
(1966) 02 CAL CK 0009

In the Calcutta High Court

Case No : Civil Revision Cases No's. 3896 and 3897 of 1961

Sankarlal Sarda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-02-1966

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 3(6), 4, 5, 6, 6(3)
Constitution of India, 1950 — Article 227
Revenue Recovery Act, 1890 — Section 3, 3(1), 3(2), 3(3), 4

Citation : 70 CWN 446

Hon'ble Judges : Chatterjee, J;A.N. Sen, J

Bench : Division Bench

Advocate : Bankim Chandra Dutt and S.K. Bhattacharjee, for the Appellant;N.C. Chakravartty, Ajoy K. Basu, Samarendra Nath Dutt and Balin Basu, for the Respondent

Judgement

Chatterjee, J.—These are petitions under Art. 227 of the Constitution against orders of the Board of Revenue affirming the orders of the appellate authority where the trial authority rejected a petition under sec. 9 of the Bengal Public Demands Recovery Act as not being maintainable. The facts of the case so far as are necessary for the present purpose are as follows:--The Collector of Cuttack issued certificates under sec. 3(1) of the Revenue Recovery Act, 1890 to the Collector of 24-Parganas for realisation of certain sum which was due from the petitioners to the State of Orissa. A certificate was thereafter issued under the Bengal Public Demands Recovery Act and notices were issued on the petitioners under sec. 7 of the Bengal Public Demands Recovery Act. The petitioners denied their liability. It was held that the objections were not maintainable. The trial authority rejected the petition on merits ; there was also a case of default. So far as the question of default is concerned we are not expressing any opinion. On the question of merit the only point to be considered, as was considered by the Certificate Officer, is whether the petitions of objection were maintainable or not. The Certificate Officer held that the petitions of objection were not maintainable

and that he held following a decision of this Court reported in (1) Ram Ranjan Rakshit Vs. The Chief Administrator, Rehabilitation Finance Administration, New Delhi and Others, . The appellate authority also came to the same conclusion. The Commissioner summarily dismissed the petition. The Board of Revenue puts the matter in the following manner :--

He (the lawyer of the petitioners) maintains further that the certificate under the Public Demands Recovery Act itself does not lie and this question was never dealt with in 64 C. W. N.

This was considered to be "new point" and was not allowed to be raised. If however a petition is maintainable it is then only the petitioners can challenge the certificate and say that the certificates under the Public Demands Recovery Act did not lie. The Board of Revenue did not hold that the petitions were maintainable. It really affirmed the order of the authority below. We do not think that the Board of Revenue intended to say that a petition was maintainable but a particular objection referred to above could not be raised. Hence, the only question for consideration is whether a petition of objection under sec. 9 of the Bengal Public Demands Recovery Act is maintainable in a case to which sec. 3(1) of the Revenue Recovery Act applies.

2. I would refer to the statement of objects and reasons for that Act which was published in the Gazette of India dated August 27, 1887 where it was Bill No. 10 of 1887. The object has been stated as follows :--

The principal object of this Bill is to provide for the recovery of arrears of revenue in districts other than those in which the arrears have accrued. The necessity of making provision in this behalf arises from the fact that most of the enactments relating to the recovery of revenue are local in their operation. Thus, the North-Western Provinces Land Revenue Act, 1873 extends only to the territories for the time being under the Government of the Lieutenant-Governor of those provinces, and the Oudh Land-Revenue Act, 1876, only to the territories under the administration of the Chief Commissioner of that province. The consequence is that a process for the recovery of an arrear which has accrued in Oudh cannot be enforced in an adjoining district of the North-Western Provinces..... The very great inconvenience arising from such a state of the law has been represented to the Government of India.....and legislation on the lines of this Bill has been urged by those Governments and approved by all other Local Governments.....

In the case of M.K. Ranganathan and Another Vs. Government of Madras and Others, , it has been held that the "statement of objects and reasons can be referred to for the limited purpose of ascertaining the condition prevailing at the time which actuated the sponsors of the Bill to introduce the same and the extent and urgency of the evil on which he sought to remedy." It is for the purpose of ascertaining the condition prevailing at the time of the introduction of the Bill that we have referred to the statement of objects and reasons. The

reasons were to help realisation of government revenue in a district other than the one in which the arrears accrued ; it was difficult to realise the same debt in a neighbouring province where the debtor might have property. This was the evil which was sought to be remedied. The Revenue Recovery Act was not made for devising a second method or an alternative method for recovery of land revenue, but that it was mainly in aid to the existing machinery in the provinces for the recovery of land revenue from the assets of the defaulter in another province or in another district. There was a machinery in North-Western Provinces for recovery of revenue. There was also another in Oudh for recovery of revenue ; but there was no machinery by which money due on account of land revenue in North-Western Provinces could be realised in Oudh except perhaps by the long drawn method of filing a suit on the basis of a certificate issued in other province. Hence, the object for the Revenue Recovery Act was to aid the existing machinery of recovery of revenues where the dues originated in another province. This Bill was introduced as early as 1887 and it is only for the purpose of refreshing our memory that I have referred to the objects and reasons.

3. Coming to the facts of this case, there were certificates under the Public Demand Recovery Act prevailing at Orissa but the arrears could not be realised there. Thereafter, certificates were issued to the Collector at 24-Parganas in terms of the schedule to the Revenue Recovery Act of 1890. Such certificate under Revenue Recovery Act is not a "certificate" within the meaning of Public Demand Recovery Act. The schedule shows that the Collector of a district certifies (under section 3, sub-section 1) that some amount is payable by the debtor to the issuing Collector and he believes that the defaulter has property in the District in which the certificate is sent and he further certifies as follows:--"Subject to the provision of Revenue Recovery Act, 1890 the said sum should be recovered by you as if it were an arrear of land revenue which had accrued due in your district and you are hereby desired so to recover it and remit to my office at.....". This certificate may be equated to a certificate of non-satisfaction which one executing court gives to a decree-holder for execution of the decree in another district. In the facts of this case, the Collector at Cuttack issued two certificates as referred to above to the Collector of 24-Parganas. The Collector of the district receiving the certificate has, under sec. 6 of the Revenue Recovery Act, power to issue the proclamation prohibiting the defaulter from transferring or charging any immovable property belonging to himself in the district and also has power to withdraw such proclamation when the debt has been recovered. Section 6(3) of the Act provides any private alienation will be void as against the government but section 6 (4) provides that the interest of the defaulter will only be sold and incumbrances, grants or contracts made bonafide by the grantor will be protected.

4. Section 7 of the said Act provides that the provisions of any other enactment for the time being in force for the recovery of land revenue or other sums recoverable as arrears of land revenue shall not be affected by the foregoing provision of the Act and further provides that the foregoing provision would not

authorise any person to be arrested for the recovery of certain sums due from the defaulter.

5. The question now is what the Collector at 24-Parganas is to do after he gets the certificate. The answer is he will proceed to realise the sum specified in the certificate under the schedule to the Revenue Recovery Act u/s 3(3) as if it were an arrear of land revenue which accrued due in his own district. Hence, the certificates of the Collector at Cuttack were not sent to the Collector at 24-Parganas for execution of the Cuttack certificates and for realisation of the same. The Collector of Cuttack stated to the Collector of 24-Parganas that sums were due to him on account of arrear of revenue or realisable as arrears of revenue and sec. 3(3) of the Revenue Recovery Act empowered the Collector, 24-Parganas to realise those sums as if they were an arrear of land revenue accrued due in the district of 24-Parganas.

6. The Revenue Recovery Act does not lay down the procedure for the sale of the property. It authorises the Collector to issue certain proclamation u/s 6 of the Revenue Recovery Act and restricts the Collector from selling property of the defaulter free from incumbrance and further protects the defaulter from arrest in certain cases.

7. The Revenue Recovery Act contemplates a "defaulter" and defines a "defaulter." The "defaulter" under the Revenue Recovery Act is not a "certificate debtor" under the Public Demands Recovery Act, though he would be a "Certificate debtor" as soon as a "certificate" under the Bengal Public Demands Recovery Act is signed u/s 5 or 6 of the Bengal Act. But u/s 3 of the Revenue Recovery Act read with the schedule, the Collector of Cuttack certifies (not merely states) that money is payable by the defaulter to him.

8. The nature of this certificate under sec. 3 of the Revenue Recovery Act is that the "certificate shall be conclusive evidence of the matters therein stated". If a defaulter challenges the conclusiveness of those matters he has to file a suit and except by a suit under sec. 4 of the Revenue Recovery Act, the defaulter cannot challenge statements therein.

9. So when the Collector of district 24-Parganas gets the "certificate" under sec. 3, he will have to proceed for the recovery of the sums as if it was an arrear of land revenue payable to him. If it is an arrear of land revenue payable to him, he may proceed under the Bengal Public Demands Recovery Act. The Collector in this case proceeded under the Bengal Public Demands Recovery Act. Because the sum certified would be deemed to be arrears of land revenue which accrued in the district of 24-Parganas it would be "public demand" within the meaning of sec. 3(6) of the Bengal Public Demands Recovery Act. Because it would be "public demand" within the meaning of the Bengal Act, the certificate officer within the meaning of the Bengal Act will have the power to sign "a certificate" within the meaning of Bengal Act and cause it to be filed under sec. 4 or sec. 6 of the Bengal Act. The "defaulter" at Cuttack under sec. 3 of the Revenue Recovery

Act thus becomes a "certificate debtor" at 24-Parganas under the Bengal Act. Because a certificate has been filed u/s 4 or 6 of the Bengal Act, notice has to be given u/s 7 of the Bengal Act to the certificate debtor.

10. As soon as a notice under sec. 7 of the Bengal Act is served, private transfer or delivery of the property by the "certificate-debtor" becomes void and the amount due on the certificate would be charged wherever situated. This is so because of sec. 8 of the Bengal Act. Had there been no such provision in the Bengal Act, the Collector of 24-Parganas might have issued proclamation as under sec. 6 of the Revenue Recovery Act and the consequence of such proclamation would follow as under sec. 6 of the Revenue Recovery Act.

11. A question may be whether the Collector of 24-Parganas would act under sec. 6 of the Revenue Recovery Act or sec. 7 of the Bengal Act. Section 7 of the Revenue Recovery Act provides that the foregoing section including sec. 6 of the Revenue Recovery Act will not affect the provisions of sections 7 and 8 of the Bengal Act. Hence, notwithstanding the provision of sec. 6 of the Revenue Recovery Act, the Collector of 24-Parganas may proceed under sec. 7 of the Bengal Act. If he gives a notice under sec. 7 of the Bengal Act, consequences as in sec. 8 of the Bengal Act will follow and the Revenue Recovery Act will not stand in the way.

12. As soon as a notice under sec. 7 of the Bengal Act is served on the "certificate-debtor" he may file a petition under sec. 9 denying liability. Such a petition is not barred by sec. 7 of the Revenue Recovery Act. But the scope of the petition of sec. 9 of the Bengal Act is circumscribed by the Revenue Recovery Act. But this is only one side, the powers of the certificate-officer under the Public Demands Recovery Act has also been circumscribed ; we are not here concerned with the latter question.

13. The Collector of Dist. 24-Parganas got the certificate from the Collector of Cuttack as in the schedule to the Revenue Recovery Act, whereby he was asked to recover subject to the provision of the Revenue Recovery Act and that Act provides that the certificate of the Collector issuing it is conclusive evidence of matter therein stated. Hence, the "Collector" within the meaning of the Revenue Recovery Act who is the Collector within the meaning of the Bengal Act cannot enquire into matters which are conclusive under sec. 3 of the Revenue Recovery Act. If the Collector of 24-Parganas cannot so enquire the said Collector as "a certificate officer" cannot also so enquire and any officer appointed by him as a certificate officer cannot do more than he could do. Hence, the certificate officer cannot enquire into matters which are conclusive as under sec. 3 of the Revenue Recovery Act.

14. Hence, a petition of objection under sec. 9 of the Bengal Act lies but in that petition the certificate officer cannot determine matters stated in the certificate of Cuttack and they are conclusive.

15. We have been referred to the case reported in (1) Ram Ranjan Rakshit Vs.

The Chief Administrator, Rehabilitation Finance Administration, New Delhi and Others, , It has been held that the only remedy the petitioner can have under the Revenue Recovery Act is under sec. 4(1) by suit as laid down and not by way of objection under sec. 9 of the Public Demands Recovery Act. What we believe was intended to be said was that if a debtor wanted to deny matters conclusive under sec. 3 of the Revenue Recovery Act he had the right to institute a suit under sec. 4. But the certificate officer of 24-Parganas must accept as conclusive all matters which are referred to under sections 3(1) and 3(2) of the Revenue Recovery Act. In the case reported in (1) Ram Ranjan Rakshit Vs. The Chief Administrator, Rehabilitation Finance Administration, New Delhi and Others, , itself this Court considered one objection, namely, whether the guarantor would be bound or not. One result of holding otherwise may be, if the certificate-debtor pays off the debt at Cuttack after the certificate was issued at Cuttack, he would not even be able to deny his liability at Cuttack because he has paid at Cuttack. We, therefore, hold that the petition of objection u/s 9 is maintainable and the scope of that petition is limited by section 3 (2) of the Revenue Recovery Act. We express no opinion on the question of default. If the petitioner is entitled to apply for setting aside the exparte order, he may take such steps as he may think fit and we express no opinion on that matter. The result must be that Sankarlal's petitions of objection u/s 9 of the Bengal Act stand dismissed for default though they are found maintainable. The result it though we do not substantially agree with the views of the authorities below and though we find that petitioner's petitions were maintainable subject to the provisions of the Revenue Recovery Act, we discharge both the rules. There will be no order for costs.

A.N. Sen, J.

I agree.