

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and B. R. Tuli, J.

PIYARE LALL KHANNA,—Appellant.

versus

THE STATE BANK OF PATIALA AND OTHERS,—Respondents.

Letters Patent Appeal No. 31 of 1966

July 8, 1968.

Patiala Recovery of State Dues Act (IV of 2002 BK)—Ss. 3(1) and 10—State Bank of India (Subsidiary Banks) Act (XXXVIII of 1959)—S. 56—Bank of Patiala or Patiala State Bank making loans and advances before 1st April, 1960—The State Bank of Patiala—Whether can 'determine' such dues after that date—Recovery of dues—Whether includes determination thereof—Loans and advances made before 1st April, 1960—Recovery of by State Bank of Patiala—Period of limitation for—Stated.

Held, that while section 56 of State Bank of India (Subsidiary Banks) Act, 1959 does use the word 'recovery', but it states clearly that the State Bank of Patiala continues to be entitled to recover its debts in the same manner as arrears of land revenue as was being done by the Bank of Patiala before April 1, 1960, and then it further specifically provides that the provisions of Patiala Recovery of State Dues Act, 2002 BK, relating to such recovery shall continue to apply, in such a situation, exactly as before. In the wake of such clear provisions the whole of Patiala Act 2002 BK applies to the recovery of such dues. This Act deals with the matter of recovery of State dues and the matter of recovery includes first the determination of the State dues and then the method of recovery of the same. In the Act the word 'recovery' has broader meanings which include both the procedure for determination of what is due and the mode of manner of recovery of the amount determined as due. The meaning of the word 'recovery' in section 56 of Act of 1938 is the same as its broader meaning in Patiala Act 2002 BK. The State Bank of Patiala, therefore, can determine dues regarding loans and advances made by The Bank of Patiala before 1st April, 1960.

(Para 9).

Held, that in view of the provisions of section 56 of the Act 38 of 1959, the law applicable to the State Bank of Patiala in the matter of recovery of moneys due to it for loans and advances before April, 1960, is Patiala Act 4 of 2002 BK, and that Act applies without any limitations or restrictions. It

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applies to the State Bank of Patiala as much and in the same manner and to the same extent as it did to the Bank of Patiala or the Patiala State Bank. So whatever period of limitation, having regard to the provisions of Patiala Act of 2002 BK, was applicable to the Bank of Patiala or the Patiala State Bank, is the limitation that would apply to the State Bank of Patiala after April, 1960, in this respect. In other words, the article applicable to the State Bank of Patiala in regard to its claims referring to the period earlier to April 1, 1960, would be the same as applicable to the Bank of Patiala in the former Patiala State or the Patiala Bank in the Former Pepsu State. In the former Pepsu State the limitation applicable to any claims by the Bank of Patiala or the Patiala State Bank, as department of the State, was sixty years from the date of the cause of action. The same continue to be the position in view of section 56 of Act 38 of 1959. Three years' limitation will not apply as to the recovery of an ordinary loan between private persons or institutions. Before the Limitation Act of 1963, a limitation of sixty years and, after that Act, of thirty years from the date of cause of action applies.

(Para 10).

Letters Patent Appeal under Clause X of the Letter Patent against the order of the Hon'ble Mr. Justice P. C. Pandit, dated 14th December, 1965, passed in Civil Writ No. 2522 of 1964.

D. N. AWASTHY, WITH RAJ KUMAR, ADVOCATE, for the Appellant.

H. L. SIBAL, ADVOCATE-GENERAL (PUNJAB), WITH M. R. AGNIHOTRI AND R. C. SETIA, ADVOCATES, for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—The appellant, Piyare Lal Khanna under an agreement (Annexure R. 1) of April 26, 1956, was allowed a cash credit account to the limit of Rs. 50,000 with the Bank of Patiala. The loan was to carry interest at the rate of six per cent per annum. The appellant gave a personal security for it in the form of a promissory note. This was in the days of the Pepsu State. At the time the Bank of Patiala was a department of the State. Section 3(2) of the Patiala Recovery of States Dues Act, 2002 Bk. (Patiala Act 4 of 2002 Bk.), specifically provided that, and it was so held in *Mohan Singh v. Patiala and East Punjab States Union* (1). The appellant not having adjusted his account with the Bank of Patiala, the question of recovery of the amount due from him arose. Section 3(1), so

(1) A.I.R. 1954 Pepsu 136.

far as relevant here, of Patiala Act 4 of 2002 Bk. defined 'State dues' to mean 'any amount due.....to any department of the State from any person and shall include.....(a) debts due to the Patiala State Bank.....together with the amount of interest, if any, chargeable till the date of realization', and, as has been pointed out above, sub-section (2) of this section included Patiala State Bank in the definition of the term 'department'. This Act further provided in Section 4 the manner of determination of the State dues and then in sections 5 to 9 the mode of recovery of the same as arrears of land revenue. Sub-section (1) of section 10 provided that no action was to be taken by the Collector (Nazim) on a certificate for recovery of State dues coming from the Managing Director of the Patiala State Bank unless it was sent to him within such period of limitation prescribed by the Limitation Act for the time being in force in the State within which the bank would have instituted a suit in a civil Court for the recovery of its debts or dues, if such debts or dues were not declared as State dues under the Act. Sub-section (2) said that there was to be a statement in the certificate of recovery to the effect that the debts or dues were within the period of limitation prescribed by the Limitation Act for the time being in force in the State for the recovery of such debts or dues. Sub-section (3) then provided that in computing the period of limitation prescribed by the Limitation Act for the recovery of any debts or dues referred to in sub-section (1), the time requisite for holding an enquiry as computed from the date of the issue of the notice till the amount was determined, and the period of any other notice required to be served under the Act or the rules thereunder, shall be excluded. Section 11 barred the jurisdiction of the civil Court in any matter which the head of department, or any authority or officer authorised by the head of department was empowered by the Act or the rules made thereunder to dispose of, or take cognizance of the manner in which any such head of department, or authority, or officer, exercised any powers vested in him or it by or under the Act or the rules thereunder. Accordingly, on September 17, 1952, a notice under rule 3(2) of the rules made under the provisions of the Act was given to the appellant for payment of the State dues due from him, the amount due having been stated in it. The appellant's objections in answer to the notice having been disallowed, determination by a proper authority under the statute was made on March 17, 1953 that an amount of Rs. 51,857 was the State dues against the appellant. The State dues were determined against the appellant exclusive of interest from January 26, 1953, which means with interest down to

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January 25, 1953. Copy of the relevant certificate in this respect addressed to the Collector is Annexure 'A' and the last paragraph in it reads—"It is hereby further certified that the said amount became payable to the Bank on April 26, 1952, and is within the period of limitation prescribed by the Limitation Act in force in the Union for the recovery of such amount, namely, three years computable from April 26, 1951."

(2) In the former Pepsu State was in force the law of limitation in the shape of Bhupindra Oudh Sunai (Amendment) Act, 2003 Bk., which was an Act that amended the Bhupindra Oudh Sunai Act of 1969 Bk. In this Amending Act, limitation for recovery of a loan was, under Article 57, three years in the case of ordinary private persons but in the case of the State such a limitation was sixty years according to Article 149. The first corresponds to Article 19, and the second to Article 112 of the Limitation Act, 1963 (Act 36 of 1963), with this difference that under Article 112 of the last-mentioned Act the period of limitation has been reduced to thirty years.

(3) The appellant also raised objections against the legality and validity of the recovery proceedings by the Collector, but he failed in this on March 19, 1956. He then had recourse to a civil suit before an ordinary civil Court in which he sought declaration that the recovery certificate issued against him was illegal. He remained ultimately unsuccessful in his suit in the Supreme Court on March 4, 1964. However, during the pendency of the appeal in the Supreme Court he did furnish security for payment of the amount of the certificate.

(4) In the meantime certain changes took place in the constitution of the Bank of Patiala. The Pepsu and Punjab States were merged, forming the new Punjab State, under the provisions of the States Reorganisation Act, 1956. After that was enacted the State Bank of India (Subsidiary Banks) Act, 1959 (Act 38 of 1959), which came into force on September 11, 1959. By section 3 of this Act certain new Banks were established including 'the State Bank of Patiala', and under section 10 was transferred to it the then existing Bank of Patiala (section 2(c) (v)). Section 56 of this Act then provides:—

"56. Continuance of special provisions respecting recovery of loans and advances made by the Bank of Patiala"

The State Bank of Patiala... shall be entitled to recover in the same manner as an arrear of land revenue any moneys due in respect of loans or advances made before the appointed day by the Bank of Patiala..... and the provisions of any law, relating to such recovery as were applicable to that bank before the appointed day shall continue to apply to the State Bank of Patiala..... in respect of such recovery after the appointed day."

(5) As from the appointed day, which in the case of the State Bank of Patiala was April 1, 1960, this section preserves to the State Bank of Patiala (a) the right and power to recover monies due to it in respect of loans and advances made before that date in the same manner as arrears of land revenue as before that date, and (b) continues the application of law (Patiala Act 4 of 2002 Bk.), relating to such recovery as was applicable to the Bank of Patiala before that date. The protection given is not only in regard to the manner of recovery of the monies due to this Bank as arrears of land revenue, but also of the law in accordance and under which such recovery was being effected by the Bank of Patiala, which law, as stated, was Patiala Act 4 of 2002 Bk. This last-mentioned Act was repealed by the Patiala Recovery of State Dues (Repealing) Act, 1960 (Punjab Act 37 of 1960), but section 2 of this Act specifically provides that the repeal is subject to the provisions of section 56 of Act 38 of 1959. So, in spite of the repeal of Patiala Act 4 of 2002 Bk., by Punjab Act 37 of 1960 the provisions of that Act (Patiala Act 4 of 2002 Bk.), continue to apply to the recovery of any moneys due to the State Bank of Patiala in respect of loans and advances made before April 1, 1960, to the same extent as to the former Bank of Patiala in regard to the recovery of such dues as arrears of land revenue.

(6) These changes in the constitution of the Bank, it will be seen occurred before the dismissal of the appeal of the appellant, in his suit, by the Supreme Court on March 4, 1964.

(7) After that on March 7, 1964, a fresh notice under rule 3(2) of the rules under the Act was given to the appellant for determination of the dues of the Bank against him. A copy of the notice is Annexure 'C'. It shows that the first amount referred in it is of the first certificate in which interest had been added up to January 25,

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1963, the second amount is of Rs. 980.50 for recovery charges, and the third amount is of interest between January 26, 1953, and December 31, 1963, coming to Rs. 48,581.87. There is the fourth item of Rs. 57.09 of other charges. The total amount stated in the notice is Rs. 1,01,476.01. The objections of the appellant to this notice were dismissed by the General Manager of the Bank on April 15, 1964, and his appeal from that order was dismissed by the Directors of the Bank by an order of June, 19, 1964, which order was communicated to the appellant by the end of September, 1964. It was on November 24, 1964, that the appellant filed a petition in this Court under Articles 226 and 227 of the Constitution questioning the validity of the recovery of the dues from him by the Bank and praying that the proceedings started against him under the provisions of Patiala Act 4 of 2002 Bk., be quashed.

(8) The learned counsel for the appellant urged two arguments, the very same arguments which have been repeated in this appeal, before the learned Single Judge, (a) that after Act 38 of 1959 and Punjab Act 37 of 1960 repealing Patiala Act 4 of 2002 Bk., no proceedings against the appellant could be taken under the 1st mentioned Act for determination of the dues payable by him to the Bank, and (b) no interest beyond three years, having regard to Article 19 of the Limitation Act of 1963, can be recovered by the Bank from the appellant. The learned Judge repelled both the contentions and dismissed the petition of the appellant on December 14, 1965. This is an appeal by the appellant under clause 10 of the Letters Patent from the order of the learned Single Judge.

(9) The first argument of the learned counsel for the appellant is that although section 56 of Act 38 of 1959 leaves the recovery of moneys due from the appellant to be made by the Bank under the provisions of Patiala Act 4 of 2002 Bk., in regard to loans and advances before April 1, 1960, and although Punjab Act 37 of 1960, while repealing Patiala Act 4 of 2002 Bk., makes the repeal subject to the provisions of section 56 of Act 38 of 1959, the only effect of section 56 of the last-mentioned Act is that recovery can be effected by the Bank from the appellant according to the provisions of Patiala Act 4 of 2002 Bk., but jurisdiction to determine the amount due has been lost. The reason given by the learned counsel is that section 56 only refers to recovery and not determination of dues from a debtor of the Bank as the appellant. While section 56 of Act

38 of 1959 does use the word 'recovery', but it states clearly that the State Bank of Patiala continues to be entitled to recover its debts in the same manner as arrears of land revenue as was being done by the Bank of Patiala before April 1, 1960, and then it further specifically provides that the provisions of Patiala Act 4 of 2002 Bk., relating to such recovery shall continue to apply, in such a situation, exactly as before. In the wake of such clear provisions, the learned Single Judge was correct in his approach that the whole of Patiala Act 4 of 2002 Bk., applies to the recovery of such dues. The learned Judge rightly points out that the name of the Act was 'Patiala Recovery of State Dues Act' and its preamble said that it was an Act to consolidate and amend the law relating to the recovery of State dues. With this preamble and detailed provisions of the statute provided first the determination of the State dues (section 4), then the mode of recovery of the State dues after determination (sections 5 to 9), and then with regard to the question of limitation in some cases including the case of the Bank of Patiala (section 10) and bar of the jurisdiction of the civil Court (section 11) in regard to matters within the jurisdiction of the authorities under the Act. So that the Act dealt with the matter of recovery of State dues and the matter of recovery included first the determination of the State dues and then the method of recovery of the same. The argument of the learned counsel only confines the provisions applicable to a case like that of the appellant. in view of section 53 of Act 38 of 1959, to the mode or method of recovery as provided by Patiala Act 4 of 2002 Bk., and leaves out the provision with regard to the determination of the State dues. There is no justification for this, because the word recovery has been used in section 56 in the same sense and with the same meaning as it had been used in Patiala Act 4 of 2002 Bk., In the last-mentioned Act the word 'recovery' has broader meanings which include both the procedure for determination of what is due and the mode or manner of recovery of the amount determined as due. In this Act the word 'recovery' is not only confined to the mode or manner of recovery of the dues. So this limited meaning as urged by the learned counsel for the appellant cannot be given to the word 'recovery' in section 56 of Act 38 of 1959, and the meaning of that word in that provision is the same as its broader meaning in Patiala Act 4 of 2002 Bk. It is in so many words the whole of that Act that has been applied to the recovery which the State Bank of Patiala can make from its debtors and not only a part of the provisions of the Act as has been contended by the learned counsel for the appellant. This argument was rightly discarded by the learned Single Judge.

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(10) The only other argument which has been urged on behalf of the appellant is that in view of the provisions of section 10 of Patiala Act 4 of 2002 Bk., the Legislature drew a distinction between the limitation applicable to the State Government dues and the dues of private institutions such as the Bank of Patiala, the Co-operative Societies, and the Rajindra Gymkhana Club. The learned counsel has not been able to controvert what is settled that in the days of the former Patiala State and thereafter in the former Pepsu State the Bank of Patiala was a department of the State like any other department of the State. It was a Government concern. The learned counsel, however, points out that when the Legislature enacted section 10 of Patiala Act 4 of 2002 Bk., it made a distinction between the executive activities of the State Government and its departments, and the commercial activities of the same. According to him subsection (1) of section 10 of that Act specifically refers to the Patiala State Bank, the Co-operative Societies, and Rajindra Gymkhana Club as institutions which were the commercial activities of the State and, therefore, the limitation applicable to them was envisaged in that provision as provided in the limitation law applicable in the former Patiala State to similar private institutions. Such limitation in the Patiala law of limitation, as shown, was three years from the date of the cause of action as is the case also under the Limitation Act of 1963. On the side of the Bank the learned counsel has pointed out that the Patiala State Bank was a department of the State in the former Patiala State as also in the former Pepsu State, and as department of the State in the suit, in which it was a party, the matter of limitation was to be governed by sixty years' rule according to the Patiala Limitation law and by thirty years' rule according to the Limitation Act of 1963. The learned counsel for the appellant has in reply to this said that after April 1, 1960, the new State Bank of Patiala was not a department of the State but was created a statutory corporation by the provisions of Act 38 of 1959, and this is correct. However, in view of the express provisions of section 56 of this last-mentioned Act, the law applicable to the State Bank of Patiala is, in the matter of recovery of moneys due to it for loans and advances before April 1, 1960, Patiala Act 4 of 2002 Bk., and that Act applies without any limitations or restrictions. It applies to the State Bank of Patiala as much and in the same manner and to the same extent as it did to the Bank of Patiala or the Patiala State Bank. So whatever period of limitation, having regard to the provisions of

Patiala Act 4 of 2002 Bk., was applicable to the Bank of Patiala or the Patiala State Bank, is the limitation that would apply to the State Bank of Patiala after April 1, 1960, in this respect. In other words, the article applicable to the State Bank of Patiala in the present case in regard to its claims referring to the period earlier to April 1, 1960, would be the same as was applicable to the Bank of Patiala in the former Patiala State or the Patiala State Bank in the former Pepsu State. There is no manner of doubt that in the former Patiala and Pepsu States the limitation applicable to any claims by the Bank of Patiala or the Patiala State Bank, as department of the State, was sixty years from the date of the cause of action. The same continues to be the position in view of section 56 of Act 38 of 1959 in so far as the present case is concerned in regard to the claim for its dues against the appellant by the State Bank of Patiala. The learned counsel for the appellant wishes to read in the provisions of section 10 of Act 4 of 2002 Bk., something which is not there, that is to say, a law of limitation applicable separately to its commercial activities as opposed to executive Government activities of the State. There is no such distinction that is available in the provisions of section 10 of that Act and none can be taken to have been in the contemplation of the Legislature. So this is not a case to which three years' limitation will apply as to the recovery of an ordinary loan between private persons or institutions, but it is a case to which, before the Limitation Act of 1963, a limitation of sixty years and, after that Act, of thirty years from the date of cause of action applies. So the determination of the dues against the appellant has been made by the proper authorities under the provisions of Patiala Act 4 of 2002 Bk., within the period of limitation applicable. The learned counsel for the appellant has laid emphasis on the last paragraph, already reproduced above, in the notice Annexure 'A', of March 17, 1953, that the claim of the Bank was within three years as provided by the law of limitation in force in the State. Any such misconception which prevailed with the then Managing Director of the Bank of Patiala cannot possibly alter the law of limitation applicable to a department of the State. So that nothing turns upon this.

(11) The learned counsel for the appellant has stressed that under the provisions of Act 38 of 1959 the State Bank of Patiala is no more than a mere transferee of the assets and liabilities of the Bank of Patiala or the Patiala State Bank. He has urged that a transferee cannot possibly have the same law of limitation applicable to it as to the original bank that was a department of the State. This argu-

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ment is only another aspect of the same argument that has already been considered. The right and title of the State Bank of Patiala to proceed to recover its dues from the appellant in the terms of Patiala Act 4 of 2002 Bk., is not as a mere transferee of the assets and liabilities of the Bank of Patiala or the Patiala State Bank but by virtue of the provisions of section 56 of Act 38 of 1959. In this respect the learned counsel has first referred to *Mehar Singh v. Municipal Committee, Amritsar* (2), in which it was held that where a suit is brought by a municipal committee for possession of land belonging to Government but vested in the Committee for management, the Committee cannot take advantage of the sixty years' limitation allowed to the Government, and then to *The State Electricity Board v. K. Govindarajulu* (3), in which the learned Judge held that in a suit by the State Electricity Board to recover a certain sum of money, being the cost of a pole which had been broken by the defendant's lorry and the loss of revenue to the plaintiff on account of interruption of electric supply to the consumers, was not within the rule of sixty years' limitation because the suit was factually instituted by the Board and could by no means be regarded as one instituted by or on behalf of the Government. There was no provision like section 56 of Act 38 of 1959 of which in the first case the Municipal Committee, and in the second case the State Electricity Board, had the benefit to proceed to make recovery of its dues from a debtor under a law like Patiala Act 4 of 2002 Bk.

(12) There is no other argument that has been urged in this case. So this appeal fails and is dismissed with costs.

BALRAJ TULLI, J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and P. C. Jain, JJ.

AMAR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 1835 of 1966

July, 16 1968

The Punjab Agricultural Produce Markets Act (XXIII of 1961)—Ss. 5, 6 and 38 and the Schedule—Power of the State Government to add any other items

(2) A.I.R. 1948 Lah. 153.

(3) A.I.R. 1960 Mad. 571.