
(2019) 07 UK CK 0123
In the Uttarakhand High Court
Case No : Special Appeal No. 682 Of 2019

Shankar Rudra

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Uttarakhand Value Added Tax Act, 2005 — Section 51
Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 278, 279, 279(2), 280, 280(1), 280(2), 281, 282, 284, 287A
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 13, 15, 17, 34
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 UK CK 0123

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Himanshu Pal, Puja Banga

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Himanshu Pal, learned Counsel for the appellant and Ms. Puja Banga, learned Brief Holder for the State of Uttarakhand.
2. This appeal is preferred against the order passed by the learned Single Judge in WPMS No.1904 of 2019 dated 03.07.2019 relegating the petitioner to avail the alternative efficacious remedy under Section 51 of the Uttarakhand Value Added Tax Act, 2005.
3. The appellant herein filed WPMS No.1904 of 2019 challenging the recovery notice dated 06.06.2019 whereby a sum of Rs.12,32,66,437/- was directed to be recovered from the petitioner as arrears of land revenue.
4. In the order under appeal, the learned Single Judge noted the petitioner's contention that he was one of the Directors of the Company; and the amounts,

which were sought to be recovered from him as arrears of land revenue, could not be so recovered. The learned Single Judge, thereafter, observed that the writ petition involved appreciation of disputed questions of fact; the petitioner had an alternative efficacious remedy to file a first appeal under Section 51 of the Uttarakhand Value Added Tax Act, 2005; and the writ petition was totally misconceived. The writ petition was, accordingly, dismissed in limine. Aggrieved thereby, the present Special Appeal.

5. Mr. Himanshu Pal, learned counsel for the appellant-writ petitioner, would submit that Section 51 of the Uttarakhand Value Added Tax Act, 2005 has no application to the facts and circumstances of the present case, since an appeal thereunder lies only against an order of assessment; in the present writ proceedings, the petitioner has not subjected the assessment orders to challenge; what is impugned in the writ petition is the recovery certificate issued for recovery of the amounts due in terms of the demand notice issued pursuant to the assessment order; even though a remedy is provided against such orders under Section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for short the "1950 Act"), the said remedy is neither effective nor efficacious, since it requires the entire amount, referred to in the recovery certificate, to be deposited; and such a provision has been held to be illegal in *Mardia Chemicals Ltd. Etc.Etc. vs. Union of India & others Etc. Etc*, 2004(4) SCC 311.

6. The order, impugned in the writ petition, is the notice of recovery dated 06.06.2019 issued by the Assistant Collector Grade-I/II informing the petitioner that a recovery certificate had been received for initiating recovery proceedings against him. The said recovery certificate refers to the letter dated 20.02.2019, and contains the break-up of the amounts due for the three year period 2014-15 to 2016-17, for a total sum of Rs. 12,33,66,437/- i.e. Rs. 4,51,60,473/- for the year 2014-15, Rs. 4,45,50,000/- for the year 2015-16 and Rs. 3,35,55,964/- for the year 2016-17.

7. While stating that the petitioner had resigned as a Director, from the Company in default of tax dues, in the year 2016, Mr. Himanshu Pal, learned counsel for the appellant-writ petitioner, would fairly state that the writ petitioner continued to be a Director, of the Company in default during the years 2014-15 and 2015-16, but the management of the affairs of the Company was under the control of others Directors who were now absconding.

8. Even if we accept the submission of the petitioner, that he resigned in the year 2016, a sum of nearly Rs. 10 Crores (Rs.4,51,61,473+ Rs.4,45,60,000) was due as tax arrears for the period from 2014-15 to 2015-16 when he was, admittedly, a Director of the Company. It is not even the petitioner's case that he is ready and willing to deposit this amount sought to be recovered from him. His contention, on the other hand, is that the remedy under Section 287-A of the 1950 Act is onerous, and is no remedy in the eye of law.

9. Section 287-A of the 1950 Act relates to payment under protest and suit for recovery. Sub-section (1), thereunder, stipulates that, whenever proceedings are taken under Chapter 10 of the 1950 Act, against any person for recovery of any arrears of land revenue, or for any recovery of sum of money recoverable as arrears of land revenue, he may pay the amount claimed under protest to the officer taking such proceedings and, upon such payment, the proceedings shall be stayed, and the person against whom such proceedings were taken may sue the State Government in the Civil Court for the amount so paid, and in such a Suit the plaintiff may, notwithstanding anything contained in Section 278, give evidence of the amount, if any, which he alleges to be due from him. Section 279 prescribes the procedure of recovery of arrears of land revenue and under Sub Section (1) thereof, an arrear of land revenue may be recovered by any one or more of the following processes which includes (a) by serving a writ of demand or a citation, to appear, on any defaulter; (b) by arrest and detention of his person; (c) by attachment and sale of his moveable property including produce, (d) by attachment of the holding in respect of which the arrear is due; (e) by lease or sale of the holding in respect of which the arrear is due; (f) by attachment and sale of other immovable property of the defaulter, and (g) by appointing a receiver of any property, movable or immovable of the defaulter.

10. Section 280 of the 1950 Act relates to the writ of demand and citation to appear and, under Sub section (1) thereof, as soon as an arrear of land revenue has become due a writ of demand may be issued by the Tehsildar on the defaulter calling upon him to make payment of the amount within a time to be specified. Sub-Section (2) stipulates that, in addition to or in lieu of a writ of demand, the Tehsildar may issue a citation against the defaulter to appear and deposit the arrears due on a date to be specified.

11. Section 281 of the 1950 Act confers the power of arrest and detention, and any person, who has defaulted in the payment of arrears of land revenue, may be arrested and detained in custody upto a period not exceeding 15 days unless the arrears including costs, if any, recoverable under sub-section (2) of Section 279, are sooner paid. Section 282 provides for attachment and sale of moveable property and, under sub section (1) thereof, the Collector may, whether the defaulter has been arrested or not, attach and sell his movable property. Section 284 relates to attachment, lease and sale of holding.

12. The appellant-writ petitioner's contention is that the pre- condition of the deposit of the amount, for a suit to be filed, falls foul of the law declared by the Supreme Court in *Mardia Chemicals Ltd. Etc. Etc. vs. Union of India & others Etc. Etc*, 2004(4) SCC 311. In *Mardia Chemicals Ltd. Etc. Etc. vs. Union of India & others Etc. Etc*, 2004(4) SCC 311, the constitutional validity of the SERFASI Act, 2002, more particularly the provisions contained under Sections 13,15,17 and 34 of the Act, were under challenge. In the present writ petition, the petitioner has not put forth any challenge to the constitutional validity of Section 287-A of the 1950 Act. His prayer, in the writ petition, is confined only to a challenge to the

impugned notice of recovery issued by the respondents.

13. In examining the constitutionality of a statute, it must be assumed that the legislature understands and appreciates the need of the people, and the laws it enacts are directed to problems which are made manifest by experience, and that the laws are enacted which are considered to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment (*Charanjit Lal Chowdhuri v. Union of India* : (1950)SCR 869; *State of Bombay v. F.N. Bulsara* : (1951) SCR 682; *Mahant Moti Das v. S.P. Saki* : AIR 1959 SC 942; *Hamdard Dawakhana v. Union of India* : (1960) 2 SCR 671 : AIR 1960 SC 554 : 1960 Cri LJ 735). The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The burden of proving all the facts which are requisite for the constitutional invalidity, is thus upon the person who challenges the constitutionality. (*Ranga Reddy District Sarpanches Association v. Government of A.P.* : 2004 (1) ALT 659; *Karnataka Sugar Workers Federation, Bangalore v. State of Karnataka* : 2003 (4) KLJ 453: (Karnataka High Court FB); *State of Jammu and Kashmir v. T.N. Khosa* : AIR 1974 SC 1). It is only when there is a clear violation of a constitutional provision beyond reasonable doubt, that the court should declare a statutory provision, be it plenary or subordinate, to be unconstitutional. (*Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat* : (2008) 5 SCC 33; *Govt. of A.P. v. P. Laxmi Devi* : 2008 28 JT 639).

14. In the absence of any challenge thereto, it would be wholly inappropriate for us to examine the validity of the said provisions, for there is a presumption regarding the Constitutionality of legislation-plenary or subordinate. Reliance placed by the learned counsel for the appellant-writ petitioner, on *Mardia Chemicals Ltd.Etc. Etc. vs. Union of India & others Etc. Etc*, 2004(4) SCC 311, is, therefore, of no avail.

15. While we agree with the submission of Mr. Himansu Pal, learned Counsel for the appellant-writ petitioner, that the remedy under Section 51 of the Uttarakhand Value Added Tax Act, 2005 is not available to the petitioner to question the impugned recovery citation, he has, admittedly, the remedy under Section 287-A of the 1950 Act. The obligation cast by the said provision to pay the entire amount would not, in the absence of a challenge to its Constitutional validity, require us to discharge the appellant-writ petitioner of this obligation.

16. Suffice it, therefore, to modify the order of the learned Single Judge to a limited extent and hold that, since the writ petitioner has an alternative remedy under Section 287-A of the 1950 Act, we see no reason to interfere with the impugned order in proceedings under Article 226 of the Constitution of India.

17. The Special Appeal fails and is, accordingly, dismissed. No costs.