The Cantonment Board, Ambala

Vs

Pyarelal

Criminal Appeal 151 of 1963

(S. M. Sikri, K. N. Wanchoo, J. R. Madholkar JJ)

12.03.1965

JUDGMENT

WANCHOO, J.-

This appeal by special leave raises the question of the interpretation of s. 259 of the Cantonments Act, No. 11 of 1924, (hereinafter referred to as the Act). The respondent was a tenant of the appellant. An application was made by the Cantonment Executive Officer, Ambala, on January 7, 1960, for realisation of a sum of Rs. 649.50 from the respondent under s. 259 of the Act on the ground that the amount was due as arrears of rent on the basis of a lease in favour of the respondent. The respondent apparently questioned the jurisdiction of the magistrate to realise the amount. The magistrate held that he had jurisdiction and issued warrants for attachment of the movable property of the respondent on June 13, 1961. Thereupon the respondent went in revision to the Sessions Judge Ambala contending that the magistrate had no jurisdiction to realise the arrears of rent due under a lease under s. 259 of the Act and in any case that could not be done without taking into account the objections of the respondent. The Sessions Judge following certain earlier decisions of the Lahore High Court took the view that rent under a lease could not be recovered under s. 259 of the Act and made a reference to the High Court under s. 439 of the Code of Criminal Procedure. The High Court heard the reference and accepted the view of the Sessions Judge and set aside the order of the magistrate dated June 13, 1961. The High Court having refused the certificate, the appellant obtained special leave from this Court; and that is how the matter has come up before us.

Two questions have been raised by learned counsel for the appellant in this appeal. In the first place, he urges that the magistrate when he is acting under s. 259 of the Act is a persona designata and therefore his order is not revisable under ss. 435/439 of the Code of the Criminal Procedure. The Sessions Judge and the High Court therefore had no jurisdiction to interfere with that order under ss. 435/439 of the Code of Criminal Procedure. Secondly, it is urged that the view taken by the High Court that arrears of rent due under a lease cannot be recovered under s. 259 of the Act is incorrect.

The question as to the jurisdiction of the Sessions Judge and High Court was never raised before the appeal in this Court. Learned counsel, however, relies on the Dargah Committee, Ajmer v. State of Rajasthan [[1962] 2 S.C.R. 265] in support of his contention that the magistrate acting under s. 259 of the Act acts as a persona designata and therefore his order under that section is not revisable under ss. 435/439 of the Code of Criminal Procedure and the Sessions Judge and the High Court had no jurisdiction under those provisions to interfere with such an order. The case cited on behalf of the appellant certainly supports the contention put forward; but in the circumstances of this case we are not prepared to allow this contention to be raised at this stage. It is true that a question of jurisdiction, not depending upon facts to be investigated, can be allowed to be raised at any stage.

Ordinarily if we were satisfied that the High Court had no jurisdiction at all to interfere we would have allowed this question to be raised even at this late stage. But we are of opinion that though the High Court may not have jurisdiction to interfere under ss. 435/439 of the Code of Criminal Procedure it could certainly interfere with the order of the magistrate under Art. 227 of the Constitution. Now if this point had been raised before the High Court it may very well be that the High Court might have considered the reference as if it was an application before it under Art. 227 of the Constitution, in which case the High Court would have jurisdiction to interfere with the order or the magistrate if it came to the conclusion that the magistrate had no jurisdiction in such circumstances under s. 259 of the Act. In these circumstances we are not prepared to permit the appellant to raise this point before us at this late stage.

This brings us to the interpretation of s. 259 of the Act as it stood after amendment by Act II of 1954. The relevant part of the section now reads as follows :-

> "Notwithstanding anything elsewhere contained in this Act, arrears of any tax, rent on land and buildings and any other money recoverable by a Board or a Military Estate Officer under this Act or the rules made thereunder may be recovered together with the cost of recovery either by a suit or, on application to a Magistrate having jurisdiction in the cantonment or in any place where the person from whom such tax, rent or money is recoverable may for the time being be residing, by the distress and sale of any movable property of, or standing timber, or growing crop belonging to such person which is within the limits of such magistrate's jurisdiction, and shall if payable by the owner of any property as such, be a charge on the property until paid; provided.
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> #..... ....(2) * * * * *"##

The first question that arises is whether rent on land and buildings mentioned in the section is governed by the words "recoverable by a Board or a Military Estates Officer under this Act or the rules made thereunder". There is no doubt that "any tax" and "any other money" mentioned in the section are governed by the words "recoverable by a Board etc." It seems to us that the words "rent on land and buildings" which appear between the words "any tax" and "any other money" must equally be governed by the words "recoverable by a Board etc." Therefore the provision of s. 259 of the Act can be utilised for realisation of arrears of rent on land and buildings only if such rent is recoverable by a Board or a Military Estates Officer under the Act or the rules made thereunder. The word "recoverable" in the context obviously means "claimable", for s. 259 itself provides for the manner of recovery. Therefore action for recovery can be taken under s. 259 with respect to rent on land and buildings provided such rent is claimable by a Board under the Act or the rules framed thereunder. This view was taken by the Lahore High Court in Banarsi Das v. Cantonment Authority Ambala Cantonment [A.I.R. 1933 Lah. 517] and is in our opinion correct. It may be added that in 1938, the words "rent on land and buildings" and "under the rules" did not appear in s. 259. Even so, the Lahore High Court took the view with respect to the section as it then stood that the money to be recovered under s. 259 must be claimable by the Board under the Act.

The next question that arises is whether "rent on land and buildings" on lease can be said to be claimable by the Board "under the Act or the rules, made thereunder". It is urged on behalf of the appellant that cl. (p) of s. 116 of the Act provides for "maintaining and developing the value of property vested in, or entrusted to the management of the Board", and s. 116-A gives the Board power to manage any property entrusted to its management by the Central Government on such

terms as to the sharing of rents and profits accruing from such property as may be determined by rule. Further reliance is placed on the Cantonment Property Rules, 1925. Rule 8 thereof provides that immovable property which vests in and belongs to the Cantonment Authority may be leased by the Cantonment Authority without a premium on the condition that a reasonable rent is reserved and made payable during the whole term of the lease and that the lease or the agreement for the lease is not made without the previous sanction of the Cantonment Authority by resolution at a general meeting, or the Officer Commanding in Chief of the Command or the Government of India as the case may be. It is urged that these provisions of the Act and the Rules show that the Board has the power to claim rent thereunder in respect of the leased property. Reliance is further placed on the Cantonment Land Administration Rules 1937 which provide how rents would be fixed when land is leased out by the Cantonment Authority. Rule 4 of these Rules provides for classification of land and r. 8 for standard table of rents; r. 9(6) vests the management of class 'C' land in the Board; r. 26 provides for disposal of land by private agreement; r. 28 for execution of leases, rr. 29 and 30 for maintenance of grants registers of building sites; r. 31 for leases for special periods and on special terms; r. 32 for agricultural land leases; r. 34 for record of agricultural leases; r. 35 for execution of agricultural leases; r. 37 for leases for miscellaneous purposes and r. 41 for special conditions in leases. It may be mentioned that originally there was a rule (r. 42) in these terms :-

> "Recovery of arrears - All arrears of rent and other payment under these rules together with interest on such arrears at the rate of seven and half per cent per annum from the date when they become due to the date of their realisation, shall, on the application of the person specified in sub-section (2) of section 259 of the Act, or of the Military Estates Officers, as the case may be, recoverable in the manner provided in that section."

That rule however no longer exists as it was repealed in 1940.

There is no doubt that in view of the provisions of the Act, the Property Rules and the Land Administration Rules to which we have referred above, the Board has the power to manage lands and Buildings vested in it or entrusted to its management, lease them out and fix rents therefor. But the right of the Board to claim the rent on land and buildings does not arise from these provisions under the Act and the Rules referred to above. The right of the Board to claim rent only arises after the execution of the lease. Therefore rent on land and buildings is not claimable by the Board under the provisions of the Act or the Property Rules or the Land Administration Rules but under the lease. It follows therefore that s. 259(1) cannot be applied to a simple case of money due to the Board on a contract of lease.

It is however urged on behalf of the appellant that the words "rent on land and buildings" which were added by the 1954 - Amendment refer to something of that kind which is recoverable under s. 259 as otherwise the amendment would be meaningless. That is undoubtedly so. We find however, that s. 256 provides that in the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act, or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Cantonment Authority after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Cantonment Authority. Section 257 then provides that if any such notice as is referred to in s. 256 has been given to any person in respect of property of which he is the owner, the Cantonment Authority may require any occupier of such property or of any part thereof to pay to it, instead of to the owner, any rent payable by him in

respect of such property, as it falls due, upto the amount recoverable from the owner under s. 256 and it further provides that any amount recovered from any occupier instead of from an owner under sub-s. (1) shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been paid to the owner. Here at any rate we have an example of the Board's power to claim rent from a tenant of an owner under s. 257 of the Act read with s. 256. So it cannot be said that there is no case where the Act does not provide for claim of rent by the Board. We may add that there may be other cases like this either under the Act or under the Rules. In our view it is in such cases where the Act or the Rules in terms make the rent on land and buildings claimable by the Board that s. 259 will apply. But where the liability to pay rent arises purely on the basis of a lease between the Board and the tenant, nothing in the Act or the Rules has been brought to our notice, particularly after r. 42 referred to above has been repealed, which makes such rent claimable by the Board under the Act or the Rules. We may add r. 42 was repealed long before 1954 when the words "rent on land and buildings" came in s. 259. So it cannot be argued that the omission of r. 42 was due to the amendment of 1954.

It is urged that the section provides for recovery by suit also and as such it will not be possible for the Board to recover rent of land and buildings let out by it even by suit if the rent in the section refers only to rent directly claimable under the Act or the Rules. This is clearly incorrect. The section does not bar the right of the Board as an owner or holder of land and buildings to take action for recovery of rent thereof by suit under the general law of the land. Further by providing for recovery of rent of the kind we have indicated above by suit or by application rent of the kind we have indicated above by suit or by application to a magistrate the section does not affect the right of the Board to recover rent of its land and buildings by suit for such rents are entirely outside the section and the right of the Board under the general law of the land is not taken away by the section. It may be that the section provides for recovery by suit as an alternative as a matter of abundant caution to avoid an argument that the application to a magistrate was the only means open to the Board for recovery of sums covered by the section. In any case the view we are taking will not affect the right of the Board to recover by suit under the general law rent of its land and buildings given on lease.

In the circumstances we agree with the High Court that the rent in this case was not claimable by the Board under the Act or the Rules but only under the lease in favour of the respondent. Therefore s. 259(1) insofar as it refers to recovery of such rent by application to a magistrate will not apply.

In the circumstances the appeal fails and is hereby dismissed.

MUDHOLKAR, J.

The question which falls for a determination in this appeal is whether under s. 259 of the Cantonment Act, No. II of 1924 'rent' on land or buildings under the management of the Cantonment Board can be recovered thereunder by a Magistrate. This question was raised by the respondent in a revision application made by him before the Sessions Judge under s. 435 of the Code of Criminal Procedure against the order of the Magistrate, II Class, made under the aforesaid provision upon an application made to him by the Executive Officer, Ambala Cantonment for the recovery of Rs. 649.50 nP being the arrears of rent alleged to be due from the respondent to the Cantonment Board. The learned Sessions Judge made a reference to the High Court under s. 438 of the Code of Criminal Procedure on the authority of the decisions in Municipal Committee, Delhi v. Hafiz Abdullah [A.I.R. 1934 Lah. 699] and Guranditta Mal v. Emperor [A.I.R. 938 Lah. 29]. The High Court, after referring to these cases and to Banarsi Das v. Cantonment Authority, Ambala

Cantonment [A.I.R. 1933 Lah. 517] accepted the reference and set aside the order of the Magistrate. By special leave the Cantonment Board has come up to this Court in appeal.

Two points were urged by Mr. Gopal Singh appearing for the appellant. The first is that the proceeding before the Magistrate was not one under the Code of Criminal Procedure and, therefore, neither could a reference be made by the Sessions Judge to the High Court under s. 438, Cri. P.C. nor could an order be made by the High Court under s. 439. The second point is that upon a correct interpretation of s. 259 of the Act the Magistrate had the power to recover the rent due to the appellant in the manner provided for in the section. We did not allow the first contention to be raised for two reasons. In the first place the point was not raised in the High Court and in the second place it would not be fair to the respondent who is ex parte to have the appeal divided upon a new ground altogether.

In so far as the second point is concerned it seems to me that the contention of Mr. Gopal Singh is correct and that the High Court was in error in setting aside the order of the Magistrate. The two cases upon which reliance was placed before the High Court arose under s. 81 of the Punjab Municipal Act (III of 1911) which runs thus :

> "Any arrears of any tax, water-rate, rent, fee or any other money claimable by a committee under this Act may be recovered on an application to a Magistrate."

According to the Lahore High Court the operation of this section was controlled by the words "claimable by a committee under this Act" and that it was not any sum that could be described as rent or fee which could be recovered under summary provisions of that section. According to that High Court only a sum that was claimable by the Committee under the express provisions of that Act could be recovered by resort to summary procedure provided by that section. In Banarsi Das's case [A.I.R. 1938 Lah. 517] it was similarly held that the expression "recoverable by the Cantonment Authority under the Act" did not include money due under an ordinary contract between the Cantonment Authority and others and that s. 259 of the Act applied only to such monies as were recoverable by that authority under express provisions of the Act. It is this last decision which was relied upon by the High Court and it pointed out that though the word rent did not occur in s. 259 of the Act as it stood when Banarsi Das' case [A.I.R. 1938 Lah. 517] was decided the introduction of that word had not altered the position in so far as recovery of rent is concerned.

Section 259 of the Act as it now stands runs thus :

> "Notwithstanding anything elsewhere contained in this Act, arrears of any tax, rent on land and buildings and any other money recoverable by a Board or a Military Estates Officer under this Act or the rules made thereunder may be recovered together with the cost of recovery either by a suit or on application to a Magistrate having jurisdiction in the cantonment or in any place where the person from whom such tax, rent or money is recoverable may for the time being be residing, by the distress and sale of any movable property of, or standing timber or growing crop belonging to such person which is within the limits of such magistrate's jurisdiction, and shall, if payable by the owner of any property as such, be a charge on the property until paid for."

Then there is a proviso which need not be quoted. The aforesaid section deals with "Method of

recovery". It sets out two methods : one is institution of a suit and the other is making of an application to a Magistrate. Therefore, where rent of land or building under the management of the Cantonment Authority falls to be recovered resort could be had either to a suit or to summary proceeding as provided in the section. But if the expression "rent" is confined to money due under some express provision of the Act is will lead to a curious result. Thus in respect of rent of land or buildings under the management of the Board neither remedy would be available - though the claim for the rent is ultimately traceable to those provisions of the Act and the Rules which empower the Board to let out the land or buildings - upon the ground that it cannot be said to be claimable or recoverable under any express provision of the Act. Surely the Legislature could never have meant that even a suit for recovery of rent would be maintainable at the instance of the Board only if it was for the purpose of recovery of rent from a tenant who was liable under an express provision of the Act or the Rules to pay rent to the Board. Under ss. 116 and 116A of the Act, read along with Cantonment Land Administration Rules, 1937, the Cantonment Board is entrusted with certain duties and is empowered to do certain acts in relation to the Cantonment property under its management. It is the duty of the Board, among other things, to maintain and develop the property vested in or entrusted to its management. Section 116-A provides as follows:

> "A Board may, subject to any conditions imposed by the Central Government, manage any property entrusted to its management by the Central Government on such terms as to the sharing of rents and profits accruing from such property as may be determined by rules made under section 280."

The Cantonment Land Administration Rules, 1937 contain detailed provisions as to the leasing of land, standardisation of rents, disposal of land by a private agreement, execution of leases etc. Powers are thus conferred upon the Board to let out property vested in it or which is under its management. It would follow from this that where in exercise of these powers the Board has let out any land or buildings it has the right as well as the duty to collect the rent from the tenant. Therefore, though, strictly speaking, the rent due from the tenant cannot be said to be payable under any express provision of the Act the tenant's liability to pay and the Board's right to recover it is ultimately traceable to the Act inasmuch as this liability has arisen by reason of the exercise of a power exercised or performance of duty by the Board under express provisions of the Act and the Rules. Surely the Board cannot be deprived of the right to recover the rent or be absolved from the duty to recover it by resort to the normal remedy of suit. Yet upon the interpretation placed upon s. 259 of the Act by the Lahore High Court and by the Court below a suit as well as a proceeding before a Magistrate have to be placed on the same footing. This will lead to an impossible position and it cannot for one moment be thought that this is what the Legislature had intended. What the expression "recoverable by a Board or the Military Estates Officer under this Act or the rules made thereunder" means is what the Act or the Rules permit the Board to recover or what the Act or the Rules permit the Military Estates Officer to recover. To put it in another way the words "recoverable by" and "under this Act or the Rules made thereunder" are meant to govern "a Board" or "a Military Estates Officer". It was necessary to make this provision because certain duties are imposed and powers conferred on the Board and certain other duties imposed and powers conferred upon the Military Estates Officer and the section makes it clear that the power to recover money is exercisable by such of these two authorities as performs the duty or exercises the power by reason of which the liability of another to pay the tax, rent or any other money arises.

In support of the view which I have expressed I may refer to a decision of the Court of Appeal in Tideway Investment and Property Holdings Ld. v. Wellwood [[1952] 1 Ch. 971]. There one of the questions which had to be considered related to awarding costs to the successful plaintiffs who were

the landlords of the defendants. The suit was brought in the High Court and the plaintiffs contended that since the defendants have committed a breach of the provisions of the lease they had forfeited it and, therefore, were entitled to possession on forfeiture as also to damages for breach of the contract contained in the lease. The defendants claimed protection of the Rent Acts and Harman J., who heard the case held that the lease having already expired there could be no forfeiture and the tenant who was holding over became a statutory tenant entitled to the protection of the Rent Acts. Evershed M.R., however, said that the tenant became a trespasser or a statutory tenant and that the breach of the convenant was a continuing one. Therefore, he said, it was plain that all claims arising out of the breach of the convenant and consisting primarily of a claim for possession must be regarded as arising out of or under the Rent Restriction Act, 1920. Harman J., also held that the claim be regarded as claims under the Rent Act and s. 17(2) precluded him from awarding costs to the successful plaintiffs. Section 17(2) reads thus :

> 'A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs."

The Master of the Rolls, with whom the other Lords Justices agreed, took the same view as Harman J. It may be mentioned that the suit was not instituted under any specific provision of the Rent Acts and the claim for possession was based on the breach of a covenant in the lease which the Court of Appeal treated as a continuing one and yet was treated as one under the Rent Restriction Act, 1922 because of the defence raised. This case thus illustrates that an expression such as the one found in s. 259 of the Act must be construed liberally and not narrowly. In Stroud's Judicial Dictionary, Vol. I, an Australian case, Winstone v. Wurlitzer Automatic Phonograph Co. of Australia Pty Ltd. [[1946] A.L.R. 422] on which could not lay my hands is cited. There it was held that 'authorise' should be read in its ordinary sense of sanction, approve or countenance. I do not think that there is any substantial difference between "Authorised by the Act" and "under the Act".

It would, therefore, be not right to construe the section in the way it was construed by the court below. On the other hand it must be held that where the liability pay money arises against a person by reason of something done by the Board or the Military Estates Officer in exercise of a power or the performance of a duty under the Act that liability can be enforced by the authority concerned either by instituting the suit or by making an application to a Magistrate.

Further, if the word 'rent' in s. 259 of the Act were to be given a restricted meaning that word itself would be rendered otiose because there is no provision whatsoever in the Act which expressly makes rent claimable or recoverable by either of the two authorities specified therein. Our attention was drawn to s. 257(1) which without its proviso reads thus :

> "If any such notice as is referred to in section 256 has been given to any person in respect of property of which he is the owner, the Board may require any occupier of such property or of any part thereof to pay to it, instead of to the owner, any rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 256."

It cannot, however, be said that what the Legislature had in contemplation when it amended s. 259

by adding the word "rent" therein was "rent " to which reference is made in s. 257(1). Section 257 is complementary to s. 256. What s. 256 provides is as follows :

> "In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act, or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Board, whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Board."

Therefore, what the Board has the power to recover from the person is the expenses which it has incurred. One of the modes is to proceed against the occupier of any property belonging to the owner thereof and require that occupier to pay to the Board instead of to the owner the rent payable by him to the owner. What the Board thus recovers from the person cannot obviously be regarded as rent in so far as the Board is concerned. For, the Board is not the landlord of the occupier and what it recovers from his is not something which was due to the Board as rent from him. 'Rent' as commonly understood and as defined in Jowitt's 'Dictionary of English Law' is a sum of money payable periodically by a tenant to a landlord as compensation for occupation of a building or land belonging to the landlord. It cannot thus include money payable by one person to another when they do not stand in the relationship of tenant and landlord. It is the Dictionary meaning which has to be given to the word 'rent' in s. 259. Giving it this meaning it would be clear that what is referred to in s. 257(1) as rent was not intended to be included in that expression in s. 259.

Apart from s. 257 no other provision has come to our notice which can support the view of the High Court as to the interpretation of s. 259. It may be mentioned that before the year 1940 there was r. 42 in the Cantonment Land Administration Rules, 1937 which expressly authorised the Board to recover all arrears of rent and "other payments" under the Rules by resorting to s. 259 of the Act. But that rule was repealed in 1940. It was represented to us by Mr. Gopal Singh that this was repealed because in view of the wide language of s. 259 there was no need felt for the retention of the rule. Whatever that may be, the position is, if I may repeat, that if the word rent is given a restricted meaning as has been done by the High Court, that word would become purposeless. On the other hand if the expression is interpreted in the way suggested here it will serve a purpose for which it was intended.

For these reasons I am of the view that the appeal should be allowed.

ORDER BY COURT

In accordance with opinion of the majority the appeal is dismissed.

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