

machinery but which are merely a chain in the process of producing the final item. The same is the case about the Oxygen Gas in the assessee's case and it is merely an intermediate article utilised for the production of Iron and Steel, an item specified in the list in the Ninth Schedule."

(4) The reference has thus clearly to be answered in the affirmative in favour of the assessee and against revenue. There will, however, be no order as to costs.

P.C.G.

Before Sukhdev Singh Kang and J. S. Sekhon, JJ.

JOGINDER SINGH and others,—*Petitioners*
versus
 HARYANA KHADI AND VILLAGE INDUSTRIES BOARD,
 PANCHKULA and others,—*Respondents.*

Civil Writ Petition No. 5112 of 1984.

March 29, 1989.

Punjab Land Revenue Act (XVII of 1887) Sections 67, 3(8) Punjab Khadi and Village Industries Board Act, 1955, Section 32-A—Loans advanced, interest, cost by Punjab Khadi and Village Industries Board, becoming due—Whether can be recovered as arrears of Land Revenue—Immovable properties mortgaged—Resort to coercive measures like arrest and detention—Whether proper at first instance.

Held, it provides in clear and categorical terms that the loans given by the Board or interest or costs in respect thereof, becoming due to the Board, shall be recoverable as arrears of land revenue. It matters little that the Board is a corporate body and is not government. In order to make the Board an effective vehicle of social change by providing facilities to artisans and other persons of limited means for setting up industries and workshops, the Board was advancing loans. These loans had to be returned in instalments. The money so returned was advanced to other needy persons. If the loanees made default in the repayment of the loans, then the work of the Board was likely to suffer and the purpose for which the Board was set up was likely to be defeated. In order to meet this situation, Section 32-A was inserted in the 1955 Act so that the loan, interest or costs in respect thereof can be recovered as arrears of land revenue.

(Para 7)

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Held, Section 67 of the Punjab Land Revenue Act. Consequently, we hold that the authorities before taking recourse to coercive measures like arrest and detention of the loanees had, in the first instance, to try to recover dues by sale of the properties mortgaged with the Board. If, however, some amounts remain due then and only then the revenue authorities could recover the arrears by arrest and detention of the defaulter loanee.

(Para 8).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs may kindly be granted to the petitioners :—

- (i) *that a writ in the nature of Mandamus and Certiorari may be issued by this Hon'ble court quashing the demand and illegal recovery proceedings initiated by the respondents and also quashing the arrest proceedings ;*
- (ii) *that an ad-interim writ, direction or order may be issued by this Hon'ble court staying the arrest of the petitioners till the decision of the writ petition in this Hon'ble Court ;*
- (iii) *that any other writ, direction or order may be issued by this Hon'ble Court in circumstances of the case ;*
- (iv) *that advance notices on the respondents may be dispensed with the matter being of urgent nature ; and*
- (v) *that the costs of the writ petition may also be awarded to the petitioners.*

OVERRULED : Dwarka Das v. Punjab Khadi and Village Industries Board 1974 Curr. L.J. 32.

K. G. Chaudhary, Advocate, for the petitioners,

Nemo, for the respondents.

JUDGMENT

S. S. Kang, J.

(1) Whether a loan advanced by the Haryana Khadi and Village Industries Board (hereinafter called 'the Board') to a person can be recovered as arrears of land revenue under section 67 of the Punjab Land Revenue Act, 1887 is the spinal issue in this writ petition. It also falls for determination as to whether a loanee who has not been able to repay the loan advanced to him by the Board can

straightaway be arrested and detained for non-payment of the loan and other dues without taking recourse to other modes of recovery like sale of mortgaged property.

(2) A brief reference to skeletal facts is a prefatory necessity.

(3) The petitioners had taken loans from the Board for the development of Gur and Khandsari Industries. They had mortgaged their immovable properties as securities for the repayment of the loans. Member Secretary of the Board addressed letters to the Deputy Commissioner, Ambala, requesting him to recover the monies due from the petitioners to the Board as arrears of land revenue. A copy of one of the letters is attached as Annexure P1/A with the writ petition. It has been stated therein that Maghi Ram, petitioner No. 3, was advanced a loan of Rs. 15,000 by the Board for Gur and Khandsari Industries on January 27, 1983. It was stipulated at the time of advancement of loan that in case of non-fulfilment of the conditions governing the advance of loan the loanee was liable to repay the full amount of loan to the Board. The loanee has not complied with the conditions nor had he repaid the money to the Board. It was mentioned that the loanee had misutilised the funds. He had not undertaken any work and had defaulted in the repayment of the loan. A sum of Rs. 17,500 (Rs. 15,000 as principal and Rs. 2,500 as simple interest) was sought to be recovered from the loanee under section 32-A of the Punjab Khadi and Village Industries Board, Act 1955 (for short, 1955 Act) as arrears of land revenue. It was requested that the sum of Rs. 17,500 may be recovered from the loanee as early as possible. It was mentioned that immovable properties of the loanee (list whereof was given) was mortgaged with the Board. The recovery of the said amount due to the Board should be effected under section 3(8) of the Punjab Land Revenue Act because provision has been made to recover the amount from the loanee or his property under section 3 (8) as arrears of land revenue.

(4) Tehsildar Naraingarh, District Ambala, under the directions of the Deputy Commissioner had taken steps to arrest the petitioners in order to put pressure on them to repay the loan. With this object in view, Tehsildar alongwith his subordinate staff visited the village of the petitioners to arrest them. However, the petitioners were not present in the village at that time. Apprehending their arrest, the petitioners have filed the present writ petition.

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(5) The respondents have filed reply to the writ petition in which the factual averments made by the petitioners are admitted. It has been admitted that the petitioners were advanced loans by the Board and their immovable properties had been mortgaged with the Board. It was explained that under section 32-A of the 1955 Act all sums including the loans given by the Board which have become due shall be recoverable as arrears of land revenue. It was asserted that the action initiated by the respondent for the recovery of the land was constitutional and valid.

(6) Mr. K. G. Chaudhary, learned counsel for the petitioners, has raised two contentions in support of the petition.

- (i) That the Board is a corporate body incorporated under the 1955 Act and is not government. The monies due to that corporate body cannot be termed as government dues and they cannot be recovered as arrears of land revenue; and (ii) Even if the amount of loan and interest etc due from the petitioners could be recovered as arrears of land revenue under section 67 of the Punjab Land Revenue Act, the respondents had to recover these amounts by first resorting to other methods contemplated by section 67 *ibid* and if they did not succeed in recovering the loan the whole or part of it, then and only then resort to arrest and detention could be made. The respondents could not straightaway arrest the petitioners and detain them.

(7) We have carefully considered the first submission made by Mr. Chaudhary and regret our inability to accept it. The Board had advanced loan to the petitioners and the sums of money had become due from the petitioners. Section 32-A was specially enacted and inserted into the 1955 Act by Act No. 12 of 1961. It provides in clear and categorical terms that the loans given by the Board or interest or costs in respect thereof, becoming due to the Board, shall be recoverable as arrears of land revenue. It matters little that the Board is a corporate body and is not government. In order to make the Board an effective vehicle of social change by providing facilities to artisans and other persons of limited means for setting up industries and workshops, the Board was advancing loans. These loans had to be returned in instalments. The money so returned was advanced to other needy persons. If the loanees made default in the repayment of the loans, then the work of the Board was likely

to suffer and the purpose for which the Board was set up was likely to be defeated. In order to meet this situation, section 32-A was inserted in the 1955 Act so that the loan, interest or costs in respect thereof can be recovered as arrears of land revenue. In exercise of these powers conferred by S. 32-A the authorities were proceeding in the matter and trying to recover the loans from the petitioners. Mr. Chaudhary's contention that since the Board was not government and the loans advanced by it cannot be recovered as arrears of land revenue is not tenable in view of the clear provisions of section 32-A. The decision in *Dwarka Dass v. Punjab Khadi and Village Industry Board* (1), is of no help to the petitioners. Indeed, in that case it had been observed that the Board was a corporate body incorporated under the 1955 Act and it was not government and the amounts due to the Board could not be recovered as arrears of land revenue. We have carefully perused the report of the case and find that the provision of section 32-A *ibid* had not been brought to the notice of the learned Judge who decided that case. The petition had been decided without appreciating the legal position in the context of section 32-A. The ratio of the decision fails in the face of section 32-A. We are constrained to hold that *Dwarka Dass's* case (*supra*) does not lay down correct law and we overrule this decision.

(8) The second plea of Mr. Chaudhary has merit and must prevail. It is the admitted case of the parties that the petitioners had mortgaged their immovable properties with the Board for securing the repayment of the loans. Even in the letter of the Secretary of the Board, Annexure P1/A, it has been clearly stated that the immovable properties of the loanees were mortgaged with the Board and the particulars thereof had been given. It has also further been recited in the letter that the recovery of the amounts due to the Board can be effected under section 3(8) of the Punjab Land Revenue Act from the loanee or his property. Section 67 of the Punjab Land Revenue Act, 1987 incorporate procedure for recovery of arrears reads as under :—

“67. Processes for recovery of arrears—Subject to the other provisions of this Act an arrear of land revenue may be recovered by any one or more of the following processes: namely :—

- (a) by service of writ of demand on the defaulter;
- (b) by arrest and detention of his person;

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- (c) by distress and sale of his movable property and uncut or ungathered crops;
- (d) by transfer of the holding in respect of which the arrear is due;
- (e) by attachment of the estate or holding in respect of which the arrear is due;
- (f) by annulment of the assessment of that estate or holding;
- (g) by sale of that estate or holding;
- (h) by proceedings against other immovable property of the defaulter;

The arrears of land revenue can be recovered by recourse to any one of or more of the methods enumerated above. In the case in hand, the immovable properties of the petitioners were already mortgaged with the Board. The proper method to recover the amount of loan etc. is by sale of these properties. If some monies on account of principal amount, interest, costs still remain unremitted, then the authorities could resort to coercive methods. In similar circumstances, a Division Bench of this Court in *Gomti Devi v. Kalka Co-operative House Building Society Limited, Kalka and others* (2), observed as under :—

“In the instant case the writ petitioner has claimed that her husband was straightway put to arrest and detention without resorting to other steps envisaged under section 67 of the Punjab Land Revenue Act. We are of the view that the arrest and detention of a person, in a matter like the present one, should normally be the last resort, for it cannot be assumed that the man, who wanted to have a roof over him, by becoming a member of the House Building Cooperative Society, to have bargained so cheaply his fundamental right to liberty. Nothing abnormal has been suggested to the taking of such step. Without much ado, we allow this petition, permit the defaulter to remain at large and leave it to the respondent to recover the arrears firstly by other means of recovery under the Punjab Land Revenue Act and on recording their satisfaction that the steps taken by them do not fructify, then resort to arrest and detention of the petitioner.”

To the same effect are the observations of the final Court in *State of Punjab and others v. Dharam Singh (dead) by successor Desa Singh and another* (3), which reads as under :—

“The Government has first to proceed against the property mortgaged and sell the property. Only in case the entire amount could not be realised that the Government could proceed against the borrower personally. The government is as much bound by the agreement as the borrower and, therefore, the government has first to proceed against the mortgaged property.”

Though the petitioners have not pleaded any specific agreement for the recovery of the loans by the sale of the immovable property, yet from the pleadings of the parties and the contents of letter Annexure P1/A it becomes clear that the authorities had intended to first recover the amount of the loan due by the sale of immovable property mortgaged with the Board. The observations in *Dharam Singh's case* (supra) have also been made in the context of section 67 of the Punjab Land Revenue Act. Consequently, we hold that the authorities before taking recourse to coercive measures like arrest and detention of the loanees had, in the first instance, to try to recover the dues by sale of the properties mortgaged with the Board. If, however, some amounts remain due then and only then the revenue authorities could recover the arrears by arrest and detention of the defaulter loanee. We, however, want to make it clear that we have construed the provisions of Section 67 of the Land Revenue Act in the context of loans advanced by the Board and these principles are inapplicable in the matters of recovery of taxes, fees etc. due to the State.

(9) In result, we partly allow the writ petitions and quash the proceedings for arrest and detention of the petitioners by the revenue authorities and direct them to proceed in the matter in accordance with law and in the light of the observations made in this judgment. No costs.

PCG
