(1987) 01 AHC CK 0060

In the Allahabad High Court

Case No : Civil Misc. Writ No. 1648 of 1986

Smt. Sita Devi APPELLANT

Vs

Kanpur Jal Sansthan and Others RESPONDENT

Date of Decision : 12-01-1987

Acts Referred:

Companies Act, 1913 — Section 186
Constitution of India, 1950 — Article 226
Limitation Act, 1908 — Article 181, 28, 3, 7
Limitation Act, 1963 — Article 137, 3, 4, 5
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 7, 7(1)
Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 52, 53, 54, 55, 56

Citation : (1987) 1 AWC 649

Hon'ble Judges : R.S. Dhavan, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : Dinesh Dwivedi and Rakesh Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—The sole question raised in this petition under Article 226 of the Constitution is whether in respect of water tax recoverable as arrears of land revenue there may be notice of demand issued by the local authority beyond the period of three years from the date when the liability arose. Kanpur Jal Sansthan Respondent had issued notice to the Petitioner describing it as the final notice u/s 64 of the U.P. Water Supply and Sewerage Act, 1975 (U.P. Act 43 of 1975)(as amended) for recovery of water tax for the period of 1978-81 in respect of a house belonging to the Petitioner. According to the Petitioner the notice was served upon her on December 7, 1986. Learned Counsel urged that period covered under the notice being beyond three years from the date when the notice came to be served on the Petitioner, the recovery sought to be made stands barred by limitation. We find no merit in this contention.

2. Section 3 of the Limitation Act, 1963 creates the bar of limitation in relation to a suit, appeal and applications. A suit is instituted in an ordinary case when the

plaint is presented to the proper officer. The application referred to u/s 3 as also Article 137 of the Schedule to the Limitation Act is an application made to court whether under the CPC or under any other provision. Article 137 is residuary in character; it refers to any application other than those specified in the Schedule for which no period of limitation is provided elsewhere in the Act. The law is now settled that applications contemplated under Article 137 are not applications confined to the CPC but these have to be applications made to court--vide: The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, in paragraph 18 of the reported decision it was observed;

The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure other than those mentioned in part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if Applicant or the Appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

3.The Limitation Act contains no provision in respect of recovery sought to be made as arrears of land revenue. Section 64(1) of the U.P. Water Supply and Sewerage Act 1975 (hereinafter referred to as the Act) reads as under:

Any sum due to a Jal Sansthan on account of tax, fee, cost of water, cost of disposal of waste water, the meter rent, penalty, damage or surcharge under this Act, shall be recoverable as arrears of land revenue.

4. The relevant expression is "any sum due to a Jal Sansthan on account of tax". Chapter VI of the Act makes provision for Taxes, Fees and Charges. Sections 52 to 57 relate directly to liability for payment of taxes, the assessment of annual valuation and restriction of levy of taxes. In the context the words "sum due" would denote a sum owned by the Petitioner to the Jal Sansthan under the substantive provision of the Act. A debt on being barred by limitation, does not cease to be due; it remains due even though it ceases to be recoverable. This rests on the settled proposition that the bar of limitation extinguishes the remedy but not the right except u/s 27 corresponding to Section 28 of the old Limitation Act, 1908 whereunder the right to property extinguishes at the determination of the period limited under the Act for instituting a suit for possession thereof. It would follow that upon being barred by limitation, a sum may not remain payable. It is nonethless a sum due in the sense that the liability for payment thereof as incurred under the relevant statutory provisons. u/s 64(1) the

expression used is a sum due and this is not without significance.

5. In New Delhi Municipal Committee v. Kalu Ram AIR 1976 Supreme Court 1637 relied for the Petitioner the question arose with respect to recovery of rent or damages relating to public premises as arrears of land revenue. Section 7(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 provides:

Where any person is in arrears of rent payable in respect of any public premises, the person to pay the same within such time and in such instalments as may be specified in the order.

6.Their Lordships upheld the alleged bar of limitation with respect to the recovery of rent or damages contemplated u/s 7(1) on the following ratio:

Under Section 7 the Estate Officer may order any person who is in arrears of rent ''payable'' in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is ''payable''. The word ''payable'' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. ''Payable'' generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred.

7. The emphasis, it would be noticed, is all along on the use of the expression ''payable'' in Section 7(1) where the recovery of any amount is barred by limitation, it Was pointed out, the amount cannot be construed as being payable. The same may not be held to apply ipso facto to a case as the present before us where the provision talks of a sum due and not with respect to a sum payable. The word ''payable'' was construed as meaning "legally" recoverable and but since the right does not extinguish due to lapse of time, it may not be claimed that the sum ceases to remain due. The proposition that the statute of limitation bars the remedy without touching the right was affirmed in the aforementioned decision also by the Supreme Court; it was further observed that a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it. The relevant text of Section 64(1) under consideration before us being distinct from that of Section 7(1) which was in issue in the case of New Delhi Municipal Committee (supra) there is

no assistance derived by the Petitioner in the proposition sought to be advanced from his side.

8. Reliance is placed also by the learned'' counsel on the decision of the Privy Council in Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 which is cited also in New Delhi Municipal Committee (Supra), we have carefully looked into that decision as well. The case therein related to an application made by the Liquidator u/s 186 of the Companies Act, 1913 for recovery of certain dues. The words appearing in Section 186 were "any money due from him or from the estate of the person whom he represents to the Company ". It was held that the application u/s 186 of the Companies Act would be an application such as is contemplated u/s 3 of the Limitation Act, 1908; it was stated, however, that Article 181 of the Old Limitation Act (corresponding to Article 137 of the new Act) related only to applications under the CPC in which case no period of limitation has been prescribed for the application As has been mentioned above this is not the view endorsed by the Supreme Court any longer, see: The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, . The Privy Council case does not pertain to recovery of any amount recoverable as arrears of land revenue. An application such as provided for u/s 186 of the old Companies Act, would be covered u/s 3 of the Limitation Act meaning thereby that in respect of such an application, there is the statutory bar of limitation provided under the Limitation Act and consequently there could be no recovery of any sum such as referable to Section 186 beyond the ordinary period of limitation. This cannot be extended to a sum recoverable as arrears of land revenue in respect whereof there is no bar of limitation contained in the Limitation Act and hence it remains the sum due and recoverable as such.

9. In the light of the discussion made above, we are of opinion that the right of the Respondent No. I to recover under the notice impugned the water tax from the Petitioner is not extinguished by limitation.

10. The petition consequently fails and is dismissed in limine.