(1979) 11 AHC CK 0027

In the Allahabad High Court

Case No : S.A. No. 397 of 1971

Town Area Committee — APPELLANT

Vs

Smt. Rama Devi and Others — RESPONDENT

Date of Decision : 15-11-1979

Acts Referred:
Town Area Act, 1914 — Section 19, 21, 30

Citation : (1980) AWC 43

Hon'ble Judges : Amitav Banerji, J

Bench : Single Bench

Advocate : C.B. Misra, for the Appellant; S.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Amitav Banerji, J.—This is an appeal by the Defendant Town Area Committee. The facts are not at all in dispute in this case. The Plaintiff Banwari Ram (since deceased) was in arrears of circumstances and property tax. It was sought to be realised. The Town Area Committee set in motion the recovery proceedings as envisaged u/s 21 of the Town Areas Act, 1914. That section provides that on the expiry of three weeks from the date of the issue of writ of demand, the Town Area Committee may make an application to the Magistrate having jurisdiction within the limits of the town area to proceed for the attachment and the sale of any movable or immovable property belonging to the defaulter for the realisation of the arrears of any tax. The Town Area Committee made an application to the Magistrate concerned for taking action for attachment and sale of the property of the defaulter. The Magistrate, it is not disputed, attached 31 bags of potatoes of the Plaintiff. These bags were placed in the Supardgi of one Ram Lai, brother-in-law of the Plaintiff. Ram Lai did not produce the attached articles on the date he was required with the result that the property attached could not be sold and no amount from the attached goods came to the coffer of the Town Area. Learned Counsel contended that in these circumstances no liability could be fastened on the Town Area. The Town Area did not receive any amount and, therefore, no orders could be passed for the refund of any amount by the Town Area. Learned Counsel further contended that where the attached articles are placed in the custody of a Supardar, the same cannot be said to be in an authority controlled Or responsible to the Town Area and, as such, even the attachment of property would not mean that the property came in the custody of the Town Area.

2. I have no hesitation in rejecting these contentions as without merits. When there is an arrears of tax as contemplated under the Town Areas Act, 1914, it can be realised in the procedure outlined in the Act. There is now no dispute about the Town Area''s right to impose the tax. When the tax is imposed the assessee is given a right to file an appeal against the assessment or levy of tax. After the decision of the appellate authority, the assessee is required to pay the tax. It may be paid in instalments as indicated in Section 19 of the Act. When there is failure to pay the tax, the Town Area Committee may issue a writ of demand u/s 30 of the Act. If the tax still remains due, it becomes an arrears of tax and it can be recovered in the procedure outlined in Section 21 of the Act. An application is made to a Magistrate having jurisdiction within the limits of the Town Area. The Magistrate cannot make any attachment or sale of the property of the defaulter, unless he is authorised to do so on an application made by the Town Area Committee u/s 21 of the Act. The making of the application clothes the Magistrate with necessary powers to make attachment and sale of the property of the defaulter. In other words, it is only when the application is made that the Magistrate gets jurisdiction to proceed in the matter. It goes without saying that the application has got to be made by the Town Area Committee. The Town Area can recover the arrears through the Magistrate having jurisdiction, It is, therefore, clear that the Magistrate acts on behalf of the Town Area. The Act provides for this machinery. It cannot, therefore, be argued that the Magistrate, who attaches the property is not acting on behalf of the Town. Area. His entire jurisdiction to proceed in the matter is on behalf of the Town Area after having been empowered to recover the arrears of tax by the Town Area. It is, therefore, clear that the Magistrate while recovering the arrears of tax u/s 21 of the Act acts on behalf of the Town Area. The contention that the Magistrate does not act on behalf of the Town Area is, therefore, not correct.

3. Of course, the Town Area has no control over the Magistrate, but for the purpose of this Act, the Town Area is answerable for the attachment and sale proceeds. If the Magistrate attaches the goods of the defaulter and puts it in the Supardgi of some one and that person fails to produce the goods, the Town Area can proceed against that person under other laws. It cannot be said that since no part of the sale proceeds came to the Town Area, the latter is not liable to return the goods or refund the money if required to do so Once attachment takes place, the property no longer remains in the custody of the defaulter. The defaulter parts with the goods. If it is taken by the Magistrate, and he entrusts it to some one else, it will be deemed that he is doing so on behalf of the Town Area. Therefore, the contention that the attachment proceedings were not done on its behalf or that the Town Area is not liable to return the goods or refund the

money is wholly untenable.

4. Once the attachment has taken place and the defaulter has parted with his goods and it is subsequently found that the defaulter is entitled to the goods or the refund of money, the Town Area is bound to return the goods or refund the money, as the case may be. In this view of the matter, I find no force in the contention raised by the learned Counsel in this regard.

5. Learned Counsel contended that there was collusion between Ram Lai, Supardar, and the Plaintiff. That is neither here nor there. Ram Lai is not the Plaintiff and does not represent the Plaintiff. He was entrusted the property by the Magistrate acting on behalf of the Town Area. If it is found later that the attachment was bad in law or what was attached was in excess of the amount due, and some refund of the goods or the sale proceeds is due to the defaulter, the latter is entitled to have it from the Town Area. The lower appellate court has, therefore, decided the appeal correctly, and no interference is called for in this appeal. No other point was argued.

6. In the result, therefore, the appeal fails and is dismissed with costs.