

PATNA HIGH COURT

Lakshmi Prasad Sao

Vs

Collector and Deputy Commissioner

C.W.J.C. Nos. 640, 641, 642 and 643 of 1974

(B.P. Jha and Vishwanath Mishra, JJ.)

08.03.1979

JUDGMENT

B.P. Jha and Vishwanath Mishra, JJ.

1. We shall dispose of these four writ petitions by a common judgment as a common point of law arises for consideration.
2. These petitioners have filed applications under Articles 226 and 227 of the Constitution of India and pray for quashing Annexure 1 attached to each of the writ petitions.
3. In these writ petitions, the Collectors of the different districts of Orissa filed certificates under section 4 of the Bihar and Orissa Public Demands Recovery Act, 1914 (Act IV of 1914) before the Collector of Singhbhum for realising the excise dues from these petitioners. The excise dues mentioned in C. W. J. C. No. 640 of 1974 are to the tune to Rs. 38,600.32, whereas in C. W. J. C. No_ 641 of 1974, Rs. 2,30 700/-, in C. W. J. C. No. 642 of 1974, Rs. 53,264.70 and in C. W J. C. No. 643 of 1974, Rs. 2,11,500. These amounts are mentioned in Annexure I to each of the writ petitions.
4. If the certificate relates to dues outstanding in any district within the State of Bihar there is no difficulty in realizing the dues through the procedure provided in the Bihar and Orissa Public Demands Recovery Act. Under section 13 of this Act, a Certificate Officer in whose office a certificate has been filed is authorized to send it to any other Certificate Officer in the same district or to the Collector of any other district. Even if, therefore, the property of the certificate-debtor is situated in a district ; other than the one in which the certificate is filed the certificate can safely be sent to the Collector of the district in which the property of the certificate-debtor lies. But a question arises as to whether a Certificate Officer or a Collector of one district of a certain State can send the certificate to the Certificate Officer or the Collector of another State if

the property of the certificate-debtor is situated in that State. For an answer to this question, we have to refer to the provisions contained in sections 3 and 10 of the Revenue Recovery Act, 1890 (Act I of 1890) which run as follows :

"3. Recovery of public demands by enforcement of process in other districts other than those in which they become payable.-(1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating :

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due

(2) The certificate shall be signed by the Collector making it or by any officer to whom such Collector may, by order in writings, delegate this duty, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

* * *

10. Duty of Collectors to remit moneys collected in certain cases.- Where a Collector receives a certificate under this Act from a Collector of another State or a Collector in Pakistan or Burma, he shall remit any sum recovered by him by virtue of that certificate to that Collector, after deducting his expenses in connection with the matter."

No other provision has been pointed out under which the Collector of one State may send the certificate to the Collector of another State for realisation of the dues. On a reading of section 3, it is clear that the Collector cannot send the certificate to another State in all cases, but only in cases where the certificate due is on account of "arrear of land-revenue" or it is "a sum recoverable as an arrear of land-revenue." "The certificates in question here are all excise dues which are to be recovered as "arrears of revenue" and not as "arrear of land-revenue". If, therefore, the excise dues are recoverable as "arrears of land-revenue", then the Collectors of Orissa were perfectly justified in sending the certificates to the Collector of Singhbhum, But if the dues are not recoverable as "arrear of land-revenue", the Collectors of Orissa could not send the certificates to the Collector of Singhbhum and consequently the Collector of Singhbhum would not be entitled, in law, to execute them.

5. Thus the point for consideration in these writ petitions is : Whether the words "arrears of revenue" can be equated with "arrears of land revenue" or not? In our opinion, the answer must

be given in the negative. The statutes have used the words "arrears of revenue" or "arrears of land revenue" with different meanings [See section 8 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (Act no. 19 of 1952), section 8 of the Payment of Gratuity Act, 1972 (Act No. 39 of 1972), section 21 (6) of the Bihar Sales-tax Act, 1959 (Bihar Act XIX of 1959) section 39 of the U. P. Excise Act, 1910 (Act no. VI of 1910), and section 142 of the Customs Act, 1962 (52 of 1962). The provisions in these Acts clearly suggest that if there is any arrear, it shall be realised as an arrear of land revenue. Wherever the Legislature intended that any arrear should be realised as an arrear of land revenue, it is specifically mentioned in the provisions of those Acts. If any arrear is to be realised as an arrear of land revenue, the provisions of the Revenue Recovery Act, 1810, apply.

6. For deciding the question whether the excise dues are recoverable as "arrear of land-revenue" or not, a reference to section 93 of the Bihar and Orissa Excise Act, 1915 which runs as follows is necessary :

"93. Recovery of dues.-(1) The following moneys, namely,-

(a) all excise revenue,

(b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 46, and

(c) all amounts due to the State Government by any person on account of any contract relating to the excise-revenue, may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of revenue."

It is clear from this section that excise revenue can be realised either by distress or sale of immovable properties or by the processes prescribed for the recovery of "arrears of revenue". The words "arrears of revenue" are very important to be noted as they are quite distinct from "arrears of land-revenue" mentioned in section 3 of the Revenue Recovery Act, 1890. Section 93 (I) of the Bihar and Orissa Excise Act provides that the arrear of excise-revenue shall be realised as an "arrear of revenue" and not as an "arrear of land revenue. If it is so, in our opinion, the provisions of the Revenue Recovery Act do not apply to the present case. If the provisions of the Revenue Recovery Act do not apply, then the Collectors of the different districts of Orissa erred in law in filing the certificates before the Collector of Singhbhum within the State of Bihar.

7. Learned Counsel for the petitioners has relied upon Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914 to show that the legislature contemplated a difference between arrears of "revenue" and "land revenue". The said Schedule I enumerates the public demands, and item 3 thereof reads as follows :

"3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue of land- revenue, or by the process authorized for the

recovery of arrears of revenue or of the public revenue or of Government revenue."

From this it no doubt appears that "arrear of revenue" would be distinct from "arrear of land revenue."

8. The learned Advocate-General appearing from the State of Orissa (respondent no. 3) argued that both these terms "arrear or revenue" and "arrear of land-revenue" are synonymous terms and the legislature did not intend to make any distinction between them. In our opinion, the answer must be given in the negative. Even item no. 2 of Schedule I of the Bihar and Orissa Public Demands Recovery Act, which runs as follows, has made a reference to "arrear of Revenue" :

"2. Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under section 3 of the Bengal Land-Revenue Sales Act, 1659 (XI of 185.1)."

In this connection, the provisions of the Bengal Land-revenue sales Act, 1859, are also relevant. [The object for enacting the Bengal Land-revenue Sales Act, 1859 was to improve the law relating to sales of land for "arrears of revenue" in the lower provinces under the Bengal Presidency." "Arrear or revenue" is also defined in section 2 of the Act which runs as follows :

"If the whole or a portion of a kist or installment of any month of the era according to which the settlement and kist-bands of any mahal have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue".

The Act also lays down the procedure for sale for arrears of revenue. We have come across three; Acts at present where the words "arrears of revenue" have been mentioned, namely, (1) the Bengal Land Revenue Sales Act, 1859, (2) the Bihar and Orissa Excise Act, 1915 (section 93) and the Bengal Excise Act, 1909 (section 89). In these enactments, the words "arrears of revenue" have been used. The Bengal Land Revenue Sales Act, 1859 provides a complete procedure for the sales of lands for non-payment of arrears of revenue.

9. The learned Advocate General also submitted that separate procedures have not been laid down for realizing "arrears of revenue" and "arrears of land- revenue". Hence, what is recoverable as "arrears of land revenue" should also be taken to be recoverable as "arrears of revenue." The Bengal Land Revenue Sales Act and the Bihar and Orissa Public Demands Recovery Act provide the machinery for realizing the "arrears of revenue" within the State and not outside the State. "Arrear of land revenue" and he realized outside the State.

10. We, therefore, come to this conclusion, on a careful consideration of the pros and cons of the case, that excise dues of Orissa are not realizable through certificates in Bihar because these dues are recoverable as "arrears of revenue" and not as "arrears of land revenue". The Collectors of the

different districts of Orissa. therefore, have erred in sending the certificates to the Collector of Singhhum. Recourse has to be taken to other legal steps for realization of the dues by the Government of Orissa.

11. The law raised in this case may he summarized thus :

"Arrears of revenue" and "arrears of land revenue" are two distinct terms. For realising - arrears of land revenue", the provisions of Revenue Recovery Act, 1890 apply and the certificate can he transferred from one State to another for realising the same. "Arrears of revenue" can be realised within State and procedure for realisation of the same is mentioned in the Bengal Revenue Sales Act, 1859 and in Bihar and Orissa Public Demands Recovery Act. A certificate for the provisions of the Revenue Recovery Act do not apply to it."

12. In the aforesaid circumstances, we allow the applications and issue writ of certiorari in each of the writ petitions quashing Annexure I therefore. In the circumstances of the case, the parties will bear their own costs.

.Applications allowed.