

Director of Industries U. P. and Others

Vs

Deep Chand Agarwal

Civil Appeal No. 576 of 1970

(E. S. Venkataramiah, D. A. Desai JJ)

06.02.1980

JUDGMENT

VENKATARAMIAH, J. -

1. This appeal by certificate involves the question whether Section 3 of the Public Moneys (Recovery of Dues) Act, 1965 (U.P. Act No. XXV of 1965) hereinafter referred to as 'the Act') offends Article 14 of the Constitution and it arises in the following circumstances.
2. The respondent is a resident of Railwayganj, Hardoi in the State of Uttar Pradesh. He applied to the Government of Uttar Pradesh for a loan of Rs. 15,000 for the purpose of setting up a panel pins and wire nails industry in Hardoi. The State Government which was interested in the industrial development of the State accordingly advanced the loan of Rs. 15,000 to the respondent under a mortgage deed dated March 10, 1960. The respondent was permitted to repay the loan in ten half-yearly instalments commencing from May 1, 1962 together with interest at the rate of 3 per cent per annum calculated from March 25, 1960. The mortgage deed provided that the respondent should spend Rs. 7000 out of the loan advanced on the purchase of machineries for manufacturing panel pins and wire nails and the balance of Rs. 8000 on the construction of a building for the purpose of the said industry and for no other purpose. The respondent also agreed to observe truly the Uttar Pradesh Rules for the Advance of Loan for Developing Cottage Industries in the Rural Area promulgated by the State Government and also to permit the Director of Industries, U.P. or any official deputed by him to inspect his accounts for the purpose of verifying whether the amount borrowed had been utilised for the specified purpose. The respondent hypothecated under the deed his house by way of security for the loan. Clause (8) of the mortgage deed, however, inter alia provided that if any of the instalments payable by the respondent as mentioned in the deed was not paid on the stipulated date then the entire amount due under the deed could be recovered by the State Government as arrears of land revenue. The mortgage deed was signed by the Director of Industries, U.P. on behalf of and acting under the authority of the Governor of Uttar Pradesh and the respondent. The respondent committed default in repayment of the loan. The State Government was, therefore, compelled to take coercive measures to recover the balance of the amount due and payable under the deed as if it were an arrear of land revenue, by resorting to Section 3 of the Act read with Sections 279/281; of the U.P. Zamindari Abolition and Land Reforms Act, 1950. At the request of the Director of Industries, U.P., the Collector of Hardoi initiated steps to recover the balance of the amount due under the deed as an arrear of land revenue. Pursuant to the order of the Collector, the Tahsildar of Hardoi issued an order of attachment dated March 12, 1968 of the house of the respondent and also issued a warrant of arrest of the respondent to recover the amount under the provisions governing the procedure prescribed for realising land revenue. Immediately thereafter, the respondent filed a petition under Article 226 of the Constitution on the file of the

High Court of Allahabad (Lucknow Bench) in Writ Petition No. 334 of 1968 questioning the competence of the revenue authorities to recover the balance of the amount due under the deed as if it were an arrear of land revenue. In that petition, the respondent contended that the Act was, discriminatory and was therefore, violative of Article 14 of the Constitution on the ground that the State Government had two remedies available to it in law - one by way of a suit for recovery of the mortgage money and another under the Act which authorised it to recover, the amounts due as if they were areas of land revenue, that the remedy under the Act was more onerous than a suit so far as the respondent was concerned and that there were no guide-lines in law as to the circumstances in which the State Government could resort to the provisions of the Act. The Director of Industries, U.P. and the revenue authorities who were impleaded as respondents in the writ petition contended that the provisions of the Act did not offend Article 14 of the Constitution.

3. Following the decision of this Court in, Northern India Caterers Private Ltd. v. State of Punjab ((1967) 3 SCR 399 : AIR 1967 SC 1581 : (1968) 1 SCJ 475) the High Court declared that Section 3 of the Act violated Article 14 of the Constitution by providing an additional remedy to the State Government over and above the remedy by way of a suit, leaving it to the unguided discretion of the State Government to resort to one or the other and that the remedy available under the Act was more drastic or prejudicial to the party concerned than the suit. Accordingly the High Court quashed the recovery proceedings initiated by the revenue authorities. Aggrieved by the decision of the High Court, the Director of Industries, U.P. and the revenue authorities have come up in appeal to this Court.

4. The impugned Act was passed in the year 1965 to provide for speedy recovery of certain classes of dues payable to the State or to the Uttar Pradesh Financial Corporation. The Act contains three sections. The first section deals with the title of the Act and extent of its operation. The second section is the definition clause. Section 2(b) of the Act defines the expression 'financial assistance' as any financial assistance (i) for establishing, expanding or running any industrial undertaking; or (ii) for purpose of vocational training; or (iii) for the development of animal husbandry; or (iv) for purposes of any other kind of planned development; or (v) for relief against distress. Section 3 of the Act with which we are now concerned reads as follows :

3. Recovery of certain dues as arrears of land revenue. - (1) Where any person is party -

(a) to any agreement relating to a loan, advance or grant given to him by the State Government or the Corporation by way of financial assistance, or

(b) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern, or

(c) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue.

Any such person -

(i) makes any default in repayment of the loan or advance or any instalment thereof, or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in repayment of such grant or portion or instalment thereof, or

(iii) otherwise fails to comply with the terms of the agreement, -

then, in the case of the State Government, such officer as may be authorised in this behalf by the State Government by notification in the Official Gazette and in the case of the Corporation, the Managing Director thereof, may, without prejudice to any other mode of recovery under any other law for the time being in force, send a certificate to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

5. It may be seen that Section 3(1)(c) of the Act provides that where any person is a party to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue and such person makes any default in repayment of the loan or advance or any instalment thereof then the arrears due and payable by him may be recovered as if it were an arrear of land revenue by issuing a certificate to the Collector. The remedy of the State Government to recover the amount by instituting a suit also remains unaffected by the Act.

6. At the outset, it has to be stated that the decision of this Court in Northern Indian Caterers Private Ltd. ((1967) 3 SCR 399 : AIR 1967 SC 1581 : (1968) 1 SCJ 475), is overruled by this Court in Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay ((1975) 1 SCR 1 : (1974) 2 SCC 402). The question for determination in this case is whether Section 3 of the impugned Act violates Article 14 of the Constitution. In order to decide this question, it is necessary to determine the object of the Act and whether the classification made between the State on the one hand and others who have also advanced moneys under mortgage deeds bears any reasonable relation to the object of the statute. The Act is passed with the object of providing a speedier remedy to the State Government to realize the loans advanced by it or by the Uttar Pradesh Financial Corporation. The State Government while advancing loans does not act as an ordinary banker with a view to earning interest. Ordinarily it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry and for such other purposes which would advance the economic well-being of the people. The amounts so advanced are repayable in easy instalments with interest which would ordinarily be lower than the rate of interest payable on loans advanced by banking institutions which are run on commercial lines. The loans are advanced from out of the funds of the State in which all the people of the State are vitally interested. Moneys advanced by the State Government have got to be recovered expeditiously so that fresh advance may be made to others who have not yet received financial assistance from the State Government. If the State Government should resort to a remedy by way of a suit on the mortgage deeds or bonds executed in its favour, the realization of the amounts due to the government is bound to be delayed resulting in non-availability of sufficient funds in the hands of the State Government for advancing fresh loans. It is with the object of avoiding the usual delay involved in the disposal of suits in civil courts and providing for an expeditious remedy, the Act has been enacted. In this instant case, the mortgage deed provided that the amount due thereunder could be realized as if it were an arrear of land revenue. It cannot, therefore, be said that there is no reasonable basis for the classification made by the statute and that the classification does not have a reasonable relation to the object of the statute.

7. It is also argued that the impugned Act does not provide any guide-lines to the authorities concerned regarding the circumstances under which the amounts could be realized by resorting to

the procedure prescribed for recovering arrears of land revenue. It is no doubt true that there is no express provision in the Act containing such guide-lines. That, however, in the circumstances of the case is not sufficient to hold that Section 3 of the impugned Act confers arbitrary power on the State Government and makes a hostile discrimination. Under Section 3 of the Act, the Collector can proceed to realize the amount due as arrears of land revenue only on the basis of a certificate issued by an officer as may be authorised in that behalf by the State Government mentioning the sum due from any person referred to therein. Such officer is expected ordinarily to avail himself of the speedier remedy provided under the statute. We are of the view that the Act which is passed with the object of providing a speedier remedy itself provides sufficient guidance to the officer concerned as to when he should resort to the remedy provided by it. As observed by this Court in *Maganlal Chhaganlal (P) Ltd. case* ((1975) 1 SCR 1 : (1974) 2 SCC 402) one expects the officer concerned to avail himself of the procedure prescribed by the Act and not to resort to the dilatory procedure of the ordinary civil court. In that case, the legality of the provisions of the Bombay Government Premises (Eviction) Act, 1955 and the provisions contained in Chapter V-A of the Bombay Municipal Corporation Act, 1888 which provided a speedier remedy to recover possession of premises belonging to the State Government and the Bombay Municipal Corporation which were in unauthorised occupation of any person was questioned on the ground that the remedies under the said provisions were more onerous than the remedy by way of a suit which was also available to the State Government and the Corporation. While upholding the above provisions, Alagiriswami, J. who spoke for the majority observed thus : (SCC pp. 422-23, para 15)

The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is premises belonging to the corporation and the government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary civil court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative Officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of government property or municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary civil court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of government and corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We therefore, find ourselves unable to agree with the majority in the *Northern India Caterers case* ((1967) 3 SCR 399 : AIR 1967 SC 1581 : (1968) 1 SCJ 475).

8. Certain provisions similar to the Act impugned in this case enabling a State Government to recover the amounts due to it by resorting to a speedier remedy have been upheld by this Court in two cases *Shri Manna Lal v. Collector of Jhalawar* ((1961) 2 SCR 962 : AIR 1961 SC 828 : (1961)

2 LLJ 146) and Lachhman Das v. State of Punjab ((1963) 2 SCR 353 : AIR 1963 SC 222). In the case of Shri Manna Lal ((1961) 2 SCR 962 : AIR 1961 SC 828 : (1961) 2 LLJ 146) the facts were these : The Jhalawar State Bank was originally a Bank belonging to the princely State of Jhalawar. Its assets, including moneys due to it, became vested in the United State of Rajasthan under the covenant executed by the Ruler of the Jhalawar along with other rulers by which the United State of Rajasthan was formed. On the promulgation of the Constitution of India, the United State of Rajasthan became the State of Rajasthan in the Indian Union and all its assets including the Jhalawar State Bank and its dues vested in the State of Rajasthan. In that case the question which arose for consideration was whether moneys which had been advanced by the Jhalawar State Bank could be recovered by taking proceedings under the Rajasthan Public Demands Recovery Act. This Court held that the amounts could be recovered by the State of Rajasthan after the Bank had become vested in it as a public demand under the Rajasthan Public Demands Recovery Act and that the said Act did not offend Article 14 of the Constitution even though it provided a special facility to the government as a banker for the recovery of the Bank's dues for the government could legitimately be put in a separate class for this purpose. In the latter case i.e. the case of Lachhman Das ((1963) 2 SCR 353 : AIR 1963 SC 222) the right of Patiala State Bank to recover the amounts due to it under the provisions of the Patiala Recovery of State Dues Act was questioned. This Court held that the Bank established by a State had distinctive features which differentiated it from other Banks and formed a category in itself and the Act in setting up separate authorities for determination of disputes and in prescribing a special procedure to be followed by them for the recovery of the dues by summary process could not be considered to be discriminatory.

9. We are, therefore, of the view that Section 3 of the Act which enables the State Government to recover the sums advanced under the circumstances mentioned therein as if they were arrears of land revenue cannot be held to be discriminatory and violative of Article 14 of the Constitution.

10. For the foregoing reasons, we allow the appeal, set aside the order passed by the High Court and dismiss the writ petition. Since the High Court disposed of the case on the basis of the decision of this Court in Northern India Caterers Private Ltd. ((1967) 3 SCR 399 : AIR 1967 SC 1581 : (1968) 1 SCJ 475) which has since been overruled, we make no order as to costs.

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