Collector of Aurangabad & Anr

Vs

Central Bank of India & Anr

Civil Appeal No. 1128 of 1965

(J. C.Shah, S. M. Sikri, V. Ramaswami- I JJ)

02.05.1967

JUDGMENT

RAMASWAMI J.

This appeal is brought by special leave from the judgement of Bombay High Court dated December 17, 1962 in Letter Pattent Appeal No. 29 of 1960.

Respondent No. 2 the firm of Chandmal Manmal was indebted to the 1st respondent Central Bank Of India Aurangabad branch. On March 11, 1955 the first respondent filed a suit being Civil Suit No. 28/1 of 1955 against the second respondent for recovering oa sum of Rs. 14,541/-and odd in the Court of subordinate Judge at Aurangabad.. On the application of the first respondent an order for interim injuction was passed in respect of certain properties belonging to the second respondent. The Court had ordered the second respondent to furnish security for the amount of the decree which may be passed against the firm in the suit. On April 28, 1955 Jogilal Mulchang one of the partner of the second respondent furnished security by creating a charge on his immovable property which was a house at Aurangabad. After the security bond furnished by Jogilal Mulchand read as follows :

I. the Defendent No. 2 therefore stand as surety and declare that if the Honable Court decides the suit against the Defendant he will abide by every order passed by the Court and if he fails to do so then I defendant No. 2 stand as surety to the extent of Rs. 20,000/-(Rupees Twenty Thousand) in O. S. coins and declare that I shall pay the amount of security into Court and for fulfilling the same, I creat a charge on my one pucca two storied house possessed by me known as 'Chandi Posh' bearing No. 167 situate at Kasba and Taluka Vijapur District Aurangabad of the value of Rs. 25,000/-..... If I fail to pay the amount of the security the Court will then be entitled to recover the amount of the security from the property hereby charged....."

On April 30, 1955 the Subordinate Judge granted a decree against the 2nd respondent for a sum of Rs. 14,541/-and odd. The 1st respondent filed an application for execution of the decree under s. 145 of the Civil procedure Code. In the execution of the decree under s. 145 of the Civil procedure code. In the execution of the decree house which was charged under the security bond was sold and one Girdhardas purchased it in auction sale which was confirmed by the Court on August 14, 1958 the Sales Tax Officer Aurangabad Circle wrote a letter to the District Judge. Aurangabad pointing out that a sum of Rs. 9,672/-and odd was due to the Government from the second respondent on account of arrears of sales tax for the years 1950-51 to 1955-56. On September 23, 1958 the District Judge sent a letter to the subordinate judge asking him not to pay the sale proceeds of the house to the degree holder i.e. the first respondent. Subsequently the Collector of Aurangabad made and order on November 20, 1958 distraining the amount of Rs. 9672/-out of the sale proceeds under s.

119 of the Hyderabad Land Revenue Act (Hyd. Act VIII of 1317F). The order of the Collector stated as follows :

Sanction is therefore accorded under Section 119 of Hyderabad Land Revenue Act to attach the amount of Rs. 9672-I. 0 out of the sale proceed realised from the auction sale of the defaulter Shri. Chandamal's property and deposited with the Court of sub-Judge Aurangabad, towards satisfaction of the Degree No. 28/1 of 1955 passed against Shri Chandmal Manmal. The amount should be remitted to the Sales Tax Officer Aurangabad."

Thereupon the 1st respondent made an application to the trial court challenging the validity of the order of the Collector. The subordinate Judge held that civil court had no jurisdiction to set aside revise or modify the order of the Collector and it could be done only by the Superior Revenue Authorities From the order of the subordinate judge 1st respondent preferred an appeal being First Appeal NO. 341 of 1959 in the Bombay High Court. The appeal was heard by Naik J. who by his judgement dated June 22 1960 held that in view of the provisions contained in ss. 104 and 119 of the Hydrabad Land Revenue Act the Government was entitled to priority for the arrears of sales tax due from the second respondent over the claim of the 1st respondent. The learned Judge according dismised the First Appeal From the judgement of Naik J. the 1st respondent took the matter in appeal under the Letter Patent. A Division Bench consisting of Patel and K. K. Desai JJ. allowed the appeal by their judgement dated December 17, 1962 holding that s. 119 of the Hydrabad Land Revenue Act applied only to property which was in the custody and possession of the judgement debotr and not in the custody or possession of a court. It was observed by the Division Bench that the provision of the Hydrabad Land Revenue Act contained in ss. 104,116,117, and 144 made it abundantly clear that the priority applied only in respect of land revenue and not in respect of other taxes. It was further held that the 1st respondent as a decree holder had a prior charge as the quality of his debt was not the same as that of debts due to the Government and therefore in respect of the Sales tax the State had no priority.

The first question to be considered in this appeal is whether the order of distraint dated November 20, 1958 made by the Collector of Aurangabad is legally valid. The order of the Collector was made under s. 13(2) of the Hydrabad General Sales Tax Act read with ss. 116 and 119 of the Hyderabad Land Revenue Act. Section 13 of the Hyderabad General Sales Tax Act (Hyd. Act No. XIV of 1950) provides as follows :

> 13(1) The tax assessed under this Act shall be paid in such manner in such instalment if any and within such time not being less than fifteen days from the date of service of the notice of assessment as may be specified in such notice.
>
> (2) In default of such payment a penalty not exceeding the tax remaining unpaid may be imposed and the total amount due including the penalty if any may be recovered as if it were an arrear of land revenue."

Section 116 of the Hyderabad Land Revenue Act (Hyderabad Act VIII of 1317F) states :

> "An arrear of land revenue may be renforced by the following measures and as far as possible the measures shall be employed in the order mentioned below :-
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> (a) by issuing a notice to the defaulter under section 118;
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> (b) by distraint and sale of the draulters movable property under section 119;

(c) by distraint and sale of the defaulters immovable property under section 120.

(d) by arrest and detention of the deraulter under section 122;

(e) by forfeiture of the right of occupancy in respect of which the arrears is due under section 124;

(f) by temporary attachment of a non khalsa village or part of such village in respect of which the arrears is due under section 125".

Section 119 of the same Act is to the following effect :

The Tahsildar may distrain and sell the defaulters movable property. Such distraint shall be made by officers or clerks appointed by him for his work".

The High Court has taken the view that s. 119 can only apply to property which is in the custody and possession of the judgement debtor and not in the custody and possession of a Court. In our opinion the construction put by the High Court on the language of s. 119 of the Hyderabad Land Revenue Act is not correct and is not warranted by the language of the section or the context is which it is placed. The section empowers the Tahasildar to distrain and sell the defaulters movable property and such distraint shall be made by officers or clerk appointed by him for this work. The language of the section is general and and there is no reason why any restriction should be put on the power of distraint conferred upon the Tahasildar with regard to the defaulters movable property. In the present case the Collector of Aurangabad sent the order of distraint to subordinate Judge requesting him to remit to Sales Tax Officer the amount of Rs. 9672/-out of the amount of sale proceeds deposited in his Court. We are of the opinion that the procedure followed by the Collector is justified by the provision of s. 119 and there is nothing in the language or context of the section which prohibit the Collector from making an order of distraint with regard to the movable property in the custody and possession of a Court. We accordingly reject the argument of respondent No. 1 on this aspect of the case.

We proceed to consider the next question arising in this appeal viz. whether the debts due to the Government in respect of arrears of sales tax has priority over the dues of respondents No. 1. It appears that the Sales tax was due for the year 1950-51 to 1955-56 i.e. for a period of six years. It was submitted on behalf of the appellant that since s. 13(2) of the Hyderabad General Sales Tax Act makes a provision for recovery of the sales tax dues as "arrears of land revenue "and since priority as to the land revenue is provided under the Hydrabad Land Revenue Act the arrears of sales tax also must be granted priority over the other demands whether in respect of debts or mortgage or based on a decree or attachment of a court. The argument of the appellants is based upon ss. 104,116,119 and 144 of the Hyderabad Land Revenue Act. Section 104 provides as follows :

"The demand on any land for its land revenue shall have priority over other demands whether in respect of debts or mortgage or based on decree of or attachment by a Court and if the title to any land on which such Government demand is due is transferred such land or its transfered shall not be discharged from such demand. If the demand for land revenue which cannot be recovered from the title to or existing produce of that land is due from a person the liability for the payment of the land revenue shall have precedence over debts or decree of a Court also on his property other than land on which the demand is due provided that such property before it is

forefeited for recovery of the said demand, is not should or mortgaged or given as a gift or otherwise transfered or hypothecated or attached."

Section 144 is to the following effect :

"All the Government sums under the following heads may be recovered under the provisions of this Chapter :

(1) Land revenue

(2) Quit rent

(3) Nazarana

(4) Peshkesh

(5) Taxes

(6) Local cess.

(7) Fine and penalties

(8) Income from Land

(9) Resum

(10) Fees.

(11) Charges.

(12) Penal interest

(13) Lease money

(14) Money recoverable from sureties

(15) Taccavi loans

(16) All sums in respect of which provision has been made in this Act or in any other Act that they be recovered as arrears of land revenue."

Section 144 enumerates the nature of taxes in respect of which the provisions under the Land Revenue Act could be adopted for recovery. But the language of s. 104 makes it clear that the priority specified in that section applies only in respect of land revenue and not in respect of other taxes. In respect of other taxes we consider that only the procedure for recovery under s. 116 applies and not the substantive law of priority under s. 104 of the Land Revenue Act. In our opinion. Counsel for the appellant has not been able to make good his argument on the aspect of the case.

We pass on to consider the next question arising in this case samely whether the appellants are entitled to claim priority to wards payment of the sales tax according to the Common Law doctrine of "Priority of Crown debts" quite apart from the provisions of the Hydrabad Land Revenue Act.

The Common Law doctrine was evolved in the English Law as part of the Crown prerogativ which is described by Halsbury as follows :-

> "The royal perogative may be defined as being that preeminence which the Sovereign enjoys over and above all other persons by virtue of the common law but out of its ordinary course in right of her regal dignity and comperhends all the special dignities liberties previllage powers and royalties allowed by the common law the Crown of England".

The question about the applicability of the priority of Crown debts was considered by the Bombay High Court in 1968 in secretary of State in council for India v. Bombay Landing & Shipping Co. Limited. In which it was held that a judgemnt debts due to the Crown was in Bombay entitled to the same precedence in execution as a like judgemnt debts in England if there is no special legislative provision affecting that the right in the particular case. The same view has been taken by the Bombay High Court in a later case Bank of India v. John Bowman in which Chagla C.J. pointed out that the priority given to the Crown was not on the basis of its debts being judgement debts or a debts arising out of statute but the principle was that if the debts were of equal degree and the Crown and the subject were equal the crowns right would prevail over that of the subject. The same view has been adopted by a Full Bench of the Madras High Court in Manickam Chettiar v. Income tax Officer Madura in which it was held that the income-tax debts had priority over private debts and the court had inherent power to make an order for payment of moneys due to the Crown. A similar view has been expressed by the High Court in Kaka Mohamad Ghose Sahib & Co. v. United Commercial Syndicate. All these Authorities have been quoted with approval by this court in Builders Supply Corporation v. Union of India in which it was held that the Government of India was entitled to claim priority for arrears of income tax due to it from a citizen over debts from him to unsecured creditors and that the English common law doctrine of the priority of Crown debts has been given judicial recognition in the territory known as"British India" prior to 1950 in regard to the recover of tax dues in the priority to other private debts of the tax payer. It was pointed out therefore that the English Common Law doctrine having been incorporated into Indian Law was a law in force in the territory of India and by virtue of Art 372(1) of the Constitution of India it continued to be in force in India until it was validly altered repealed or amended. It was however argued for the respondent that the authority of the decision of this Court in Builder supply Corporation v. Union Of India has been affected to some extent by the later decision of a larger Bench of this court in the Superintendent & Rememberancer of Legal Affairs West Bengal v. The Corporation Of Calcutta, in which it was held that the rule of English Common law that the State was not bounded by the provisions of a statute unless it was expressly named or brought in by necessary implication was not accepted as a rule of construe action throughout India and therefore it has not become law of the land. It was further held that even on the assumption that it was accepted as rule of construction throughout India it was only a rule of construction and not a rule of substantive law and only a rule of construction and not a rule of substantive law and therefore cannot be said to be a law in force within the meaning of Art. 372 Lastly this Court expressed the view that the rule of construction was inconguous in a democratic republic and it was inconsistent with the rule of law based on the doctrine of equality and therefore the said canon of construction should not be applied for construing statues in India. In our opinion there is nothing in this judgement which affects the authority of the previous decision of this Court in Builders Supply Corporation v. Union of India. On the other hand the majority judgement of the learned Chief Justice has referred to the decision in H. Snowden Marshall v. People of the State of New York which lays down a similar doctrine namely that the State Of New York has the common law prereogative right of the priority over unsecured creditors and distinguished the case on the ground that it had nothing to do with the rule

of construction but was based upon the common law prerogative of the Crown.

We are however unable to apply the English Common Law doctrine of priority of Crown debts in this case because there is no proof that the doctrine was given judicial recognition in the authority of Hyderabad State prior to January 26, 1950 when the Constitution was brought into force. We granted time to Counsel for the appellants to ascertain whether there were any reported decision recognising such a doctrine in the Hyderabad State but sufficient material has not been placed before us in this case to show that the doctrine was given judicial recognition in the Hyderabad State before its incorporation into the Indian Rpublic.

For these reason we hold that the judgement of the Bombay High Court dated December 17, 1962 in Letter Patent Appeal No. 29 of 1960 must be affirmed and this appeal must be dismissed with costs.

V. P. S. Appeal dismissed

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