

(1987) 07 KAR CK 0019
In the Karnataka High Court
Case No : W.P. No. 19967/1985

Thimmanna B.

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

Karnataka Public Moneys (Recovery of Dues) Act, 1979 — Section 3

Citation : (1987) 2 KarLJ 261

Hon'ble Judges : S. G. Doddakale Gowda, J

Judgement

Doddakale Gowda, J.-Rule.

Third respondent has obtained a Decree against the petitioner for recovery of Rs. 2,05,771-16 ps. in O.S. No. 3417/ 1981, on the file of the City Civil Judge, Bangalore, being the cost of silk yarn supplied, and it is a consent decree, vide Annexure-B. 3rd respondent not being satisfied with the decree has initiated recovery proceedings under the Karnataka Public Monies Recovery Act, 1979 (hereinafter referred to as the "Act") also.

Special Tahsildar, as per notice dated 27th November 1985 (Annexure-F) has called upon the petitioner to pay a sum of Rs. 3 19,239-43 ps, vide (Annexure-G). As the petitioner failed to pay the same the Spl. Tahasildar has issued Sale Proclamation (Annexure-H).

Main contention of Sri. Janardhana learned Counsel for Petitioner, was that 3rd respondent who had obtained a decree before a competent Civil Court should have confined to that forum. Instead the parallel proceeding initiated under Public Monies Recovery Act, 1979 is impermissible. Section 3 of the Act enumerates nature of debts that can be recovered as arrears of land revenue. According to this, where a person, party to an agreement relating to a loan, advance or grant or relating to credit in respect of or relating to hire purchase makes default in payment of loan or advance or any instalment or otherwise, fails to comply with the terms of the agreement, debt due thereunder can be recovered as if an arrears of land revenue on a Certificate being issued by an

Authorised Officer. But, in the instant case, the amount due by petitioner has not remained as a debt, but has culminated in a decree. Rights are crystalised. Though the decree in the larger concept may be a debt enjoining the judgment debtor to discharge the decretal amount, question of issue of a Certificate will not arise in such cases as decree cannot be brought under any one of the categories of debts enumerated in this section. In other words. Section 3 does not enable recovery of decretal amount, hence, initiation of proceedings under the Act is illegal. As per sub-section (5) of Section 3 no suit for recovery of any sum due as aforesaid shall lie in a Civil Court against any person referred to therein, if proceedings to recover the same are pending before the Deputy Commissioner. As the facts of the present case are reverse of it, no assistance can be derived under this provision. Sub-section (2) of Section 6 on which reliance was placed by the learned counsel for respondent is of no assistance as it is only a saving clause protecting rights and liabilities accrued or arising under the Karnataka Public Premises (Recoveries of Dues) Act, 1979. Third respondent instead of executing the decree cannot resort to recover decretal amount under Section 3 of the Act and consequently, impugned action must be held to be illegal and without jurisdiction.

For the reasons stated above, writ petition succeeds; impugned notice marked as Annexures F and H are hereby quashed reserving liberty to respondent to execute the decree. Rule made absolute.