

RAJASTHAN HIGH COURT

Hiralal

Vs.

Income Tax Officer, Bhilwara

D.B. Civil Writ Petition of 1960

1962 RLW 461

(Sarjoo Prosad C.J. and Beri, J.)

08.02.1961

JUDGMENT

Sarjoo Prosad, C.J

1. The petitioners before it, pray for an appropriate writ or direction quashing the proceedings for recovery of arrears of tax and penalty pending before the Collector and the *Tehsildar* of Bhilwara and preventing the respondents from collecting the tax in question.

2. The relevant facts on which the application is founded are these. The petitioners are members of a joint Hindu family firm carrying on business at Bhilwara. On 28th Jan., 1958, the Income-tax Officer concerned made an ex parte best judgment assessment against the petitioners under Section 23 (4) of the Income-tax Act (hereinafter called the Act) for the assessment year 1956-57. The tax assessed was to the tune of Rs. 1,96,015.03 nP., in addition to a penalty of Rs. 9,800/- imposed under Section 46 (1) of the Act. Notices of demand under Section 23 of the Act were issued in respect of the above amounts. Since the petitioners' firm was unable to pay the amount, the Income-tax Officer concerned forwarded to the Collector, Bhilwara, a certificate for recovery of the amount due from the petitioners. The Collector, Bhilwara, then initiated proceedings for recovery of the dues and transferred the case to the *Tehsildar* of Bhilwara for appropriate action in order to realize the amount. The said *Tehsildar* issued notice under Section 229 of the Rajasthan Land Revenue Act (Act No. 15 of 1956) on 10th August, 1959. This was followed by another notice of demand dated 27th November, 1959, in which the *Telisildar*, Bhilwara, again pressed for payment of

the amount in arrear along with certain costs within 15 days from the date of the notices. In the meanwhile the petitioners' firm preferred an appeal to the Appellate Assistant Commissioner against the order of assessment passed by the Income-tax Officer, after an application under Section 27 of the Act requesting the income-tax Officer to cancel the *ex parte* assessment had failed. The Appellate Assistant Commissioner by his order dated 10th of April, 1959, partially accepted the appeal of the petitioners and reduced the amount of tax levied to sum of Rs. 91,132/- only. The Assistant Commissioner, however, refused to interervene with the order of penalty imposed by the income-tax Officer. The total demand thus, as a result of the appellate order, was reduced to Rs. 1,00,932/- only. Against these orders of the Appellate Assistant Commissioner, the petitioners state that appeals are pending before the Appellate Income-tax Tribunal. According to the case of the petitioners although the amount of assessment was reduced, no fresh notice of demand was served under Section 29 of the Income-tax Act and the proceeding before the Collector or the *Tehsildar* continued uninterrupted. It appears, however, that the Collector was in due course informed by the Income-tax Officer about the reduction in the amount of the tax assessed, as a result of the appellate order; and the Collector was requested to recover the amount of Rs. 1,00,632/- only which had been so reduced and was the outstanding demand payable by the petitioners modifying the original certificate. The *Tehsildar*, Bhilwara, before whom the proceeding for recovery of the demand were pending, then sent a fresh notice on 14th of January, 1960, to the petitioners asking them to pay the above sum of Rs. 1,00,932/-.

3. On the above facts the petitioners have applied to this Court for an appropriate writ for quashing the proceeding. The objection is mainly twofold. Mr. Sumerchand Bhandari, who appears for the petitioner, contends that after the amount of the tax had been reduced by the Appellate Assistant Commissioner, the issue of a fresh notice of demand under Section 29 of the Act was necessary and that not having been done no proceedings could be taken out by the Collector or the *Tehsildar* for the recovery of the dues. The second contention of Mr. Bhandari is that the income-tax due was realisable as if it were an arrear of land revenue, and, therefore, the provisions of the Public Demands Recovery Act were attracted to such a demand. In that case it was necessary for the Collector to proceed according to law and issue the relevant notice as contemplated by Secs. 4 and 6 of the Rajasthan Public Demands Recovery Act, 1952, (Act No. V. of 1959) and since the procedure laid down under the Public Demands Recovery Act had not been followed, the Collector or the *Tehsildar* had no jurisdiction

to recover the amount from the petitioners.

4. We may take up the contentions of Mr. Bhandari seriatim. In order to support his contention on the first point that a fresh notice of demand under Section 29 of the Act was necessary before any action could be taken by the authorities to recover the amount, Mr. Bhandari contends that as the earlier assessment had been modified as a result of the appeal, it was, therefore, obligatory on the taxing authorities to call upon the petitioners by a fresh notice of demand to pay up the amount due at a place and time appointed in the said notice. He relied upon a decision of the Mysore High Court in *Seghu Buchish Setty v. Income-tax Officer, Kolar Circle*,¹ In that case also a certificate had been forwarded to the Collector under Section 46 (g) of the Income-tax Act for recovery of arrears of tax and proceedings were initiated for the attachment of immovable properties of the assessee. The tax payable by the assessee was, however, substantially reduced by the Appellate Assistant Commissioner on appeal, but no fresh notice of demand was issued thereafter and the Collector proceeded to bring to sale the properties attached on the basis of the original certificate. It was held on an application for a writ quashius the recovery proceedings that the department was not entitled to treat the assessee as a defaulter in the absence of a fresh notice of demand being served after the appellate order reducing the tax payable by the assessee; and since the proceedings before the Collector were initiated on the original certificate, they were quashed as illegal and without jurisdiction. It may be observed that the learned judge, who decided that case, appeared to have placed reliance upon a decision of the Calcutta High Court in *Metropolitan Structural Works Ltd. v. Union of India*,² where Chakravarti C.J., who delivered the judgment incidentally emphasized on the necessity of issuing a fresh notice of demand under Section 29 of the Income-tax Act in the circumstances of that case. The learned Chief justice himself explained his decision in a later judgment of the said High Court in *Ladhuram Taparia v. D. K. Ghose*,³ to which Mr. Bhandari himself was frank and fair enough draw our attention in that case the learned Chief justice observed that :

"Where a proper notice of demand has already been given in respect of the tax determined by the assessment order and the subsequent appellate orders have only reduced the amount of the tax and not enhanced it, it is not necessary that a second notice of demand under Section 20 should be -served on the assessee. Nothing further than the intimation given to the certificate officer and the assessee is required under the law. The reduction or elimination of the amount

of the difference between the sum ultimately claimed and the larger sum mentioned in the notice of demand cannot affect the validity of the certificate or the demand so far as it is limited to the ultimate reduced sum.

Assessee was always liable to pay the reduced sum on the notice of demand, within certain time as required by that notice and having defaulted the sum could be realized by certificate proceedings already initiated before the reduction of the amount in appeal".

We find ourselves in respectful agreement with these pertinent observations of the learned Chief justice.

5. The absence, therefore, of any fresh notice under Section 29 of the Income-tax Act cannot now be pleaded as a bar to the continuation of the proceedings which were initiated against the petitioners for recovery of the amount due on the original certificate since reduced and modified on appeal. The fact that the certificate Officer was also informed of the reduced amount and intimation was sent to the petitioners accordingly is quite enough to meet the ends of justice. The learned counsel himself realized that he could no longer support his contention on the first point. In our opinion it is not essential in such a case to serve a second notice of demand under Section 29 of the Act. Under the law the certificate Officer is empowered to amend the certificate. Thus where the tax due is scaled down by the appellate authority, the certificate can be suitably amended and the proceedings already initiated can be continued for realization of the reduced amount. No fresh certificate is necessary so as to wipe off the entire proceedings heretofore adopted. If any other interpretation of the law is accepted, all the advantage of attachment of properties in the earlier certificate proceeding would be lost, since the whole proceeding will have to start afresh. We do not think that the law contemplated any such procedure. The contention, therefore, on the first point must fail.

6. The second contention of the learned counsel has raised certain serious questions about the procedure to be actually followed for recovery of such demands. According to the learned Government Advocate the procedure which has to be followed and which appears to have been followed in this case is the procedure laid down under the Rajasthan Land Revenue Act, whereas according to the learned counsel for the petitioners, the proper procedure is the procedure laid down in the Public Demands

Recovery Act read with the provisions of the Rajasthan Land Revenue Act. To appreciate the respective contentions, therefore, we may have to refer to the relevant provisions of these Acts as also the Income-Tax Act. Section 46 of the Income-Tax Act provides that when an assessee is in default in making payment of Income-Tax, the Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee; and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein "as if it were an arrear of land revenue". The proviso to the section further says that without prejudice to any other powers that the Collector may have in this behalf, he shall for the purpose of recovering the said amount, have also the powers which under the Code of Civil Procedure, a civil court has for the recovery of an amount due under a decree. The Act does not lay down any particular procedure according to which the recovery can be made. We have, therefore, to see what powers the Collector does enjoy under any other law for recovery of demand "as if it were an arrear of land revenue".

7. The Land Revenue Act authorizes the Collector to recover land revenue, according to the procedure laid down in that Act; and under the Public Demands Recovery Act the Collector is empowered to recover any other public demand "as if it were an arrear of land revenue". Chap. X of the Land Revenue Act specifies the procedure for collection of revenue. The very first section in that Chapter provides that the revenue is a first charge on the land and its produce. Section 288 indicates the various modes for recovery of arrears of revenue or rent, including the process of attachment and sale of immovable property of the defaulter. Section 256 of the Land Revenue Act is of special significance in this case, because it deals with recovery of miscellaneous revenue and other moneys. It says :-

"The following moneys may be recovered under this Act in the same manner as an arrear of revenue :-

- (a) rents, fees and royalties due to the State Government for the use or occupation of land or water, whether the property of the Government or not, or on account of any produce thereof;
- (b) all moneys falling due to the State Government under any grant, lease or contract which provides that they shall be recoverable as arrear of revenue;
- (c) all sums declared by this Act or any other enactment for the time being in

force to be recoverable in the same manner as an arrear of revenue; and
(d) all sums declared by the Rajasthan Public Demands Recovery Act, 1952 (Rajasthan Act of 1952), or any other enactment for the time being in force to be public demands or recoverable as arrears of public demands."

8. The various clauses appear to make a distinction between the recovery of any demand as an arrear of revenue. Section 259 of this Act bars the jurisdiction of the civil courts. No suit or proceeding shall, unless otherwise excepted by any express provisions made in this Act or in any other enactment or law for the time being in force, be instituted in any Civil Court with respect to any matter arising under, and provided for by the said Act. It is obvious, therefore, that on its own terms the bar under the above section will not apply where some other law for the time being in force provides for institution of civil suit, though in other respect the procedure laid down in the Revenue Act may be attracted by virtue of the provisions of that particular law. On the strength of Section 256, it is clear that all sums declared to be public demands whether under the Public Demands Recovery Act or any other enactment for the time being in force, or recoverable in law as "an arrear of revenue" can be realized in accordance with the procedure laid down under Chapter X of the Land Revenue Act.

9. Under Section 46 of the Income-tax Act the Tax assessed is recoverable "as if it were an arrear of land revenue". The Income-tax due is 'not land revenue in itself, but only recoverable as such. We have seen that land revenue is declared under the Land Revenue Act as a first charge on the land and its produce. There is no such thing under the Income-tax law. Therefore, the Land Revenue Act as a whole, nor even so the procedure laid down in Chap. X of that Act, can apply to arrears of income-tax. Those produced will apply only to the extent that they can be applicable to the recovery of other public demands. We have, therefore, to supplement and complement the procedure laid down under the Land Revenue Act with the procedure laid down in the Public Demands Recovery Act in all such cases, subject also to the provisions of those enactments under which the demands accrue. We find, therefore, that we are unable to accept the position that the tax demanded could be recovered in the same manner as an arrear of revenue for all purposes. We find nothing in the Rajasthan Land Revenue Act to show that if the recovery of the assessment was barred by time, the assessee could raise any objection to the recovery of the demand. Section 227 of the Land Revenue Act says that :-

"A statement of account, certified by the *Tehsildar* for the purpose of this chapter, be conclusive evidence of the existence of the arrear of its amount and of the person who is the defaulter;

Provided that nothing in this section shall shall, prejudice the right of such person to make payment under protest and to question the correctness of the account in separate independent proceedings before the Collector."

Then obviously there can be no protection to a person who challenges the recovery of the assessment of Income-tax on the ground that the recovery is barred by limitation. Such an objection is nonetheless open to the assessee under Sub-section(7) of Section 46 of the Income-tax Act, which says that no proceedings for the recovery of any sum payable shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made. It is obvious, therefore, that apart from the provisions in the Land Revenue Act, there is some other enactment to which we have to refer in order to be able to have a comprehensive idea of the nature of the procedure to be followed by the Collector in recovery of income-tax dues. That in our opinion can only be provided by the Public Demands Recovery Act. The other difficulty which would arise if we had to depend only on the provisions of the Land Revenue Act for the recovery of a demand of this nature is that under the Land Revenue Act the Collector could not delegate his powers for recovery of the dues to any other Officer, and the *Tehsildar* as such would not acquire jurisdiction to continue the proceedings. Even where the land revenue cannot be recovered from the land or the produce thereof on which it is a first charge the Collector will have to recover the dues like any other public demand under the Public Demands Recovery Act and send a requisition to the Officer within whose jurisdiction the defaulter resides or his other properties are situate for the recovery of the dues. It thus follows that the Public Demands Recovery Act is the Act applicable to the procedure for recovery of all such demands which are public demands within the meaning of the Act.

10. Let us, therefore, now turn to examine the provisions of the Rajasthan Public Demands Recovery Act and see to what extent in the instant case the complaint of the petitioners is justified. Section 8 of that Act enables the defaulter within the time specified, where a notice has been served under Section 6, to present an objection denying his liability. In that case the Collector, in whose Office the certificate is originally filed, may forward the objection to the officer or authority charged with the

realization of the public demand for disposal, and such Officer or authority shall hear and determine the petition and communicate the result to the Collector, who shall set aside, modify or vary the certificate in accordance therewith. Section 9 further provides that the Collector in whose office the certificate is originally filed shall hear and determine a petition presented under Section 8 if it proceeds on the ground that the demand is not recoverable under this Act or that its recovery is barred by any law for the time being in force. Obviously in a case of assessment made under the Income-tax Act no objection can be raised by the assessee as to the validity of the demand as based on the assessment order or his liability to pay the same because those questions have been determined already by the appropriate authorities in the assessment proceedings under the Income-tax Act, and under Section 87 of the Act assessment cannot be challenged even by a suit. It is, however, open to the assessee to raise an objection under Section 9 of the Public Demands Recovery Act on the ground that the demand is not recoverable, or barred by the law for the time being in force. Under Section 11 the Officer, in whose office a certificate is filed under Section 4 or to whom a copy of the certificate is transmitted under Section 5, may send it for execution to any Assistant Collector or *Tehsildar* subordinate to him within whose jurisdiction the defaulter resides or owns property. But this can only be done after determination of any question u/s. 8 of the Act. It is presumably on the authority of Section 11, if at all, that the Collector acted in this case and transferred the proceedings to the *Tehsildar* concerned. Then comes section 13, which is a transport section, which says that subject to the other provisions of the Act, the amount due under a certificate may be recovered in one or more of the modes authorized by any law for the time being in force for the recovery of an arrear of land revenue, and the provisions of such law shall apply as if such amount were an arrear of land revenue due from the defaulter. It is by virtue of this provision that mutatis mutandis the provisions of Chapter X of the Raj. Land Revenue Act are attracted to the recovery of these public demands. In other words Section 228 and 256 and other relevant provisions of the Land Revenue Act come to apply to proceedings under the Public Demands Recovery Act.

11. The learned Government Advocate contends that in case the provisions of the Public Demands Recovery Act are held to be applicable, the anomalous position would be that Section 20 of the said Act would come into conflict with Section 67 of the Income-tax Act. Under Section 20 of the Public Demands Recovery Act a defaulter may bring a suit to have a certificate cancelled or modified and for any further consequential relief of which he may be entitled, but under Section 67 of the

Income-tax Act the assessment order for which the certificate has been issued could not be cancelled or questioned in a suit under Section 20 of the Public Demands Recovery Act. We do not think that there is any conflict between the two. Section 20 of this Act will have to be read subject to Section 67 of the Income-tax Act and Section 259 of the Land Revenue Act where those laws are applicable. The assessment order cannot be challenged by suit; but in other respects if there is any objection available to the party, it may be availed under section 20 of the the Public Demands Recovery Act, in respect of the amount. This is clearly borne out by the provisions of Section 30 of the Public Demands Recovery Act, which provides that the powers given by the Act or the rules made there under shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other law for the time being in force for the recovery of any due, debt or demand to which the provisions of this Act are applicable, and, except where expressly so provided, no legal remedy shall be affected by this Act. We, therefore, think that the provisions of the Rajasthan Public Demands Recovery Act should apply to recovery of a demand of this nature. "Public demands", as defined in Section 2 (5) of ti a Public Demands Recovery Act, means any arrear of money mentioned or referred to in the Schedule to this Act and includes any interest which may by law be chargeable thereon upto the date of the signing of a certificate in respect thereof under Section 4; and the Schedule shows that any money which is declared by this Act or by any other law for the time being in force to be recoverable or realisable as an arrear of revenue or land revenue, is a public demand. As we have already noticed this demad is realisable as if it were an arrear of land revenue and, therefore, the provisions of the Public Demands Recovery Act are attracted to the recovery of the dues.

12. The above view finds ample support from an earlier decision of this Court in *Gian Singh v. Collector, Bhilwara*.⁴ In that case the Commissioner under the Workmen's Compensation Act had made a request to the Collector to realise a certain sum of money which under the Act was realizable as arrear of land revenue. The Collector on receipt of that written request or requisition from the said Officer proceeded to realize the amount under the provisions of the Public Demands Recovery Act; but when an objection was raised by the defaulter under Section 8 of the Public Demands Recovery Act denying his liability, the Collector dropped the proceedings under the Public Demands Recovery Act and started recovery of the same amount under Section 84 of the Qanoon Mal Mewar (Act No. V of 1947). It was held by this Court that where a public officer makes a request to the Collector to realize any sum which is realizable

as an arrear of land revenue, the Collector can only proceed to do so under the provisions of the Public Demands Recovery Act on receipt of any such request. The request in writing amounts to a requisition under Section 3 of the Public Demands Recovery Act, and the Collector has then to follow the procedure provided by the subsequent provisions of the said Act. It was, therefore, held that when the applicant appeared and objected under Section 8, the Collector was in error in deciding to drop the proceedings under the Public Demands Recovery Act and to take action under Section 84 of the Qanoon Mal, Mewar. It was further pointed out that Section 84 of Qanoon Mal, Mewar, merely provided for methods of recovery of land revenue and it did not authorize the Collector to recover sums other than land revenue, strictly so called. The position is almost analogous in the present case. Here the Land Revenue Act strictly speaking applies to recovery of land revenue technically so called, and it is only by virtue of Section 256 of the Land Revenue Act read with Section 13 of the Public Demands Recovery Act that the procedure for recovery of land revenue applies mutatis mutandis to the recovery of other public demands.

13. That being so we have now to examine the contention of Mr. Bhandari as to whether on account of the omission to comply with some of the provisions of the Public Demands Recovery Act we ought to interfere in this case. The learned counsel has referred us to another decision of this Court in *Rijhu Mal v. The State of Rajasthan*.⁵ In that case it has been laid down that the following are the essentials which are the foundation of proceedings under the Public Demands Recovery Act :

- "(1) That the demand should be one covered by schedule of the Act;
- (2) That there is a requisition as required under Section 3, unless the case is covered by Section 4(2);
- (3) That there is a certificate in strict compliance with Section 4; and
- (4) That a notice has been served under Section 6 on the defaulter."

If any of those conditions are not fulfilled there is a patent lack of jurisdiction for the Collector to proceed under the Public Demands Recovery Act, in which case the High Court should interfere. That was a case where a certificate was issued against the debtor (the petitioner there) in respect of certain dues recoverable from him by the Supplies Department. Here the position is slightly different. The requisition sent by the Income-Tax Officer on the authority of Section 46 (2) of the Income-Tax Act in itself amounts to a certificate within the meaning of Section 4 of the Public Demands

Recovery Act read with Section 30 of the said Act. Thereafter the signing of a certificate by the Collector under Section 4 of the Public Demands Recovery Act is merely formal and the Collector's jurisdiction to proceed to recover the amount specified in the certificate of the Income-tax Officer is inured on the language of Section 46(2) of the Income-tax Act itself. It says the Collector on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue". Under Section 29 of the Act, a notice of demand had been issued already to the assessee. Under the provisions of Section 46 of the Act the amount due to the Income-tax Department could be further realized by the Collector, as if it were an amount due under a decree. Therefore, the complaint here mainly is reduced to this that a notice under Section 6 of the Public Demands Recovery Act was not issued. We have no doubt that compliance with Ss. 4&6 of the Public Demands Recovery Act is necessary, as observed earlier, but still it remains to see whether we should, in the circumstances of this case, interfere under Article 226 of the Constitution. Even if a notice under above section had been issued to the petitioners, it is not suggested that it was open to them to deny the liability for the payment of the amount; nor is it suggested that the amount was not recoverable on account of its being barred by any law of limitation. It is to be remembered that the provisions of the Public Demands Recovery Act are not in derogation of the provisions of the Income-Tax Act. Therefore, in the circumstances of this case we do not find that failure to serve notice under Section 6 of the Public Demands Recovery Act has resulted in any such prejudice to the petitioners as to necessitate any direction that action should be taken under that provision and the proceeding should start from that stage over again. Otherwise it appears to us that the proceedings are in order and the Collector could transfer the certificate for execution and recovery of the amount to the *Tehsildar* who was his subordinate and within whose jurisdiction the petitioners reside.

14. We, therefore, do not feel inclined to interfere merely because of non-compliance with the provisions of Section 6 of the Public Demands Recovery Act, though we must in no sense be taken to commend any irregularity in adopting the proper procedure known to law in all such cases.

15. The application, therefore, in the net result, fails and must be dismissed, but without costs.

.

Cases Referred.

1. (1960) 38 Income Tax Reports 204
2. (1953) 28 Income Tax Reports 432
3. AIR 1957 Cal. 667
4. 1956 RLW, 44 : ILR (1955) 5 Raj. 644
5. 1957 RLW, 370: ILR (1957) 7 Raj. 748