
(1990) 10 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6455 of 1989

Sumer Chand

APPELLANT

Vs

The Haryana Khadi and Village Industries Board and another

RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 19(1), 246
Penal Code, 1860 (IPC) — Section 21
Punjab Khadi and Village Industries Board Act, 1955 — Section 12(2), 3, 32, 32
Punjab Land Revenue Act, 1887 — Section 67

Citation : AIR 1991 P&H 106 : (1992) 2 ILR (P&H) 15

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : D.D. Gupta, for the Appellant; M.S. Jain and Sanjiv Sharma, for the Respondent

Judgement

1. This judgment will dispose of Civil Writ Petitions No. 6455 of 1989, 16415 of 1989, 7612 of 89 and 8019 of 1989 since common questions of law and facts are involved therein.

2. Reference to relevant facts for resolving the question of law arising for determination has been made from the pleadings in Civil Writ Petition No. 6455 of 1989.

3. Safidon Gram Udyog Samiti, Safidon is a Society registered under the Societies Registration Act, 1860 (for brevity the Society). Respondent No. 1 advanced a loan of Rs. 20,000/- to the Society. The petitioner stood as a surety for repayment of the loan by the Society and mortgaged his share in shop No. 15, Anaj Mandi, Safidon in favour of respondent No. 1. Respondent No. 1 further advanced a loan of Rs. 48,000/- to the Society. The petitioner mortgaged additional properties in favour of respondent No. 1 vide mortgage deed dated June 12, 1984. The loan of Rs. 20,000/- was utilized in accordance with the terms and conditions prescribed in the loan utilization certificate. Respondent No. 1

recalled the entire loan from the Society vide letter dated October 30, 1987. The loan was recalled for non-payment of the instalments and the interest accrued on the principal amount. It was also stated in the letter that if the loan was not repaid the amount would be recovered as arrears of land revenue and by sale of mortgaged property. The Society filed representation to respondent No. 1 for recalling the loan abruptly. Respondent No. 1 issued recovery certificate No. 101 dated 27-12-1988 for recovery of Rs, 100651/- and interest thereon and forwarded the same to the Collector, Jind for taking action under S. 3(8) of the Land Revenue Act for recovering the amount as arrears of land revenue. The recovery certificate was issued without any notice to the petitioner. Respondent No, 1 issued the certificate in exercise of powers under S.32-A of the Punjab Khadi and Village Industries Board Act, 1955 (for short the Act). The vires of S. 32-A of the Act have been challenged on the ground that it is beyond the legislative competence of the State Legislature.

4. Written statement was filed on behalf of respondent No. 1. Preliminary objections were taken to the effect that real brother of the petitioner Shri Kishan Chand was the President, and his two sons Sarv Shri Naresh Kumar and Suresh Kumar are the Secretary and Cashier respectively of the Society. The Society also took a loan of Rs. 44000/- from respondent No. 1 and out of this amount only Rs. 2666.67 towards principal and Rs. 1920/-towards interest were paid. Apart from this amount, no payment was made towards the loan advanced to the Society. The petitioner's brother had also filed Civil Writ Petition No. 7612 of 1989 in this Court. It was denied that the recovery certificate was issued without affording an opportunity of hearing to the petitioner. A notice was issued by the District Khadi and Village Industries Officer of the Board on Nov. 21, 1986 whereby the Society was called upon to refund the entire amount of Rs. 68,000/- as the Unit had not gone in production. It was followed by an other communication dated October 13, 1987 of respondent No. 1 to the petitioner calling upon the Society to pay the entire loan amount. The notice was served upon the petitioner on Dec. 5, 1987. A letter dated August 17, 1988 was addressed to the Secretary of the Society to pay the loan amount failing which the amount would be recovered as arrears of land revenue. The petitioner refused to accept the notice. The petitioner having not disclosed the material facts in the writ petition, the writ petition deserves dismissal for suppressio veri. On merits, it was stated that interest at the rate of 4% per annum was payable on the loan advanced to the Society. Since the loanee Society committed default in payment of instalments as enjoined by the loan agreement an additional amount of interest at the rate of 5 per cent. per annum was recoverable from the loanee. The total loan amount was repayable with interest @ 9% per annum. It was admitted that the mortgage deed was executed in favour of the respondent to ensure repayment of the loan. Respondent No. 1 has resorted to the action under S. 32-A of the Act for recovering the loan amount as arrears of land revenue. The mortgaged property will be sold in the first instance by the revenue officials for realisation of the loan amount. These proceedings are

only resorted to if the loanee does not repay the amount of loan in instalments which become payable after two years in the case of a loan granted for the purchase of land, building and machinery and after three years" in case of loans granted for working capital. In spite of the notices issued to the Society and the petitioner neither the principal amount nor the interest thereon was paid. The petitioner's brother, who had filed a separate writ petition, was advanced a loan of Rs. 44,000/-. Out of this amount, Rupees 24,000/- were disbursed on March 31, 1981 for the purchase of machinery for the manufacture of soap, which were payable in nine equated instalments beginning from March 31, 1983 and another sum of Rs. 20,000/- was disbursed by way of working capital on August 23, 1982 and the recovery of which was to be started from August 23, 1982 and the loan amount was to be repaid in three equated instalments. In the instant case Rs. 68,000/- were advanced to the Society as a working capital for processing of cereals and pulses. Out of the loan amount Rupees 20,000/- were disbursed on March 31, 1983 and Rs. 48,000/- were paid on Sep. 17, 1984. The entire amount of loan was repayable in three instalments, the first instalment beginning from the end of the third year. The first instalment to the extent of 30 per cent. the second instalment to the extent of 30 per cent, and the third instalment to the extent of 40 per cent. and also the interest were payable annually. The instalments in case of both the amounts with interest accruing thereon fell due on the following dates:--

Amount of First Second Third loan Instalment. Instalment. Instalment.

Rs. 20,000 31-3-1986 31-3-1987 31-3-1988

Rs. 48,000 17-9-1987 17-9-1988 17-9-1989

Out of the loan amount of Rs. 68,000/-, only a sum of Rs. 1,000/- was paid on April 15, 1989 after the proceedings for recovery of the loan amount had been initiated. The office bearers of the Society were served with valid notices but they had not repaid the loan amount. The petitioner in collusion with his brother Kishan Chand obtained a total loan of Rs. 1,12,000/- from respondent No. 1. It was maintained that Section 32-A of the Act is not ultra vires and the recovery proceedings have been correctly initiated.

5. The only point canvassed at the Bar was that Sec. 32-A of the Act as introduced in the principle Punjab Act No. 12 of 1961 was beyond the legislative competence of the Punjab State Legislature. Two seminal issues arise for determination, namely, whether respondent No. 1 falls within the expression "other authorities" in Art. 12 of the Constitution and whether S. 32A of the Act is intra vires of the Constitution. Respondent No. 1 (hereinafter referred to as the Board), by a notification in the Official Gazette, was established by the Government of Haryana under Sec. 3 of the Act. The Board was to consist of not more than 15 members appointed by the Government from time to time including Chairman, Vice Chairman, Secretary, Joint Secretary and other officials and non-officials. The Board shall, unless sooner dissolved by the Government,

continue for a period of three years from the date of its establishment or till a new Board is appointed thereafter. The Government could with the previous approval of the State Legislature, by a notification in the Official Gazette, make a declaration that from a particular date, the Board shall stand dissolved. The Chairman, Vice Chairman, Secretary, Joint Secretary or any other member of the Board holds office during the pleasure of the Governor. The disqualification for appointment or for continuing as member of the Board is prescribed in the Statute. The Government has the right to suspend or remove a member from the Board. The Board is to organise, develop and propagate village industries and perform such functions as the Government may prescribe from time to time and exercise such powers as may be necessary or carrying out the objects of the Act. The Board in particular has to discharge and perform all or any of the duties mentioned in sub-section (2) of S. 12 of the Act. It also includes the functions to help the people by providing them with work in their homes and to give them monetary helps. The expression monetary help includes the giving of grants and loans for any of the purposes of the Act on such terms and conditions as may be prescribed. The Government could transfer to the Board building, land or any other property moveable or immovable for use and management of the Board on such conditions and limitations as the Government may deem fit, for the purpose of the Act. The Government could transfer to the Board such schemes or works in progress, with all their assets and liabilities as are run or managed by Government, subject to such conditions and limitations as may be imposed for the purpose of the Act. The Government may, from time to time, make subventions and grants to the Board for the purposes of this Act on the terms and conditions prescribed by the Government. The Government may also advance loans to the Board on such terms and conditions not inconsistent with the provisions of the Act. The Board has to submit, on such date as may be fixed by the Government, the budget for the next financial year showing the estimated receipts and expenditure on capital and revenue accounts according to the programme and schedule of the staff sanctioned by the Government. In the discharge of its functions, the Board shall be guided by such instructions on question of policy as may be given to it by the Government. If any dispute arises between the Government and the Board as to whether a question is or is not a question of policy, the decision of the Government was to be final. The Government was to exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of mismanagement, it may, by order suspend the Board. The members of the Board and the members of the staff of the Board shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.- The Government may, by notification make rules for carrying out the purposes of the Act. The Board may, with the previous sanction of the State Government, make regulations consistent with the Act and the rules made thereunder and such regulations shall be notified in the official gazette.

6. In *Som Parkash Rekhi v. Union of India*, : AIR 1981 SC 212, it was held by the apex Court that the following are the preponderant considerations for pronouncing an entity as State agency or instrumentality:

- "(i) financial resources of the State being the chief funding source,
- (ii) functional character being governmental in essence,
- (iii) plenary control residing in Government,
- (iv) prior history of the same activity having been carried on by Government and made over to the new body and,
- (v) some element of authority or command."

The expression "other authorities" in Article 12 will thus include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred on the authority may be for the purpose of carrying on commercial activities for under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Article 19(1)(g) of the Constitution. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting economic interests of the people. Respondent No. 1 thus fulfils all the prerequisites as mentioned in *Som Parkash Rekhi*'s case *supra* for pronouncing it "other authority" in Article 12 of the Constitution. It thus falls within the expression of other authority in Article 12 of the Constitution.

7. Article 246 of the Constitution deals with the distribution of legislative powers as between the Union and the State Legislature, with reference to the different Lists in the 7th Schedule. The gist of the Article, in short, is that the Union Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List II, minus matters falling in Lists I and III and has concurrent power with respect to matters included in List III. The competence of a Legislature to make a law is to be determined with reference to constitutional provisions relating to the power of the Legislature as they exist at the time of the enactment of the law. The entries in the three lists have not to be read in a narrow or pendent sense but must be given their fullest meaning and the widest amplitude so as to extend their scope to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in them. Item 43 of List III -- Concurrent List relates to recovery in a State of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such arrears, arising outside that State. The loans advanced by the Board are made out of the funds placed at its disposal by the Government and these will fall within the ambit of "public demands." The State Legislature can legislate on the subject mentioned in List II and List III -- Concurrent List of Seventh Schedule to the Constitution. Section 32-A was inserted in the principal

Act by Punjab Act No. 12 of 1961 with the principal object that all sums, including grants and loans given by the Board or any interest or costs in respect thereof, becoming due to the Board under the Act, and whether such sums have become due by virtue of any contract or otherwise shall be recoverable as arrears of land revenue. It was the function of the Board to help the people by providing them work in their homes and to give them monetary help. The expression "monetary help" includes the giving of grants and loans for any of the purposes of the Act on such terms and conditions as may be prescribed. The loans advanced under Act fall within the ambit of "public demands". The State legislature was competent to legislate with regard to "public demands". Section 32-A was inserted in exercise of the legislative power so that the loans advanced by the Board under the Act could be recovered by a speedier method like arrears of land revenue. The amount payable to the Board, which is a statutory body under the Act, by virtue of this provision is recoverable in the same manner as arrears of land revenue. The submission of the learned counsel that Section 32-A of the Act was beyond the legislative competence of the States is thus without merit. Before I part with the judgment, it will be fair to the counsel to refer to the judgment reported as G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., , cited in support of his submission that the insertion of Section 32-A in the principal Act by Act No. 12 of 1961 was beyond the competence of the State Legislature. In this case, the constitutional validity of Section 52A of the Tamil Nadu Revenue Recovery Act (No. 2 of 1984) (as amended by Act No. 12 of 72) was challenged. Section 52-A as added by the amending Act postulated that the amount due to the Corporation Limited and such other Corporations could be recovered as arrears of land revenue. The Bench after referring to Entry 43 of List II which relates to "public debt" of the State came to the conclusion that the expression "public debt" refers to only from the public and does not take in any amount payable by the public to the Government and on that basis ultimately came to the conclusion that it is not open to the State Legislature by a fiction to treat something which is not land revenue as land revenue and make the law with respect to the same. It will be useful to reproduce the relevant observations of the Bench:--

"Thus, Entry 45 of List II deals only with land revenue payable to the State and it has nothing whatever to do with any amount payable by any person to anybody else. Therefore prima facie the State Legislature, under the said Entry, will have no power to enact a law for the purpose of collecting the dues owed by a person to a Corporation like the Tamil Nadu Small Industries Development Corporation Ltd. and such other Corporations.

When an expression like "land revenue" has acquired a definite and well understood meaning before the promulgation of the Constitution and it is in that meaning the said expression has been used in the Constitution, it is not open to the State Legislature by a fiction to treat something which is not land revenue as land revenue and make a law with respect to the same."

The observations clearly indicate that the ratio of this judgment has not remotest bearing to the facts of the instant case. The High Court did not opine on the applicability of Item 43 of List III in the 7th Schedule to the Constitution.

8. Although, the learned counsel has not urged any other point at the Bar, yet I make it clear that the authorities before taking recourse to coercive measures like arrest and detention of the loanee had, in the first instance, to try to recover the dues by sale of the property mortgaged with the Board. If, however, some amounts remained due then and only then the revenue authorities could recover the arrears by arrest and detention of the defaulter loanee. A reference to the following observations in *Joginder Singh and others Vs. Haryana Khadi and Village Industry Board, Ambala and others*, can usefully be made (at p. 60 of AIR):--

"9. Though the petitioners have not pleaded any specific agreement for the recovery of the loan by the sale of the Immovable property, yet from the pleadings of the parties and the contents of letter Annexure P1 / A it becomes clear that the authorities had intended to first recover the amount of the loan due by the sale of immovable property mortgaged with the Board. The observations in *State of Punjab and Others Vs. S. Dharam Singh (Dead) by Successor Desa Singh and Another*, have also been made in the context of Section 67 of the Punjab Land Revenue Act. Consequently, we hold that the authorities before taking recourse to coercive measures like arrest and detention of the loanees had, in the first instance, to try to recover the dues by sale of the property mortgaged with the Board. If, however, some amounts remain due then and only then the revenue authorities could recover the arrears by arrest and detention of the defaulter loanee. We, however, want to make it clear that we have construed the provisions of Section 57 of the Land Revenue Act in the context of loan advanced by the Board and these principles are inapplicable in the matters of recovery of taxes, fees etc. due to the State."

9. Thus, for the reasons aforesaid, there is no merit in the writ petitions. The same are dismissed with costs. Counsel fee Rs. 1000/-.

10. Petitions dismissed.