Luka Mathai

Vs

Neelakanta Iyer Subramonia Iyer

Civil Appeal No. 542 of 1967

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar JJ)

06.10.1971

JUDGMENT

SIKRI, C.J. -

1. By judgment dated May 26, 1970, this Court (Sikri, J., as he then was, and Ray, J.) allowed Civil Appeal No. 542 of 1967, set aside the judgment of the High Court and passed a decree in favour of the appellant after modifying the decree passed by the Trial Court. The respondent subsequently filed Review Petition No. 35 of 1970 for review on the ground that they had failed to bring to the notice of the court the provisions of Travancore Regulation IX of 1094 and the fact that the loans were granted under the above Regulation. We allowed review on February 1, 1971. This judgment is, however, in continuation of our earlier judgment dated May 26, 1970.

2. The only new point which needs discussion is the effect of the provisions of Travancore Regulation IX of 1094 on our conclusion on the fourth point in that judgment.

3. We had inter alia held that the "fourth point raised by the learned counsel for the plaintiff is fatal for the respondent". We observed that "the bonds do not give power to the Government to sell the properties other than that mentioned in the bond. The properties mentioned in plaint A schedule items 2 to 8, B schedule items 1 and 3 to 8, and C schedule items were not given as security under the bond and the Government had no authority to sell them. It is conceded on behalf of the respondent that all the properties were sold in one lot. This, in our opinion, vitiates that the sale of all of properties was void". The fourth point raised before us was that "the Government had no authority to attach and sell plaint A schedule items 2 to 5 and B schedule items 1 and 3 to 8 and C schedule items, which were not given as security under the bonds; and if the Government had no authority then the sale of all the properties is void". We had while dealing with the third ground also observed that "no other regulation has been brought to our notice which makes dues under this bond to be recoverable as arrears of public or land revenue".

4. It now transpires that Regulation IX of 1094 - Travancore Land Improvement & Agricultural Loans Regulation - provides for recovery of land improvement loans from the borrower as if they were arrears of land revenue due by him. Section 7 of the above Regulation provides :

> "7. (1) Subject to such Rules as may be made under Section 10, all loans granted under this Regulation, all interests (if any) chargeable thereon and costs (if any) incurred in making the same shall, when they become due, be recoverable in any of the following modes -

(a) from the borrower as if they were arrears of land revenue due by him;

(b) from his surety (if any) as if they were arrears of land revenue due by him;

(c) except as regards the loans referred to in Section 4, out of the land for the benefit of which the loan has been granted as if they were arrears of land revenue due in respect of that land;

(d) out of the property comprised in the collateral security according to the procedure for the realisation of land revenue by sale of immovable property other than the land on which the revenue is due :

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under Section 3 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on that interest.

(2) When any sum due on account of any such interests or costs in paid by a surety or an owner of property comprised in any collateral security, or recovered from a surety or out of any such property, such sum shall, on the application of the surety or the owner of such property, be recovered on his behalf from the borrower or out of the land for the benefit of which loan has been granted, in manner provided in this Section."

From these provisions it is quite clear that the loans granted under the Regulation, interest and charges, etc. can be recovered in any or all of the four modes described in the section. They can be recovered from the borrower under clause (a); they can be recovered from a surety under clause (b); the land for the benefit of which the loan had been granted can be proceeded against under clause (c); and under clause (d) property comprised in the collateral security can be proceeded against. The fact that the properties which had been sold were not mentioned in the bound as collateral security or were not expressly hypothecated does not make any difference because the Travancore Revenue Recovery Act I of 1068 provides under Section 5 that "when Public Revenue due on land may be in arrear, such arrear, together with interest, if any, and cost of process, may be recovered by the sale of the defaulter's movable or immovable property or both, in the manner hereinafter provided".

5. The learned counsel for the appellant contends that neither the Travancore Revenue Recovery Act 1 of 1068 nor the Land Improvement and Agricultural Loans Regulation IX of 1094, and the rules made thereunder, confer any power or jurisdiction on the State Government or its officers to sell through the machinery of the Revenue Recovery Act any other property of the borrower than what he has specially given by his bond as security for the loan. It is further contended that the borrower does not incur any personal liability unless he has specifically so covenanted in the bond and hence the sale of all the 12 out of the 13 items of land sold-one item alone having been a security-property under the loan agreement - was unauthorised, illegal and void.

6. We are unable to agree with this contention. It is not necessary for the borrower to specifically so covenant in his bond that he would be personally liable because Section 7 (1) (a) of Regulation IX of 1094 makes the borrower personally liable. This is also made clear by sub-section (2). Under sub-

section (2), if a surety pays the loan he can request that the money be recovered from the borrower on his behalf.

7. The learned counsel relied on the decision in Ulahannan Ouseph v. Koohitti Kochukumari (23 Travancore Law Journal 1051; 54.) where reference was made to an earlier judgment in the Dewan of Travancore v. Eravi Narayanan (29 Travancore Law Reports 37.) in which it was held that "though under Section 59 of the Revenue Recovery Regulation, moneys due to Government under written agreements and all sums declared by other Regulations to be realisable as arrears of public revenue may be recovered under this Regulation, that section only makes the machinery of procedure prescribed in the Regulation applicable to such cases, and it would not follow that the incidents of a Revenue sale held under Section 39 would also attach to sales held under the authority conferred by the provisions of Section 59". The Court held that the property in the case remained subject to the plaintiff's prior charge.

8. We are unable to appreciate how this case assists us on the question whether there is any personal liability of the appellant or not.

9. The learned counsel also drew out attention to Birendra Nath Raha v. Mir Mahabubar Rahaman (AIR 1947 Cal 332). In this case it was held that according to the provisions of the Bengal Land Revenue Sales Act 1868, the properties in question could not be sold because they were neither an estate nor a tenure within Section 5 of the Act. No such question arises in this case but it may be mentioned that at page 336 the Court interpreted clause (a) of Section 7 of the Land Improvement Loans Act to mean that it imposed a personal liability on the borrower.

10. There is, however, authority against the contentions of the appellant. The Madras High Court observed in Gonjalada Bhojarajappa v. Korlahalli Halappa (AIR 1946 Mad 226) as follow :

> "It is clear from Section 5, Revenue Recovery Act, that for the recovery of a loan advanced under the Agriculturists Loans Act it is open to the Collector to sell any part of the immovable property belonging to the defaulter, and the remedy is not confined to that particular property in respect of which or for whose improvement the loan had been taken."

11. It may be noted that Section 5 of the Agriculturists' Loans Act, 1884, provide :

> "Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the persons to whom the loan was made or by his surety."

In interpreting this section, the Madras High Court, in the above-mentioned case clearly held that it was open to the Collector to sell any part of the immovable property belonging to the defaulter, and the remedy was not confined to the particular property in respect of which or for whose improvement the loan had been taken.

12. We may also mention that in Lakshman Venkatesh Naik v. Secretary of State (AIR 1939 Both 183), while dealing with Section 7 of the Land Improvement Loans Act, 1883, which is in terms similar to Section 7 of Travancore Regulation IX of 1094, it was observed that "it was therefore

open to the Collector to adopt all or any of the four different methods which the Section provides for the recovery of the taqavi arrears".

13. In the result the appeal is dismissed. The parties will bear their own costs throughout. Our order dated February 1, 1971 awarding Rs. 1500/- to the appellant as thrown away cost shall, however, stand.

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