with the provisions hereinafter mentioned: such sum with all costs of the recovery may be levied under a warrant

caused to be issued by the Executive Officer or an officer duly authorised by him, by distress and sale of the immovable property of the defaulter:

Provided that when any such sum is due on account of tax payable under this Act in respect of any property, it shall be first charge on the property

in respect of which it is payable and shall also be recoverable as arrears of land revenue subject to the condition that nothing in this proviso shall

authorise the arrest of a defaulter.

From the provisions of the section above quoted it is quite clear that the Executive Officer of a Committee has to send a bill to the defaulter and in

case the payment is not made within 15 days then a notice of demand is issued asking the defaulter to pay the amount and in case of failure to pay

within fifteen days inspite of the notice then a warrant of attachment can be issued and the property can be sold. This gives a complete machinery

for the recovery of the tax dues. The counsel for the parties have not been able to show any provision in the Municipal Act under which a

certificate can be issued by respondent No. 2 to the Collector or Tehsildar to recover the amount due as arrears of land revenue. Under the above

circumstances respondent No. 2 could not authorise respondent No. 1 to effect the recovery. The only provision is contained in proviso to clause

4 of Section 101 as quoted above but that pertains to the recovery of a tax due

in respect of a property and does not apply, to the amount of

Dharat contract due as in the instant case.

8. It was argued by the learned counsel for the respondents that respondent No. 1 will be deemed to be exercising powers u/s 101 of the

Municipal Act. This contention has no force because the respondents themselves have admitted that respondent No. 2 authorised respondent No.

1 to effect the recovery. Moreover, the notice which was issued by respondent No. 1 on 24- 11-1969 directed the petitioner to deposit the

amount by the next day i.e. 25-11- 1969. The procedure as given in Section 101 of the Municipal Act is not complied with. It was also admitted

at the bar by the counsel for the petitioner and respondent No. 2 that the Tehsildar was neither the Chairman nor the Executive Officer of the

Notified Area Committee Rajouri at the time when this order had been issued.

9. For the foregoing reasons, the recovery proceedings taken by respondent No. 1 are not according to law and cannot be allowed to continue.

The order of respondent No. 1 dated 24-11-1969 is, therefore, quashed by a writ of certiorari. This of course will not in any way prejudice any

proceedings which respondent No. 2 can take for recovery of the defaulted amount under the Municipal Act. The petitioner will also be entitled to

costs which are assessed at Rs. 100/- (Rupees one hundred) and will be paid by respondent No. 2 only.