

(1973) 12 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2465 of 1970

The Agricultural Industrial Syndicate Ltd.

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 04-12-1973

Acts Referred:

Uttar Pradesh Vrihat Jot Kar Adhiniyam, 1963 — Section 22

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 279

Citation : AIR 1974 All 477

Hon'ble Judges : S. Malik, J

Bench : Single Bench

Advocate : H.A. Kazmi and S.M. Pakhrazzama, for the Appellant;

Final Decision : Allowed

Judgement

S. Malik, J.—This is a petition under Article 226 of the Constitution for, a writ of certiorari quashing the orders passed by the Additional Collector, Saharanpur, on the 7th of August, 1968 (Annexure 3) the Additional Commissioner, Meerut Division dated 16-1-1970 (Annexure 5) and the order dated 30-12-1970 (Annexure 13) passed by the Board of Revenue, dismissing the petitioner's objections, appeal and revision respectively against attachment of its properties enumerated in the petition. The petitioner has further prayed for a writ of mandamus directing the opposite parties (sic) (to refrain?) from selling the attached properties or from confirming the auction sale which already took place on 3-11-1970.

2. The relevant facts are that the petitioner is a Public Limited Company registered under the Indian Companies Act and is the tenure-holder of lands situate in two villages in district Saharanpur as mentioned in the petition. The Company fell in arrears of agricultural tax and land revenue amounting to Rs. 32,000 and odd. In order to realise the agricultural tax and land revenue, at first standing crops of the petitioner were attached on 2-4-1968 but as the value of the crops as estimated by the opposite parties was found to be insufficient to

make good the dues a notice was served restraining the petitioner from transferring its properties. The notice is dated 5-4-1968 and has been filed as Annexure 1 to this petition. Thereafter both movable and immovable properties of the petitioner were attached on 19-4-1968. These properties were enumerated in the notice (Annexure 1). It may also be mentioned that the movable and immovable properties which, were attached did not include the land or the holdings in the two villages of which the petitioner is the tenure holder. The petitioner filed objections before the Additional Collector which were rejected by the order filed as Annexure 3. Thereafter, the petitioner went up in appeal to the Additional Commissioner who dismissed the same by his order dated 16-1-1970 filed as Annexure 5. Thereafter, the petitioner filed a revision application before the State Government which was transferred to the Board of Revenue and the Board of Revenue dismissed it by its order dated 30-12-1970 (Annexure 13). The Board of Revenue also rejected the petitioner's prayer for stay of the proposed auction sale. Thereafter the properties were auctioned on 3-11-1970, but the confirmation of the sale was stayed by this Court till the disposal of this writ petition.

3. The contentions put forward on behalf of the petitioner were that the attachment and sale of the petitioner's properties were in contravention of the proviso to Section 22 of the U.P. Vrihat Jotkar Adhiniyam, 1963 (U.P. Act No. XII of 1963) and also in contravention of Section 286 of the U.P. Zamindari Abolition & Land Reforms Act as regards mode of realisation of the land revenue due from the petitioner. It was also contended that the attached properties were exempt from attachment and sale u/s 60 of the CPC and that the orders passed by the Additional Collector and the Board of Revenue were not speaking orders and the Board of Revenue disposed of the revision application without giving any opportunity to the petitioner of being heard and, therefore, the principles of natural justice were violated. The proviso to Section 22 of the U.P. Act No. XII of 1963 runs as follows:--

"The Collector may, on the motion of the assessing authority, recover

(a) the amount assessed as holding tax, and

(b) as if it were an arrear of land revenue;

Provided that the processes mentioned to Clauses (c), (e), (f) or (h) of Section 146 of the U.P. Land Revenue Act, 1901 (U.P. Act No. III of 1901) or those mentioned in Clauses (c) and (f) of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (U.P. Act No. I of 1951), shall be issued only after the other processes mentioned in the said sections of the said Acts have been exhausted."

4. A perusal of Section 279(1) of the U.P. Zamindari Abolition & Land Reforms Act, 1950 will show that land revenue could be recovered by any one or more of the processes enumerated as Clauses (a) to (g). As has been pointed out, the proviso to Section 22 of the U.P. Act No. XII of 1963 lays down that the mode of

realisation as laid down in Clauses (c) and (f) of Section 279 shall not be resorted to unless the other modes enumerated in Clauses (a) to (g) of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, had been exhausted. The different clauses from (a) to (g) of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act are as follows:--

"279(1)

- (a) by serving a writ of demand or a citation to appear on any defaulter,
- (b) by arrest and detention on his person,
- (c) by attachment and, sale of his movable 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 appointment of a receiver of any property, movable or immovable of the defaulter".

It was pointed out that the movable and immovable properties of the petitioner including the standing crops were attached in accordance with Clauses (c) and (f) of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act though the other modes enumerated in Clauses (a), (b), (d) and (e) were not resorted to.

Though in the supplementary counter-affidavit filed on behalf of the State on the 17th of October, 1973, it was mentioned that a writ of demand was served on the petitioner, this fact has been denied in the supplementary rejoinder-affidavit. It was pointed out that no counter-foil of the notice of demand nor any receipt showing that any such notice was sent by registered post to the petitioner, was filed. The mode of service of a writ of demand, as laid down in Clause (a) of Subsection (1) of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act is laid down in Rule 246 of the U.P. Zamindari Abolition & Land Reforms Rules. There is nothing to show that Rule 246 was followed or actually any writ of demand was served on the petitioner. It is true that the process enumerated in Clause (b) of Sub-section (1) of Section 279 could not be followed in this case as the petitioner is a registered Public Limited Company and a Company could not be arrested or detained but there is no explanation for not following the process enumerated in Clause (d) quoted above. Admittedly, the holdings in question, were not attached. It was argued by the learned counsel for the respondents that this could not be done as the Consolidation Officer by his order dated 16-5-1969 declared the holdings to be of the Gram Samaj (vide Supplementary Counter-Affidavit dated 17-10-1973). This contention again has no force. The attachment order was made, as already mentioned on 19-4-1969, more than a year before the Consolidation Officer declared the holdings to be of the Gram Samaj and, therefore, there is no satisfactory explanation as to why the holdings were not attached before resorting to the processes enumerated in Clauses (c) and (f) of

Section 279 of the U.P. Zamindari Abolition & Land Reforms Act. Similarly, the process enumerated in Clause (e) was not resorted to. Under the circumstances it is clear that in trying to realise agricultural tax from the petitioner the mandatory provisions, as laid down in the proviso to Section 22 of the U.P. Vrihat Jotkar Act, were violated.

5. Similarly, in trying to realise the amount of Rs. 1,500 and odd said to have been due from the petitioner as land revenue, the mandatory provisions of Section 286 of the U.P. Zamindari Abolition & Land Reforms Act were violated. Section 286 of the said Act lays down that if arrears of land revenue could not be realised by the processes enumerated in Clauses (a) to (e) of Section 279, then other modes of realisation could be resorted to. As has been pointed out, at least the processes enumerated in Clauses (a), (d) and (e) of Sub-section (1) of Section 279 of the U.P. Zamindari Abolition & Land Reforms Act were not resorted to by the respondents in trying to realise the land revenue. In view of what has been discussed, I do not consider it necessary to enter into the other questions raised on behalf of the petitioner in support of this petition, as it is apparent that the attachment of the movable and immovable properties of the petitioner on 19-4-1968 was illegal and therefore, it follows that the auction sale of the same is also liable to be set aside.

6. It was urged by the learned counsel for the respondents that as equally speedy and efficacious remedy could be obtained by the petitioner from the Civil Court, this Court should not interfere in its writ jurisdiction and the petition is liable to be dismissed. In this connection, it was pointed out that actually the petitioner did file a suit in a Civil Court which was later withdrawn. But the suit appears to have been filed in the year 1971 after this writ petition was filed in May 1970. It was dismissed as withdrawn on 22-12-1971. It was pointed out on behalf of the petitioner that the suit was withdrawn as by a Notification Sub-clause (a) was added to paragraph 911 of the Land Revenue Manual making proceedings before the Additional Collector, the Additional Commissioner and the Board of Revenue judicial proceedings and, therefore, in the suit the petitioner could not have challenged the correctness or otherwise of the orders passed by the said authorities in the appeal or the revision filed by the petitioner before the Additional Commissioner or the Board of Revenue. The attention of the Court was drawn on behalf of the respondents to the observations made by the Supreme Court in *Dhulabhai v. State of Madh. Pra.* (AIR 1969 SC 78) in support of the contention that the proper remedy lay in filing a suit and this Court should not interfere in the exercise of its writ jurisdiction. The Supreme Court, as was pointed out, laid down in the ruling (*supra*),

"Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the

fundamental principles of judicial procedure".

As will appear from a perusal of the judgment of the Supreme Court, the observations quoted above were made as a civil suit was filed alleging that the rules which were the subject-matter of that case, framed by the State Government were ultra vires of the Constitution and, therefore, the impugned orders demanding tax from the plaintiff were without jurisdiction. The facts of the case before the Supreme Court are clearly distinguishable from the facts of the instant case. Moreover, in this writ petition, no suit was pending when the writ petition was filed and the suit which was filed subsequently, was withdrawn for cogent reasons. It was also rightly pointed out on behalf of the petitioner that it would not have obtained as speedy and efficacious remedies from the Civil Court as he can from this Court in this writ petition. The civil suit may have taken a very long time to be decided and, moreover, it is doubtful if the Civil Court could have granted all the reliefs claimed in this writ petition. It may be mentioned that the properties of the petitioner have been attached and are not in its possession since 1968.

7. In view of the reasons discussed, I allow the petition and quash the orders passed by the Additional Collector, Saharanpur, the Additional Commissioner, Meerut Division and the Board of Revenue as prayed. The sale of the attached properties held on 3-11-1970 is set aside as also the order of attachment dated 19-4-1968. The properties are hereby released from attachment. It may be mentioned that it will be open to the respondents to proceed according to law to realise any agricultural tax or land revenue that may be due from the petitioner. Parties to bear their own costs.