

(2011) 01 AHC CK 0247
In the Allahabad High Court
Case No : Writ C No. 66154 of 2010

Sukh Lal and Darbari Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Companies Act, 1956 — Section 617
Contract Act, 1872 — Section 23
Uttar Pradesh Co-operative Societies Act, 1965 — Section 131, 2, 3, 3(2), 92
Uttar Pradesh Land Revenue Act, 1901 — Section 148
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 2, 4(2)
Uttar Pradesh Sahkari Gram Vikas Banks Act, 1964 — Section 15, 15(1), 16, 16(1), 2
Uttar Pradesh Sahkari Gram Vikas Banks Rules, 1971 — Rule 45, 47
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 281

Citation : (2011) 1 ADJ 839 : (2011) 2 AWC 1296

Hon'ble Judges : Shyam Shankar Tiwari, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These two writ petitions, raising similar issues, have been heard together and are being decided by this common judgment.

2. Counter and rejoinder affidavits have been exchanged between the parties and reference to the pleadings in Writ Petition No. 66154 of 2010 is sufficient for deciding both the writ petitions.

3. We have heard Sri Jagannath Singh, learned Counsel for the Petitioners, Sri K.N. Mishra and Sri Shailendra Kumar Singh appearing for the U.P. Sahkari Gram Vikas Bank Limited and learned Standing Counsel.

Brief facts of Writ Petition No. 66154 of 2010 are as follows; the Petitioner mortgaged his 1/3rd share in six plots area 2.813 hectares for obtaining a loan from Respondent No. 4. The loan was repayable in instalments within five years at the rate of 16% interest. The Petitioner purchased a Vikram Taxi (Registration

No. UP 70/Y, 9354). A notice for payment of road tax was issued to the Petitioner on 3rd March, 2006 for the period 1st October, 2003 to 31st March, 2006 by Regional Transport Officer, Allahabad. The Petitioner made certain payments towards repayment of loan, last payment of Rs. 14,000/- was made on 2nd January, 2009. In the year 2006, the Petitioner was detained in prison for 14 days. The Petitioner's vehicle was also claimed to be attached from 2nd March, 2006. The Petitioner made an application under the Right to Information Act, 2005 enquiring details of outstanding amount in his loan amount. He was informed by letter dated 18th August, 2010 that total due till 31st August, 2010 is Rs. 4,44,004/-. The Branch of Respondent No. 4 sent a letter dated 20th October, 2010 to Tahsildar/Sub Divisional Officer, Tahsil Bara, Allahabad informing that defaulters who are covered by proceedings u/s 95A of the U.P. Cooperative Societies Act, 1965 (hereinafter referred to as the 1965 Act) have not yet deposited their dues, hence citation be issued. Along with the letter dated 20th October, 2010 a list of 50 defaulters was sent in which the name of the Petitioner (Sukh Lal) has been shown at Serial No. 28 with due amount of Rs. 2,85,109/-. The Naib Tahsildar issued an order dated 23rd October, 2010 for issuing notice and citation. Citation dated 23rd October, 2010 has been issued containing the seal of Tahsildar, Jasra, to the Petitioner (Sukh Lal) for an amount of Rs. 2,85,109/-. The Petitioner claims to have filed an objection before the Collector dated 3rd November, 2010 raising various objections and praying for setting aside the recovery proceeding. Writ Petition No. 66154 of 2010 has been filed by Sukh Lal praying for following relief :

i) issue, a writ of certiorari quashing the recovery proceeding against the Petitioner pending before Respondent No. 3, in pursuance of recovery certificate dated 20.10.2010 issued by Respondent No. 4 (Annexure No. 6 to the writ petition) and citation dated 23.10.2010 issued by Respondent No. 3 (Annexure No. 7 to the writ petition).

ii) issue, a writ of mandamus directing the Respondents not to arrest the Petitioner regarding this recovery.

iii) issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

iv) award cost of the writ petition in favour of the Petitioner.

4. In Writ Petition No. 69811 of 2010, the Petitioner (Darbari Lal) claims to have been sanctioned a loan of Rs. 50,000/- on 31st December, 2004. The Petitioner claims that he was subsequently told that he has been sanctioned loan of Rs. 1,00,000/-. The Petitioner was granted loan for purposes of milk dairy. Copy of the mortgage deed has been filed by the Petitioner as Annexure-2 to the writ petition. The amount of loan was to be repaid within five years with interest of 12.5%. The Petitioner mortgaged his share in six plots area area 1.020 hectare for obtaining the loan. The letter dated 20th October, 2010 was sent by the Branch to the Tahsildar/Sub Divisional Officer in which the name of the Petitioner

has been placed at Serial No. 24 with due amount of Rs. 1,67,717/-. The Petitioner has placed reliance on the Government order dated 31st May, 1979 which provided that under the Public Moneys (Recovery of Dues) Act, 1972 the mortgaged property has to be sold first.

5. Sri Jagannath Singh, learned Counsel for the Petitioners, raised following submissions in support of the writ petition :

(i) The Petitioner was granted loan by U.P. Sahkari Gram Vikas Bank Limited, which is governed by the provisions of the U.P. Sahkari Gram Vikas Banks Act, 1964 (hereinafter referred to as the 1964 Act) and the rules, namely, the Uttar Pradesh Sahkari Gram Vikas Banks Rules, 1971 (hereinafter referred to as the 1971 Rules). The 1964 Act provides procedure for recovery of loan and according to Rule 45 of the 1971 Rules, the certificate of recovery is to be issued by the Registrar and in the present case no certificate having been issued by the Registrar, the recovery proceedings initiated against the Petitioners are contrary to the provisions of the 1964 Act and 1971 Rules and are liable to be set-aside on this ground alone. The counsel for the Petitioners has placed reliance on a Division Bench judgment of this Court in the case of Shesh Bahadur v. State of U.P. and others, reported in 2009(3) ADJ 588.

(ii) All recoveries have to be made in accordance with the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 (hereinafter referred to as the 1972 Act). According to Section 4(2)(b) of the 1972 Act in every case of mortgage the interest of the defaulter has to be first sold in such property. The Respondents, without proceeding to sell the mortgage property, cannot adopt any other mode of recovery. Reliance has been placed on a judgment of this Court in the case of Uma Datt Mishra v. the Collector, Rae Bareilly and Ors. reported in 1977 AWC 142 as well as on the Government order dated 31st May, 1979.

(iii) The mortgage deed, which was entered between the Petitioner and Respondent No. 4, is void and is unenforceable. It does not provide mode and manner of recovery it having not mentioned that recovery is to be made in how many instalments. Reliance has been placed on a Full Bench judgment of this Court in the case of Nutan Kumar and others Vs. IInd Additional District Judge, Banda and others,

(iv) Even in proceedings of recovery u/s 95A of the 1965 Act, the Petitioner has to be informed of the dues and without giving any opportunity of hearing recovery certificate cannot be sent by the Registrar u/s 95 A. Reliance has been placed on the Division Bench judgment of the Lucknow Bench of this Court in the case of Rasul Bux v. State of U.P. and others, reported in 1977 AWC 711.

(v) The Naib Tahsildar, who has directed for issuance of citation, had no jurisdiction to issue the same and it is only the Tahsildar who is authorised to issue citation for recovery of arrears of land revenue. Further the Collector has not passed any order for proceeding with the recovery and without there being any order of Collector, the citation cannot be issued even by Tahsildar.

(vi) The Petitioner (Sukh Lal) having been arrested on 2nd March, 2006, sent to Central Jail, Naini and released after 14 days, he cannot be arrested again in pursuance of the recovery.

6. Sri K.N. Mishra, learned Counsel appearing for Respondent No. 4, submits that the Bank has initiated process of recovery by issuing a certificate u/s 95A of the 1965 Act. He submits that recovery certificate u/s 95A of the 1965 Act was sent against the Petitioners and several other defaulters on 5th October, 2007. The recovery certificate was issued by the District Assistant Registrar, Cooperative Societies, U.P. Allahabad, who has been delegated the powers of the Registrar by the notification issued by the State Government dated 15th November, 1979 and the recovery certificate u/s 95A of the 1965 Act was validly issued which has to be executed u/s 92 of the 1965 Act and the Collector, Allahabad has authorised the District Assistant Registrar to execute the certificate of recovery issued u/s 95A of the 1965 Act by his order dated 6th May, 1991. He submits that State Government has issued a Government order dated 27th December, 2007 that against the defaulters of less than 1,00,000/-amount, unnecessary coercive proceedings be not taken. It is submitted that after the Government order dated 27th December, 2007 a list of defaulters, who were defaulters of more than Rs. 1,00,000/-, was separated and a letter was issued by the Branch Manager for issuing citation in continuation of earlier certificate issued u/s 95A of the 1965 Act. It is submitted by Sri Mishra that letter dated 20th October, 2010 is not the recovery certificate u/s 95A and the certificate was already issued on 5th October, 2007. It is submitted that Petitioner had mortgaged his property. It is further submitted that Petitioner had made certain deposits in different months casually up to June, 2005. An amount of Rs. 7,000/-was deposited on 22nd March, 2007 and further an amount of Rs. 14,000/-on 2nd January, 2009, which was kept in sundry account. It is submitted that Uttar Pradesh Sahkari Gram Vikas Bank Limited is a registered cooperative society within the meaning of the 1965 Act and the Bank is free to invoke the process as provided under the provisions of Section 95A of the 1965 Act for issuance of the recovery certificate and it is not necessary for the Bank to adopt the process of recovery as provided under the 1964 Act and 1971 Rules. It is submitted that the provisions of U.P. Public Moneys (Recovery of Dues) Act, 1972 (hereinafter referred to as the 1972 Act) are not applicable. It is further submitted that mortgage deed is fully valid and is enforceable. There is neither any error in the recovery certificate dated 5th October, 2007 nor such certificate has been challenged in the writ petition. The Petitioner is not entitled for any relief. Learned Counsel for the Bank has further submitted that the Petitioner Sukh Lal, without informing the Bank, has sold his mortgaged property which clearly shows that his intention is to defeat the rightful claim of the Bank.

7. Learned Standing Counsel, refuting the submission of learned Counsel for the Petitioners, contended that citation has rightly been issued against the Petitioners and there is no error in the recovery proceedings initiated against the Petitioners.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. The first submission of learned Counsel for the Petitioners is that recovery proceedings are in violation of the provisions of 1964 Act and 1971 Rules. He submits that according to Rule 45 of the 1971 Rules certificate is to be issued by the Registrar and the certificate issued by the Branch Manager dated 20th October, 2010 is wholly without jurisdiction.

10. The U.P. Sahkari Gram Vikas Banks Act, 1964 has been enacted to facilitate the working of Sahkari Gram Vikas Banks in the State of Uttar Pradesh. Section 2(j) provides that Uttar Pradeshs Sahkari Gram Vikas Bank means a cooperative society registered under the Cooperative Societies Act. Section 2(j) is quoted below :

2(j). Uttar Pradesh Sahkari Gram Vikas Banks means a cooperative society registered under the Co-operative Societies Act for the time being in force in Uttar Pradesh with its area of operation covering the whole of Uttar Pradesh and carrying on the business as a Gram Vikas Bank and facilitating the operation of its members;

11. From the materials brought on the record including the mortgage deed (Annexure-1 to the writ petition), it is clear that the Uttar Pradesh Sahkari Gram Vikas Bank Limited is a registered society under the Cooperative Societies Act, 1912. According to Section 131 of the 1965 Act any cooperative society existing on the date of coming into force of the 1965 Act and registered under the Cooperative Societies Act, 1912 shall be deemed to be registered under the 1965 Act. Thus the U.P. Sahkari Gram Vikas Bank is a registered cooperative society within the meaning of the 1965 Act. Section 15 of the 1964 Act provides procedure for distraint and sale by the Gram Vikas Bank. Sections 15(1) and 16(1) of the 1964 Act, which are relevant for the purpose, are quoted below :

15(1). Distraint when to be made.-(1) If any instalment payable under a mortgage executed in favour of a Gram Vikas Bank or any part of such instalment remains unpaid for more than one month from the date on which it falls due, the managing committee may, in addition to any other remedy available to the said bank, apply to the Registrar for the recovery of such instalment or part thereof by distraint and sale of the produce of the mortgaged land including the standing crops thereon.

(2) ...

(3) ...

16. Power of sale when to be exercised (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, where a power of sale without the intervention of court is expressly conferred on a Gram Vikas Bank by a declaration of charge made or mortgage deed executed before or after the commencement of this Act, the managing committee of such bank or any person

authorised by such committee in this behalf shall, in case of default in payment of the money due under the mortgage or charged or any part thereof, have power, in addition to any other remedy available to the said bank, to bring the property subject to any mortgage or charge to sale without the intervention of the court.

(2) ...

(3) ...

(4) ...

(5) ...

12. The aforesaid of Sections 15 and 16 of the 1964 Act clearly indicate that the power given in the aforesaid Sub-sections are in addition to any other remedy available to the said Bank. Thus the procedure laid down in the 1964 Act does not prohibit adopting of any other process which is available to the Gram Vikas Bank under any law. As noticed above, the Gram Vikas Bank being a registered cooperative society within the meaning of the 1965 Act, the provisions of Section 95A of the 1965 Act are fully applicable.

13. Rule 45 of the 1971 Rules on which much reliance has been placed by counsel for the Petitioners, provides as under :

45. Recovery of arrears of loans secured on furnishing sureties - (1) The Registrar may on an application made in this behalf for the recovery of arrears of any loan or any instalment thereof on furnishing a statement and accounts in respect of such loans and after making such enquiries, if any, as he thinks fit, issue a certificate for recovery of the amount due.

(2) A certificate issued by the Registrar under Sub-rule (1) shall be final and conclusive proof of the dues which shall be recoverable as arrear of land revenue from the sureties and the borrower jointly and severally.

14. Rule 45 of the 1971 Rules has been subsequently added in the 1964 Act. By notification dated 22nd January, 1990 Chapter 5-A was added in the 1965 Act. Rule 45 is akin to Section 95A of the 1965 Act. Section 95A of the 1965 Act is quoted below :

95A. Special provision for recovery of certain dues of agricultural society. (1) The Registrar may, on an application made by society referred to in Section 34 or an agricultural credit society for the recovery of arrears of any loan advanced by it or any instalment thereof to any member and on its furnishing a statement of accounts in respect of such loan and after making such inquiries, if any, as he thinks fit, issue a certificate for recovery of the amounts due.

(2) A certificate issued by the Registrar under Sub-section (1) shall be final and conclusive proof of the dues which shall be executable u/s 92.

15. Rule 45 of the 1971 Rules provides that Registrar on an application made for

recovery of arrears of any loan may issue a certificate for recovery of the amount. The word "Registrar" is defined in Section 2(h) of the 1964 Act, which is to the following effect :

2(h). "Registrar" means the person appointed by the State Government to be Registrar of Cooperative Societies for the State of Uttar Pradesh under the provisions of the Cooperative Societies Act for the time being in force in Uttar Pradesh;

16. Section 95A of the 1965 Act also refers to "Registrar" and for "Registrar", the definition given in Section 2(r) of the 1965 Act is to be referred, which is to the following effect :

2(r). "Registrar" means the person for the time being appointed as Registrar of Cooperative Societies under Sub-section (1) of Section 3 and includes any person appointed under Sub-section (2) of that section when exercising all or any of the powers of the Registrar;

17. From the above provisions, it is clear that the procedure for issuing certificate under Rule 45 of the 1971 Rules and the authority to issue the said certificate are the same as provided u/s 95A of the 1965 Act. Thus the submission of learned Counsel for the Petitioners that recovery, which is under challenge, is against the 1964 Act and the 1971 rules cannot be accepted.

18. The Respondent-Bank has come up with the specific plea that recovery has been initiated on the basis of certificate issued u/s 95A of the 1965 Act and the said certificate has been filed as Annexure CA-2 to the counter affidavit filed by Respondent No. 4. Annexure CA-2 to the counter affidavit specifically refers to Section 95A of the 1965 Act and the certificate has been issued by the District Assistant Registrar, Cooperative Societies, U.P. The Respondent No. 4 has brought on the record the notification dated 15th November, 1979 issued by the State Government in exercise of power of U.P. General Clauses Act, 1904 read with power of the State Government as referred to u/s 3(2) of the 1965 Act by which the District Assistant Registrar has been authorised to exercise the power u/s 95A of the 1965 Act with regard to such branches of the Uttar Pradesh Sahkari Bhumi Vikas Bank Limited which are within its jurisdiction. Section 3 of the 1965 Act is quoted below :

3. Registrar. -(1) The State Government may appoint a person to be the Registrar of Cooperative Societies for the State.

(2) The State Government may, for the purpose of this Act, also appoint other persons to assist the Registrar and by general or special order confer on any such person all or any of the powers of the Registrar.

(3) Where any order has been made under Sub-section (2) conferring on any person all or any of the powers of the Registrar under any provision of this Act, such order shall be deemed to confer on him all the powers under that provision as may be amended from time to time.

19. Thus the District Assistant Registrar is fully empowered to exercise the power of Registrar u/s 95A of the 1965 Act and the recovery certificate dated 5th October, 2007 issued by the District Assistant Registrar is fully in consonance with the provisions of Section 95A of the 1965 Act and the District Assistant Registrar for the purpose of Section 95A of the 1965 Act is empowered to act as Registrar. Thus the submission of the Petitioners' counsel that recovery proceedings initiated against the Petitioners are in breach of the 1964 Act and the 1971 Rules is misconceived.

20. Reliance has been placed by the learned Counsel for the Petitioners on the Division Bench judgment of this Court in Shesh Bahadur's case (supra). In the said case the notice was served by the Branch Manager of the Bank and this Court took the view that according to Rule 45 of the 1971 Rules recovery certificate can be issued by the Registrar. Due to the aforesaid reason, the writ petition was allowed. The said judgment, which is in two paragraphs is quoted below :

1. Petitioner has contended before this Court that notice impugned herein has been served by the Branch Manager of the Bank. The loan which is in the nature of commercial loan sought to be recovered as arrears of land revenue at least as per citation. But we will find from Rule 45 of U.P. Sahkari Gram Vikas Banks Rules, 1971 that a recovery certificate can be issued by the Registrar of a Co-operative Bank under Rule (2) of Sub-rule (1) which shall be final and conclusive proof of the dues which shall be recoverable as arrears of land revenue from the sureties and the borrower jointly and severally. In paragraph 16 of the writ petition, the Petitioner has specifically taken that ground. Therefore, at this stage, we do not find any reason to keep the writ petition pending unnecessarily but to pass the order to the extent that the notice which has been issued by the Bank for the purpose of recovery and the citation without following Rule 45, shall be quashed. However, passing of this order will no way affect the right of the Respondent-authorities to take the course of law as per Rule 45 of the aforesaid Rule to collect the arrears, if any, from the Petitioner.

2. With the above observation, writ petition is disposed of. No order is passed as to costs.

21. In Shesh Bahadur's case (supra) no such proposition was laid down that District Assistant Registrar cannot issue certificate u/s 95A of the 1965 Act and in the said case no certificate issued by the District Assistant Registrar was in question, rather notice issued by the Branch Manager of the Bank was under challenge. The said judgment does not help the Petitioners in the present case.

22. The second submissions of learned Counsel for the Petitioners is that mortgaged property has to be sold first by virtue of provisions of Section 4(2)(b) of the 1972 Act. Learned Counsel for the Petitioners submits that all recoveries have to be made under the 1972 Act. The 1972 Act has been enacted to provide for speedy recovery of certain classes of dues payable to the State Government

or to the Uttar Pradesh Financial Corporation or any other Corporation notified by the State Government in that behalf or to any nationalised or other Scheduled Bank or to a Government Company. Sections 2(a), 2(c) and 2(f), which are relevant, are quoted below :

2. Definitions.-In this Act, unless the context otherwise requires:

(a) "Corporation" means the Uttar Pradesh Financial Corporation established under the State Financial Corporation Act, 1951, and includes any other Corporation owned or controlled by the Central Government or the State Government and specified in a notification issued in that behalf by the State Government in the Official Gazette;

(b) ...

(c) "Government Company" means a Government Company as defined in Section 617 of the Companies Act, 1956;

(d) ...

(e) ...

(f) "banking company" means the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or a banking company as defined in the Banking Regulation Act, 1949, or a financial bank or Central Bank as defined in the Uttar Pradesh Cooperative Societies Act, 1965 not being a land development bank;

23. According to definition of "banking company" u/s 2(f) of the 1972 Act, the land development bank has been expressly excluded. Thus the 1972 Act has no application with regard to dues of land development bank and the submission of learned Counsel for the Petitioners that u/s 4(2)(b) of the 1972 Act, the mortgage property has to be first sold has no substance.

24. The next submission of learned Counsel for the Petitioners is that the mortgage deed is void. He submits that mortgage deed does not mention as to in how many instalments the amount has to be repaid. He has placed reliance on a Full Bench judgment of this Court in Nutan Kumar's case (supra). In Nutan Kumar's case, the Full Bench of this Court held that agreement forbidden by law and contrary to public policy is void and if the parties agree thereto it shall not become valid. Paragraphs 22 and 23, which have been relied by learned Counsel for the Petitioners, are quoted below :

22. An agreement offending a Statute or public policy or forbidden by law is not merely void but it is invalid from nativity. It cannot become valid even if the parties thereto agree to it.

23. The concept that an agreement may be void in relation to a specified person

and may be valid or voidable between the parties thereto is not applicable to an agreement the very formation whereof law interdicts; or which is of such a character that, if permitted, it would frustrate the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral or opposed to public policy. Neither party can enforce said agreement. No legal relations come into being from an agreement offending a Statute or public policy.

25. There can be no dispute that according to Section 23 of the Contract Act an agreement, which is forbidden by law or which is opposed to public policy or if permitted to defeat the provisions of law, is void. The issue is as to whether Section 23 of the Contract Act is applicable in the facts of the present case. The Petitioner (Sukh Lal) made application for sanction of loan for purchase of a Vikram Taxi and the Bank sanctioned the loan. The Petitioner mortgaged his 1/3rd share in six plots. The mortgage deed has been filed as Annexure-1 to the writ petition which gave a table for repayment. The said table mentions the amount as Rs. 1,90,000/-, rate of interest 16% per annum and period for repayment in instalments i.e. 5 years. The period for repayment has been fixed and mortgage deed also mentions repayment in instalments. The mere fact that mortgage deed does not fix the amount of instalment, cannot make the mortgage deed void. Further details including the detail of instalments can be worked out from the details of ledger which has been filed by the Respondents along with the counter affidavit. The said detail clearly indicates that instalments have been calculated monthly and first instalment was to be paid on 9th June, 2003. The relevant part of the ledger has been filed as Annexure CA-1 to the counter affidavit, hence the mortgage deed is neither contrary to any provision of the statute nor against the public policy nor it can be said to be unreasonable. Thus submission of the counsel for the Petitioners that mortgage deed is void has no substance.

26. The next submission of counsel for the Petitioners is that even in the proceedings u/s 95A of the 1965 Act, the Petitioners have to be informed of the dues. He has placed reliance on a Division Bench judgment of this Court in the case of M/s. Ram Narain Himmat Ram and Anr. v. Jalaun Kraya Vikraya Sahkari Samiti Ltd. Jalaun. The Division Bench in the said case while considering Section 95A of the 1965 Act has laid down following in paragraphs 5 and 6 :

5. It is true that under Sub-section (1) of Section 95A, after an application has been made to the Registrar for recovery of arrears of loan advanced by the society, the Registrar has been given discretion to hold such enquiry into the claim made by the society as he thinks fit. This provision, however, does not mean that while issuing recovery certificate, the Registrar can give a go by to the principles of natural justice. As and when an application is made to the Registrar to recover any balance or instalments of loan from any debtor, the Registrar has to, in accordance with the principles of natural justice, inform the debtor concerned about the claim made by the society so that the debtor may approach

and satisfy him about the following matters :

- (1) That the debtor is not a member of the Society;
- (2) That the amount sought to be recovered is not in fact a loan advanced by the Society to him;
- (3) That the amount of loan has either been wholly or partly paid up.

6. It is after the debtor has shown cause that a discretion arises with the Registrar either to depending upon the circumstances of the case, hold such enquiry in the matter as he thinks fit and proper. In the instant case, it is clear that although the Petitioners wanted to contest their liability, the Registrar issued the recovery certificate to the collector without affording them any opportunity to place their version before him. The Respondent persisted in recovering the amount as arrears of land revenue despite the order made by the Collector on 21.8.1976 requiring the Assistant Registrar to look into the matter before proceeding to recover the amount from the Petitioner, on the pretext that the said order of the District Magistrate was never brought to the notice of the Registrar. Be that as it may, as already explained, the Registrar was bound to, at least inform the Petitioner about the claim made by the society and to hear him before issuing any recovery certificate in respect of the claim made by the Cooperative Society. As this has not been done, the action of Respondent in pressing the recovery certificate cannot be sustained.

27. There cannot be any dispute to the proposition laid down by the Division Bench in the aforesaid case that when an application is made to the Registrar to recover any instalment of loan, the Registrar has to inform the debtor, which principles of natural justice have to be read therein. In the present case the Petitioner (Sukh Lal) challenged the alleged recovery certificate dated 20th October, 2010 and citation dated 23rd October, 2010 (Annexure 6 and 7 to the writ petition). In the counter affidavit it has been clearly explained that the recovery certificate was issued on 5th October, 2007, which has been filed as Annexure CA-2 to the counter affidavit. There being no challenge to the recovery certificate dated 5th October, 2007 issued by the Assistant Registrar and the letter dated 20th October, 2010 challenging in the writ petition being not the recovery certificate issued u/s 95A of the 1965 Act, the above submission of the Petitioners need not be gone into. All procedure as required to be followed before issuing the certificate u/s 95A of the 1965 Act had to be followed while issuing the recovery certificate dated 5th October, 2007. It has been explained in the counter affidavit that since the State Government has issued the Government order dated 27th December, 2007 that those defaulters whose dues are less than Rs. 1,00,000/-should not be unnecessarily proceeded with, a separate list of defaulters whose default was more than Rs. 1,00,000/-was prepared and the citation which has been issued on 23rd October, 2010 is in continuation of earlier recovery certificate which was issued on 5th October, 2007. The certificate issued u/s 95A of the 1965 Act dated 5th October, 2007 has been filed as Annexure

CA-2 to the counter affidavit in which the name of the Petitioner (Sukh Lal) is mentioned at Serial No. 799 with total dues of Rs. 2,85,109/-, which is the same amount as mentioned in the citation dated 23rd October, 2010. Thus the recovery certificate dated 5th October, 2007 being not under challenge, it is not necessary to consider the above submission of the Petitioners any further.

28. The next submission of the Petitioners' counsel is that the Naib Tahsildar, who has directed for issuing the citation, has no jurisdiction and only the Tahsildar could have issued the citation. In the letter dated 20th October, 2010 (Annexure-6 to the writ petition), there is an order of the Naib Tahsildar dated 23rd October, 2010 and the consequential citation has been issued with the seal of the Tahsildar, Jasra. A counter affidavit has also been filed by the Tahsildar, Jasra in which, while replying paragraph 14 and 15 of the writ petition, it is stated that in absence of Tahsildar, Naib Tahsildar/Prabhari Tahsildar is fully entitled to issue citation. In view of the aforesaid stand taken by Respondents No. 2 and 3, no infirmity can be found in issuance of the citation by the Naib Tahsildar, who is said to be Prabhari Tahsildar.

29. The submission, which is further pressed, is that no order has been passed by the Collector for issuing citation, hence the proceedings are without jurisdiction. The Respondent-Bank in its counter affidavit has brought on the record copy of the order of Collector dated 6th May, 1991 as Annexure CA-4 by which the Collector has authorised the District Assistant Registrar for executing the certificates issued u/s 95A of the 1965 Act regarding cooperative dues. The District Assistant Registrar thus was fully empowered to direct for execution of the certificate issued u/s 95A of the 1965 Act.

30. The last submission of Petitioners' counsel is that Petitioner (Darbari Lal) having been arrested in the year 2006 and detained for 14 days, he cannot be again arrested for recovery of the dues. Learned Counsel for the Petitioner has placed reliance on a Division Bench judgment of this Court in Rasul Bux's case (supra). The Division Bench of this Court in the said case had occasion to consider Section 281 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The said Division Bench judgment, which is in three paragraphs, is quoted below:

1. The Petitioner has challenged the recovery proceeding in respect of a loan taken by him. Learned Counsel for the Petitioner has contended that the Petitioner having already been kept in detention for a period of 15 days, cannot be rearrested for the recovery of the same loan. He has relied on the decision in Sangam Lal Gupta v. Sales Tax Officer 1969 AWR 275. In that case the question about the interpretation of Section 148 of the U.P. Land Revenue Act came up for consideration. That section provided that "the defaulter may be arrested and detained in custody for fifteen days, unless the arrear, and the costs of arrest and detention, are sooner paid...." Section 281 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 is in similar terms. It provides :

Any person who has defaulted in the payment of an arrear 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.

In view of the decision in Sangam Lal Gupta's case (supra) the Petitioner cannot be arrested again for the recovery of the same loan.

2. Learned Counsel for the Petitioner has stated that the Respondents are also proceeding to recover the amount of loan as arrears of land revenue by attachment and sale of immovable property of the Petitioner, but for some reason or the other it has not yet been sold. There is no bar to the amount of loan being recovered in the manner the Respondents are trying to recover it. The only bar is that if the Petitioner has already been under arrest for 15 days, he cannot be arrested again for the recovery of the same amount.

3. In the result, we allow the petition in part and direct that the Petitioner shall not be arrested again for the recovery of the amount in dispute provided he has already been in detention for a period of 15 days. Costs on parties.

31. The Division Bench in Rasul Bux's case (supra) has relied on an earlier Division Bench judgment in the case of Sangam Lal Gupta v. Sales Tax Officer reported in 1969 AWR 275 . The aforesaid two judgments came for consideration before a Division Bench of this Court in the case of Praveen Kumar Gupta v. District Magistrate/Collector, Allahabad and others in Writ Petition No. 52746 of 2002, decided on 13.12.2002 (reported in Praveen Kumar Gupta Vs. District Magistrate/Collector and Others, The Division Bench in Praveen Kumar Gupta's case, after considering the aforesaid two Division Bench judgments, has laid down that a person cannot be arrested and detained again in recovery proceedings relating to the same arrear. Following was laid down by the Division Bench in Praveen Kumar Gupta's case (supra) :

4. We have heard counsel for the parties and perused the record. From the facts brought on the record, it is clear that the Petitioner was earlier detained in civil prison from 10.8.1999 to 25.10.1999, for recovery of an amount of Rs. 1,87,32,191.00 in pursuance of the citation dated 19.7.3999. By the present writ petition, Petitioner is challenging the recovery proceedings for realisation of an amount of Rs. 4,29,09,935.00 plus collection charges for which citation has been issued on 30th October. 2002. Thus, it is clear that the earlier citation dated 19th July, 1999, was for different arrears and the citation which has now been issued is for a very huge amount of Rs. 4,29,09.935.00. The Division Bench's judgment cited by the counsel for the Petitioner in Sangam Lal Gupta v. Sales Tax Officer and Ors." case (supra) was pertaining to realisation of arrears of sales tax. The Division Bench in the aforesaid case had laid down that if a person has been detained in custody for maximum period of fifteen days, he cannot be arrested and detained again in recovery proceedings relating to the same arrears of land revenue. Following was held in the aforesaid case :

But, in our opinion, the total period for which he may be detained in custody in respect of the same arrear cannot exceed fifteen days. Section 148 declares that a defaulter may be detained in custody for fifteen days unless the arrear and the costs of arrest and detention, are paid before the expiry of that period. There is nothing in the provision from which we can infer that the defaulter may be detained in custody for repeated periods of fifteen days until the arrear is paid up. If that inference was possible, we would have to hold that the detaining authority is entitled, so long as it believes that the process of detention would result in the payment of the arrear, to detain the defaulter in custody almost indefinitely provided the successive periods of detention did not exceed fifteen days at a time. A construction such as this would result in serious encroachment upon the liberty of the citizen and we are not prepared to accept that so unlimited an arbitrary power was intended to be conferred upon the detaining authority, specially when the power to detain has been conferred under Rule 47, even upon a Tahsildar and when the only reason for detention is the possibility of the payment of an arrear of land revenue. In our judgment, the period of fifteen days prescribed by Section 148 is the maximum period for which a defaulter may be detained in custody in respect of any arrear. If he has been detained in custody for that period he cannot be arrested and detained again in a recovery proceeding relating to the same arrear of land revenue.

5. In the above, case, it has been clearly laid down that a person cannot be arrested and detained again in recovery proceedings relating to same arrear. The observation of the Division Bench, underlined by us, clearly shows that aforesaid proposition was laid down when the subsequent recovery is for the same arrear. The natural corollary of the provision would be that if the arrears are different, the prohibition from detention will not apply. Thus, the aforesaid judgment of the Division Bench is clearly distinguishable and not applicable in the facts of the present case since in the present case the subsequent recovery which is impugned in the present writ petition, is for different arrears.

6. The next Division Bench's judgment in *Rasul Blue's* case (supra) relied by the counsel for the Petitioner follows the Division Bench's judgment of this Court in *Sangam Lal Gupta v. Sales Tax Officer and Ors.* case (supra). However, paragraph 2 of the aforesaid judgment also lays down the same proposition. The prohibition is of arrest for recovery of same amount. Paragraph 2 of the Division Bench lays down :

...The only bar is that if the Petitioner has already been under arrest for 15 days, he cannot be arrested again for the recovery of the same amount.

32. Thus the proposition is well settled that for different arrears and for different citations the prohibition of detention not exceeding 15 days is not applicable. The Petitioner (Darbari Lal) in the writ petition has stated that he was detained by the Tahsil authority on 2nd March, 2006 and was released after 14 days. In the counter affidavit the Respondents have come up with the case that recovery certificate for the amount of Rs. 2,85,109/- was issued on 5th October, 2007 and

for the same amount citation has been issued on 23rd October, 2010. The Petitioner has not brought anything on the record to establish that he was detained in the year 2006 for the recovery of the same amount and the earlier recovery certificate or the citation having not been brought on the record, it cannot be said that the recovery certificate dated 5th October, 2007 and the citation dated 23rd October, 2010 are the same for which the Petitioner was detained on 2nd March, 2006. Thus although as a proposition of law, it cannot be disputed that for the same arrears and for the same citation a person cannot be detained for a period more than 15 days, but as explained in Praveen Kumar Gupta's case (supra) that in case the citation and arrears are different, prohibition of detention of not more than 15 days shall not apply, the the above submission of the Petitioner also cannot be accepted.

33. In view of the foregoing discussions, the Petitioners are not entitled for any relief in these writ petitions. Both the writ petitions are dismissed.

34. Parties shall bear their own costs.