(1985) 03 KAR CK 0059

In the Karnataka High Court

Case No : W.P. No. 5756 of 1983

Vittalachar. M. — APPELLANT

Vs

Tahsildar, Mangalore and Others — RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Citation : (1985) 1 KarLJ 427

Hon'ble Judges : K. A. Swami, J

Judgement

1. In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for the following reliefs:

(i) to declare the provisions of the Karnataka Public Money''s (Recovery of Dues) Act of 1979-Act No. 16/80 as unconstitutional and consequently strike down the same.

(ii) to issue a writ of certiorari or any other appropriate writ or order quashing the Demand Notice Annexure ''C'' dated 3-2-19-83 in No. Tax C.R. 139/82-83 in Form No. 37 issued by the 1st Respondent, and the Recovery Certificate as per Annexure-E dated 1-10-1983 in Ref. No. MNG. 842/82-83 issued by 3rd respondent.

2. As far as the first relief is concerned, it is already covered by a decision of this Court in KAMATH M.A. V. KARNATAKA STATE FINANCIAL CORPORATION & ORS., reported in 1981(2) Kar. L.J. page 129. Therefore, following the said decision, the first relief is refused.

3. In respect of the second relief, Sri P. Ganapathi Bhat, learned Counsel for the petitioner, submits the prayer relating to quashing of the recovery certificate need not be examined because the certificate is not issued against the petitioner. In view of this submission, it is not necessary to consider the said prayer.

4. Now, what remains for consideration is the prayer relating to demand notice Annexure-C.

5. It is contended by learned Counsel Sri Ganapathy Bhat that the demand notice is illegal and without jurisdiction in as much as the Tahsildar who has taken action to recover the amount pursuant to the recovery certificate Annexure-F cannot proceed against the petitioner because the recovery certificate does not enable him to do so; that the recovery certificate is issued only against the 5th respondent; that. under Sec. 5 of the Karnataka Public Moneys (Recovery of Dues) Act, 1979 (hereinafter referred to as the ''Act''), it. is only against such person against whom the recovery certificate is issued, the Deputy Commissioner is entitled to proceed to recover the amount and not against any other person. Since the petitioner is not one of the person named in the recovery certificate, the proceeding for recovery of the amount initiated against the petitioner as per Annexure-C are not sustainable.

6. On the contrary, it is submitted on behalf of respondents 3 and 5 that the petitioner has stood as surety for the loan advanced to the 5th respondent and has also offered the property bearing Sy. No. 243/1 measuring 12-1/2 cents situated at surathkal village being the dry land and Sy. No. 248/1B measuring 12-1/2 cents situated at Surathkal Village being the Tiled house; therefore he is liable to pay the amount; hence, the Tahsildar is justified in proceeding against the petitioner to recover the amount by issuing the demand notice as per Annexure-C. it is also further submitted on behalf of the 3rd respondent that now the Bank has obtained as award against the petitioner also, therefore, it is open to the Bank to issue a fresh recovery certificate under Sec. 3 of the Act, against the petitioner as well as the 5th respondent, and proceed to recover the amount as per the provisions of the Act or to approach the Registrar of Co-operative Societies under the provisions of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the ''K.C.S. Act'') to issue a recovery certificate to the Deputy Commissioner for recovering the amount due under the award from the petitioner and the 5th respondent as arrears of land revenue.

7. Having regard to the aforesaid contentions, the points that arise for consideration in this writ petition are as follows:

(i) In the absence of recovery certificate issued against the petitioner, whether is it open to the Deputy Commissioner or the Tahsildar to proceed to recover the amount from the petitioner; and (ii) Whether it is open to the 3rd respondent having regard to the award obtained by it under the K.C.S. Act to proceed to recover the amount under the Act also?

Point No. 1

8. Section 3(1) of the Act, among other things, specifically provides that where any person is party- (A) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of or relating to hire purchase of goods sold to him by the State Government or the Corporation, by way of financial assistance; or (B) to any agreement relating to a loan, advance or grant to him or relating to credit in respect of or relating to hire-purchase of, goods

sold to him by a banking company or a Government Company, as the case may be, under a state sponsored scheme, ...makes any default in payment of the loan or advance or any instalment thereof; or ....otherwise fails to comply with the terms of the agreement.........in the case of Banking company, the local agent thereof by whatever name called may send a certificate to the Deputy Commissioner mentioning the sum due from such person and requesting that such sum together with the cost of the proceedings and future interest at the prescribed rate upto the date of recovery be recovered as if it were arrear of land revenue. It further provides that a certificate sent to the Deputy Commissioner may be withdrawn at any time.

Sub-section (2) of Sec. 3 of the Act, further provides that the Deputy Commissioner on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

9. Thus, from the aforesaid provisions, it is clear that it is only against such person in respect of whom the recovery certificate is issued, the Deputy Commissioner can proceed to recover the amount. Recovery Certificate is in the nature of a decree as far as the Deputy Commissioner is concerned. Just as the executing Court cannot go behind and beyond the decree so also the Deputy Commissioner cannot go behind and beyond the recovery certificate. If, in the recovery certificate the name of the co-applicant or co-obligant is not mentioned, it is not open to the Deputy Commissioner to proceed against the co-applicant or co-obligant because as far as the Deputy Commissioner is concerned, the recovery certificate is final and he has to proceed in accordance with it. That being so as the recovery certificate in question has not been issued against the petitioner, the Deputy Commissioner or the Tahsildar were and are not entitled to proceed against the petitioner. Hence, the demand notice issued against the petitioner as per Annexure-C is liable to be quashed. This does not mean that the liability of the petitioner is wiped out. It is still open to the Bank to proceed against the petitioner. Accordingly, the first point is answered as follows: Since the recovery certificate is not issued against the petitioner, the Tahsildar and the Deputy Commissioner-respondent 1 and 2 herein, are not entitled to proceed against the petitioner. It is open to the 3rd respondent to withdraw the recovery certificate now issued and issue a fresh recovery certificate including the name of the petitioner. If a fresh recovery certificate is issued by including the name of the petitioner, it will then be open to them to proceed against the petitioner.

Point No. 2.

10. Under Sec. 3(1)(D)(c) of the Act, in the case of Banking company, it is the local agent who is empowered to issue the recovery certificate. The 3rd respondent has also obtained an award against the petitioner as well as the 5th respondent on 14th March, 1983 and it is produced as Annexure-1 by the 5th respondent. The case of the petitioner is that since there is an award passed, it is not open to the 3rd respondent to proceed under the Act, as well as under the provisions of the K.C.S. Act. On the contrary, it is contended on behalf of the

Bank that when once the award is passed, the liability gets crystalised and it is open to the Bank on the basis of that liability either to issue a recovery certificate under Sec. 3(1)(D)(c) of the Act or to approach the Registrar of Co-operative Societies under Sec. 99 of the K.C.S. Act to issue a direction to recover the amount due under the award. The recovery certificate under Sec. 3(1)(D)(c) of the Act, can be issued only on the basis of the amount found payable by the loanee. If that be so, when once the award is passed and that award becomes final, the amount payable by the debtor also gets settled. Thus, the award can also form a basis for issuing the recovery certificate by the local agent of the Bank. It is also open to the Bank to approach the Registrar under Sec. 99 of the K.C.S. Act. In any event, it is not open to the Bank to pursue both the remedies simultaneously. It can proceed to recover the amount either under the provisions of the Act or under the provisions of the -K.C.S. Act and not under both the enactments simultaneously. In either event, in the instant case, the basis will be the award as the award has been obtained. Accordingly, the second point is answered as follows. It is open to the 3rd respondent to proceed to recover the amount due. It is also open to it to withdraw the recovery certificate now issued and issue a fresh recovery certificate on the basis of an award including the name of the petitioner, and request the Deputy Commissioner to recover the amount under the provisions of the Act or proceed under Section 99 of the K.C.S. Act, but not simultaneously under both the enactments.

11. For the reasons stated above, this writ petition is allowed in part. The demand notice dated 3-2-1983 bearing No. Tax C.R. 139/82--83 issued by the Tahsildar, Mangalore (Annexure-C) is hereby quashed. It is made clear that it is open to the 3rd respondent to proceed to recover the amount in accordance with law and in the light of the observations made in this order.

12. Sri S. Udayashankar, learned High Court Government Pleader, is permitted to file his memo of appearance for respondents 1,2 and 3, in six weeks.