(1969) 04 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3341 of 1968

Sartaj Singh APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 23-04-1969

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1969) 04 P&H CK 0034

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Harinder Singh Giani, for the Appellant; Ajaib Singh for Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—The facts of this case portray a dismal picture of the manner in which the officials of the State Government sometimes choose to act in the discharge of their duties. The facts, hereinafter stated reveal the scant regard shown by the concerned Government functionaries for the person and property of a respectable citizen of this Republic.

2. Sartaj Singh petitioner owns land and resides in village Chicha, Hadbast 27. tahsil Taran Taran district Amritsar. He is admittedly a Lambardar of the adjoining village Mahmudnagar Hadbast No. 28, in the same tahsil, since August 13 1951. There are four posts of Lambardars in the revenue estate of village Chicha. One of those posts fell vacant on the resignation of one Gurmej Singh on March 21 1955 Petitioner who appears to have been taking keen interest in village welfare as evidenced by the Praman Patra (Annexure ''B'') issued in his favour by the Commissioner, Jullundur Division, on July 24, 1956, made an application for being appointed as a Lambardar in place of Gurmej Singh in addition to his being Lambardar of Mahmudnagar. The only other applicant for the post was one Hardit Singh. By his order, dated September 5, 1957 (Annexure''A''), Shri H. B. Lai who was the Collector of Amritsar at that time held that Sartaj Singh owned 252

Kanals of land out of which 22 Kanals and 7 marlas were in village Chicha, that he was literate, that he was an ex-serviceman and Sarpanch that he was also a member of the Block Advisory Committee and held a number of commendation certificates to his credit, and, therefore, seemed to be a better candidate than Hardit Singh The Collector further observed that Sartaj Singh was of good character and had been recommended by the Revenue Officer below. In spite of all those findings, the Collector declined to applicant Sartaj Singh on the solitary ground that he was already the Lambardar of the adjoining village Mahmudnagar. Having excluded Sartaj Singh from the contest for the above said office, the Collector appointed Hardit Singh who was the only other applicant in the field as Lambadar of village Chicha in the vacancy caused by the resignation of Gurmej Singh. There is no quarrel with that order in the present proceedings.

3. From the original records shown to me, it appears that while recovering the land revenue relating to village Mahmudnagar. the petitioner accepted the lard revenue in respect of both the villages from such landowners as owned land in each of the two villages, and who off red to pav to the petitioner the land revenue in respect of their holdings in village Chicha also. It is, however, significant that it is no body''s case that the petitioner ever kept with him any amount recovered as land revenue from any land-holder in respect of his Chicha land. Notice, dated April 5, 1965 (Annexure ''C''), was issued to the petitioner by the Tahsildar Taran Tarn relating to the recovery of land revenue of village Chicha a amounting to Rs 12,376.84 P. The notice was addressed to the petitioner as "Lambardar, resident of village Chicha" and stated as follows :

You are hereby informed through this notice, in the above mentioned case that you should appear in the Tahsil on the 3Oth April, 1965, together with relevant papers for rendition of account. In case of your absence the recovery will be made by attachment. No objection shall be heard thereafter.

The petitioner claims to have resisted the revenue authorities in their demand to foist the liability for the unpaid amount of land revenue in respect of village Chicha on the ground that he was never appointed a Lambardar of village Chicha and was under no liability to collect or deposit the If nd revenue of that village. The petitioner could not convince the revenue authorities about his stand. Tahsildar, Taran Taran, therefore, issue a memorandum of demand, dated June 7. 1965 (Annexure ''E'') relating to village Chicha, Hadbast No. 27, wherein the petitioner was described as the Lambardar The said memorandum of demand contained year wise figures of the total demand of land revenue and the figures of the amount recovered as land revenue and the balance of recovered revenue. The net balance of the recovered amount after adjusting therefrom the excess recovery is given in the said memorandum as Rs 8,683.72 P. The statement relates to the period commercing from Khar if 1954-55 and ending with the Kharit 1960-61. Faced with this situation, the petitioner served on the State Government notice u/s 80 of the CPC and followed it up by suit No. 185 of 1965, instituted on October 15/16, in that year in the trial Court at Amritsar, Shri R.P.

Gaind, Subordinate Judge. 1st Class, Amritsar, while dismissing the suit by hi; judgment and decree, dated March 7, 1968 on the ground that section 66 read with section 158 of the Punjab Land Revenue Act 1887 (17 of l887) (hereinafter called the Act) barred the jurisdiction of the Civil Court from determining the question of the correctness of the recovery certificate and from trying matters relating to any claim connected with or arising out of the collections by the Government or the enforcement by the Government of any process for the recovery of the land revenue observed inter alia as follows:

It is strange to note in this case that the Government has nowhere pleaded that the plaintiff was appointed as a Lambardar and there is nothing on the record to show under what authority he did so (here covered the land revenue relating to the village Chicha) The appointment of a Lambardar is governed by certain rules and regulations on the subject and it is not discretionary with any revenue authority to authorise or permit anybody to act as such....

He again observed in his judgment that he could not help placing on record the fact that in this case the conduct of the revenue authorities concerned had been most undesirable and in violation of the departmental rules. The petitioner preferred an appeal against the above said judgment and decree of the trial Court which is still pending. I have been told that the appellate Court has been adjourning the hearing of the appeal from time to time at the request of the counsel for the State. Daring the pendency of the civil suit, the land of the petitioner measuring twelve Acres was attached. Though a warrant of arrest of the petitioner for non-payment of the alleged amount due from him had been issued as long ago as on May 19, 1965, it was not executed till after the decision of the civil suit. During the pendency of the petitioner''s appeal against the decree of the civil Court; the said warrant was executed and the petitioner was actually arrested on June 13, 1968, and was kept in the tehsil lock up from that day to June 2t, 1968, and thereafter in civil jail till July 4, 1968, on account of the alleged default of payment of Rs. 10,863.28 P. Though an auction notice in respect of the attached land of the petitioner had been issued on April 6, 1987 (Annexure ''D'') for the recovery of Rs. 8,690.72 P. from him after having obtain d the approval of the Commissioner u/s 75 of the Act and the sale had been proclaimed for May 22, 1967, the property could not be sold as the State had been restrained by an injunction pendente lite issued by the Subordinate Judge. Amritsar, from auctioning the said attached property during the pendency of the petitioner''s suit.

4. It was in the above mentioned circumstances that the present writ petition was filed on October 18, 1968; for quashing the notice, dated April 15, 1935 (Annexure ''C''), and the other recovery proceedings. When the case came up for preliminary hearing, it was directed to be brought to a hearing after service of notice of motion. Service was completed for December 10 1968, but the hearing of the case was adjourned on that date to December 13, 1968, at the request of the learned State Counsel The order of the Motion Bench, dated December 13,

1968, reads as follows :

Mr. Harinder Singh for petitioner.

Mr. Malithi for the State.

It is stated by the counsel for the State that the petitioner was actually asked to collect the land revenue in village Chicha. Let an affidavit be filed to this effect To come up on 3rd January, 1969.

When this case finally came up for admission before Shamsher Bahadur, J. and my self on January 3, 1969, Mr. Majithia appeared for the State, but no affidavit was filed by him in pursuance of the direction given by the Bench on the previous hearing. The petition was, therefore, admitted and recovery proceedings were directed to be stayed. The petition having been dire ted by the Bench to be heard within two months, has come up for hearing before me after service on the respondents. In the written statement, dated January 21, 1969, filed by the Collector, Amritsar, it has been stated that since the petitioner had been receiving the Dhal Bachhes for the period from Kharif 1954, to Kharif 1960, in respect of village Chicha and making collection thereof, as such the recovery of arrears due from him can be made u/s 61 read with section 3(8) of the Act. In reply to the material averments in the written statement of the Collector, the petitioner stated in his replication, dated February 24, 1969, that the respondents had incorrectly stated that the petitioner had been receiving Dhal Bachhes of village Chicha, and that the petitioner was never authorised to collect the land revenue of that village, nor he ever did that, though the petitioner had sometimes assisted the authorities in his capacity as Sarpanch.

5. At the hearing of the petition, the following facts which emerge from the pleadings of the parties and the documents produced by them, have been admitted by the learned State counsel to be correct :

(i) that the petitioner was never appointed as a Lambardar of village Chicha;

(ii) that there is no document on the original record which is held by the learned State counsel, to show that any order was at any time passed by any revenue authority authorising the petitioner to collect the land revenue of village Chicha;

(iii) that the representation which was made before the Motion Bench on December 13, 1968, regarding the petitioner having actually been asked to collect the land revenue of village Chicha was based on erroneous instructions, and is not borne out from the official records,

(iv) that there is no allegation that the petitioner defalcated or kept back with him any amount of land revenue actually recovered by him from any land-owner of village Chicha. The disputed claim of the State against the petitioner is based on his liability to pay the land revenue of the revenue estate of Chicha which has not been recovered from the land-owners; and

(v) that no evidence is available to show that any Dhal Bachh of village Chicha was ever issued to the petitioner.

6. The learned State counsel has shown to me certain receipts (purporting to have been sign, d by the petitioner) relating to recovery of land revenue by him during the period in dispute. One of those receipts does not show the name of the village to which it relates. The petitioner who is present in Court, was asked by his learned counsel about the receipt and he stated that from the name of the land-owner referred to in the receipt it is clear to him that the receipt relates to village Mahmudnagar, and not to village Chicha. In the other receipts there is a specific mention to the effect that the land revenue related to village Chicha. In all those receipts, however, the recovery has been made from the land-owners who owned land in village Mahmudnagar as well as Chicha, and paid land revenue to the petitioner in respect of their entire holding comprised in both the villages. I have noticed those receipts because the learned State counsel took pains to search them in order to point them out to me. Since an averment had been made in the return about the Dhal Bachhes of village Chicha having been issued to the petitioner during the relevant time, and tins allegation was vehemently denied by the petitioner in his replication, asked the learned counsel to show to me if there was anything on the official records supporting the Government''s case. Counsel fairly and frankly conceded that this averment of the Collector is not borne out from anything available on the record with him, and that he is unable to substantiate the said allegation from the records which have been made available to him.

7. It is in the back ground detailed above that the solitary contention of Mr. Harinder Singh Giani, learned counsel for the petitioner, about the entire recovery proceedings against his client being wholly unauthorised and illegal, has to be decided Since the impugned proceedings have been justified on behalf of the State under sections 3(8) and 61 of the Act, both those provisions maybe quoted at this stage. Clause (8) of section 3 defines a ''defaulter" in the following terms:

Defaulter'' means a person liable for an arrear of land revenue, and includes a person who is responsible as surety for the payment of the arrear.

The purview of section 61 with which alone we are concerned the contents of the provisos being irrelevant for our purposes, reads as follows:

In the case of every estate, the entire estate and the landowner or, if there are more than one, the land owners jointly and severally, shall be liable for the land revenue for the time being assessed on the estate.

8. The sole argument of Mr. Harinder Singh is that the petitioner is neither a defaulter within the meaning of section 3(8) of the Act, nor is he liable u/s 61. The definition of "defaulter" in the Act is not exhaustive. It is the admitted case of both sides that the petitioner never stood as a surety for the payment of the amount claimed from him. The petitioner cannot, therefore, fall in the second part of the definition of "defaulter". The question then is whether the petitioner is

"liable for an arrear of land revenue" relating to village Chicha. The State is not claiming from the petitioner the land revenue in respect of the land owned by him in village Chicha. Shorn of all details, the defence of the State seems to be that since the petitioner did in fact assist the revenue authorities in the recovery of the land revenue of village Chicha at times. he is liable to pay the amount of the unrecovered land revenue of that revenue estate. To say the least, this kind of a defence to the present petition does net reflect much credit to the revenue authorities. Since the definition of defaulter" is not exhaustive, I may mention here that the ordinary dictionary meaning of the word as given at page 469 of the third edition of the Shorter Oxford English Dictionary, Volume I, is "one who is guilty of default; especially one who fails to perform some duty or obligation legally required of him." From the admitted facts of this case it appears to be abundantly clear that the petitioner has not failed to perform any duty or obligation cast on him by any law or contract. I am, therefore, unable to hold that the petitioner is a defaulter within the meaning of section 3(8) of the Act or in any sense whatsoever in respect of the amount in dispute for which the recovery certificate has been issued against him. Section 61 merely makes the entire estate and the landowners of that estate jointly and severally liable for the land revenue for the time being assessed on the estate It is not the case of the respondents that the entire land revenue of village Chicha is being claimed from the petitioner merely because he is one of the land-owners in that village. The provisions of sub-section (l) of section 61 of the Act are, therefore, wholly irrelevant for deciding this issue. No land revenue of this village was admitted assigned to the petitioner at any time. In these circumstances I am left with no alternative, but to hold that the recovery proceedings against the petitioner were wholly without jurisdiction and absolutely unjustified. Mr. Harinder Singh claims that the officials concerned and the State are liable to the petitioner for damages for having illegally confined him in the lock up and the civil prison in the impugned recovery proceedings. These are matters into which I cannot appropriately go in these proceedings and the petitioner will have to, if so advised, seek his remedy in other appropriate proceedings in that behalf.

9. For the reasons already stated. I allow this writ petition and quash the entire recovery proceedings against the petitioner, the respondents shall pay the costs incurred by the petitioner in this case which are assessed at Rs. 350/-.

