(1993) 03 SC CK 0120

In the Supreme Court Of India

Case No : Civil Appeal No. 775 of 1978

Siroman Singh APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 17-03-1993

Acts Referred:

Bihar and Orissa Excise (Amendment) Act, 1980 — Section 2, 2
Bihar and Orissa Excise Act, 1915 — Section 93(1)
Revenue Recovery Act, 1890 — Section 3

Citation : (1993) 1 BC 476 : (1994) 78 CLT 464 : (1993) 3 JT 585 : (1993) 2 SCALE 94 : (1993) 3 SCC 562 Supp

Hon'ble Judges : N. M. Kasliwal, J;Kuldip Singh, J

Bench : Division Bench

Advocate : P.D. Sharma, for the Appellant;

Final Decision : Partly Allowed

Judgement

Kuldip Singh, J.—The question for consideration in this appeal is whether the excise dues under the Bihar and Orissa Excise Act, 1915 (the Act) can be recovered as arrears of land revenue under the Revenue Recovery Act, 1819 (the Recovery Act)? The High Court decided the question in the affirmative and against the appellant. This appeal by way of special leave is against the judgment of the High Court dated March 28, 1977.

2. The appellant was carrying on the business of manufacture and sale of country liquor. He fell into arrears of excise-dues which remained unsatisfied. Since the appellant belonged to district Singhbhum (Bihar) and had his property and assets in the said district, the Collector Mayurbhanj (Orissa) issued requisition to the Collector Sighbhum (Bihar) under the Recovery Act. On the basis of the requisition sent by Collector, Mayurbhanj proceedings were initiated for recovery of dues from the appellant. At that stage appellant filed writ petition under Article 226 of the Constitution of India before the Orissa High Court which was dismissed.

3. Section 3 of the Recovery Act is as under:

Recovery of public demands by enforcement of process in other districts than those in which they become payable. (1) Where an arrear of land-revenue, or a sum recoverable as an arrears of land-revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating.

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) 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.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amours stated therein as if it were an arrear of land revenue which had accrued in his own district.

4. Section 93(1) of the Act which is relevant is an under: "The following moneys namely,

(a) all excise-revenue,

(b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him u/s 46, and

(c) all amounts due to the State Government by any person on account of any contract relating to the excise-revenue, may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of revenue.

5. The only point raised before us by learned Counsel for the appellant is that the excise dues being arrears of revenue - not "arrears of land-revenue, or a sum recoverable as an arrear of land-revenue" are not covered by Section 3 of the Recovery Act and as such the High Court was not justified in dismissing the writ petition of the appellant. The High Court rejected the point raised by the appellant on the following reasoning:

Undoubtedly arrears of revenue can be collected as public demand and we see no force in the contention of Mr. Mohanty that arrears of excise revenue in question would not be covered by Section 3 of the Revenue Recovery Act The distinction drawn by Mr. Mohanty between recoverable as arrears of revenue and as arrear of land-revenue does not impress us as a contention on which relief can be granted.

learned Counsel for the appellant vehemently relied on a Division Bench judgment of the Patna High Court in Lakshmi Prasad Sao and Ors. v. Collector and Deputy Commissioner, Singhbhum and Ors. (1979) BLJR. 379. In the said judgment the Patna High Court on the interpretation of the Recovery Act and the Act- facts being similar to this case- has held that "arrears of revenue" and "arrears of land-revenue" are two distinct terms. It has been further held by the Patna High Court that the excise dues cannot be considered as "arrears of land-revenue and as such the Recovery Act was not applicable for the purpose of recovering the excise dues.

6. It is no doubt correct that Lakshmi Prasad Sao's case fully support the appellant but it is not necessary for us to go into the merits of the question as Section 93 of the Act has since been amended by the Bihar and Orissa Excise (Orissa Amendment) Act, 1980. Section 2 of the Amendment Act is as under:

Amendment of Section 93 in Section 93 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915), in Sub-section (1), for the words "recovery of arrears of revenue", the words "recovery of arrears of land revenue" shall be and shall be deemed always to have been substituted.

7. The amendment brought into Section 93 shall be "deemed always to have been substituted". The effect of the amendment is that the excise dues can now be recovered as arrears of land revenue. In view of the amendment incorporated in Section 93 of the Act, it is not necessary for us to go into the question as to which of the two views-Orissa High Court in the impugned judgment or Patna High Court in Lakshmi Prasad Sao's case - is correct.

8. The appeal is, therefore, dismissed. No costs.