

(1957) 12 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 19-D of 1956

Union of India (UOI)	Vs	APPELLANT
Amar Nath and Others		RESPONDENT

Date of Decision : 09-12-1957

Acts Referred:

Constitution of India, 1950 — Article 372(1)

Citation : AIR 1959 P&H 533

Hon'ble Judges : D. Falshaw, J

Bench : Single Bench

Advocate : Bishamber Dayal, for the Appellant;

Final Decision : Allowed

Judgement

D. Falshaw, J.—This is a revision petition filed by the Union of India in the following circumstances.

2. Amar Nath respondent had obtained a simple money decree against certain persons as legal representatives of one Devi Chand who had been a contractor and in execution of the decree he got attached and remitted to the executing court the sum of Rs. 2312/- which was lying with the Deputy Accountant General, Industries and Supplies, in the name of one of the judgment-debtors. This sum was received by the Court on the 6th of April 1955 and on the 15th of April a letter was received from Mr. J. D. Sharma, Assistant Collector 1st Grade stating that the Union of India laid claim to a sum of Rs. 914/6/- which was due to the Delhi Improvement Trust and was apparently recoverable as arrears of land revenue. It was accordingly requested that this sum should not be paid to the decree-holder.

3. The matter was ultimately argued before the learned Sub Judge, who held in the order now challenged that after the coming into force of the Constitution of India in January 1950 the old Crown claim to priority over unsecured creditors had ceased to exist. However while ordering that the money should be paid to

Amar Nath decree-holder the learned Sub Judge suspended the operation of the order for a month in order to give the government time to file an appeal. This order has been challenged by a revision since no appeal u/s 47 C. P. C. lay as the Union of India was not a party in the ordinary sense of the suit or execution proceedings.

4. In arguing that the old Crown priority over unsecured creditors, which was recognised in India before the Republic came into existence still remains in force, and is not contrary to any provisions of the Constitution, the learned counsel for the Government has relied on the decisions in Builders Supply Corporation V. Union of India, (S) AIR 1958. Cal 26 and Bank of India Vs. John Bowman and Others,

5. In the latter case there was a dispute between the Government and a Bank both of which had advanced loans to a certain company. The loans obtained from the Bank were guaranteed by one of the Directors, and the loans from the Government were guaranteed by the Directors as a whole including the Director who had guaranteed the Bank's loan, one of the terms of the Directors' guarantee being that the loan was recoverable as arrears of land revenue. Proceedings were taken by the Government to recover this sum by attachment and sale through the Collector of Bombay of certain immovable property belonging to those Directors.

6. In the meantime the Bank filed a suit and a consent decree was passed in its favour and a struggle then began between the Government and the Bank. The matter was considered by Chagla C. J. and Dixit J. whose views are set out in the following passages taken from the judgment delivered by Chagla C. J. :

"The claim of the State would have been justified if the claim had been put forward u/s 11, Bombay City Land Revenue Act, but as we have already pointed out, the Advocate General has conceded that its claim does not come within the ambit of that section, and therefore we had to ask the Advocate General to point out to us any provisions of the law by which the claim of the State must be preferred to the decree passed by a competent Court and the execution taken out by a competent Court, and again the Advocate General fairly conceded that there was no provision in any law, but what he relied on was the Common law doctrine that if the debts due to the Crown are of equal degree to the debts due to a private citizen, then the Crown must have priority in recovering those debts as against the private citizen, and this takes us to the very interesting question that has been debated at the Bar as to what are the rights of the State after the Indian Constitution was enacted.

According to the Common law doctrine if the debts due to the Crown are of equal degree to the debts due to a private citizen, then the Crown must have priority in recovering those debts as against the private citizen. The priority given to the Crown is not on the basis of its debt being a judgment-debt or a debt arising out of statute but the principle is that if the debts are of equal degree and the Crown

and the subject are equal the Crown's right will prevail over that of the subject. The Indian Courts have also accepted the same position here. Whatever may have been the historical origin of the principle which gives priority to the debts due to the Crown when the English Courts came to consider this question the principle had become a part of the Common law of England. It is not so much because the Crown has any special privileges in England that this principle has been upheld, but it is because the State in England has taken the place of the Crown and the English Courts have continued the privilege which was once the privilege of the King and have afforded the same privilege to the State because they have realised that the State has certain rights and privileges which cannot be overlooked.

It is true that our Constitution sets up a democratic socialist republic and we would be loath to give effect to any principle of law which was inconsistent with the democratic or socialistic principles which we have accepted in our Constitution. "But it would be an exaggeration even to suggest that the England of today is not democratic or Socialistic, and if the English Courts have upheld this principle they could not have done so if they had realised that it was no longer consistent with the modern trends of constitutional theory prevailing in England today. Even in a democracy and even under socialism the State must have certain rights and privileges. The State has to govern, the State has to find money to be used for socialistic principles and the Courts have always given every facility to the State to realise moneys which are not collected for any private purpose but are intended for the public need. This principle which has been enunciated in the English Courts and which has been accepted by our Courts is not a principle which is peculiar to British Jurisprudence.

If this principle formed part of the Common Law of England, then that law has been preserved under Article 372(1) of the Constitution. This was the law in force in India immediately before the commencement of the Constitution and it must continue in force until altered or repealed or amended by a competent legislature or other competent authority.

It is not true to say that the State is denying equality before the law to any person by claiming this special privilege. Article 14 of the Constitution would only be offended against if the State made a discrimination between one creditor and another or between one class of creditors and another, The principle of Common law is that the State has priority over all competing creditors if the debts are of the same quality. The State here is not claiming as a creditor. It may be a creditor, but the right which it claims is in its capacity as the State and its contention is that as it is the custodian of public welfare, as moneys which it is claiming belong to the coffers of the State and are to be used in public interest, it should be given precedence over private creditors who have not to discharge the duties or responsibilities of the State. Therefore the Common Law with regard to priority of debts due to the State is not in any way inconsistent with the fundamental rights embodied in Part III of the Constitution."

7. More or less the same view has been taken by Chakravartti C. J, and Lahiri J. in the Calcutta case, which related to a struggle between a decree-holder and the Income Tax authorities for certain moneys belonging to a judgment-debtor which had been attached and received in the executing court.. In this case also it was held that Article 372(1) of the Constitution kept alive the principle of law by which the State claimed priority over other unsecured creditors and the case for State priority in matters of this kind was justified even under a Republican form of Government on the same grounds as in the Bombay case. I am in respectful agreement with the pronouncements on the law in this matter and I accordingly hold that the learned Sub Judge wrongly held that the old Crown priority over other unsecured creditors had disappeared with the inauguration of the Republic of India, and that the Government is entitled to claim the sum in dispute on behalf of the Delhi Improvement Trust. Since nobody appeared on behalf of the respondents there is no order as to costs.