

M.K. Devaraj Vs. State of Mysore and ors.

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Court : Karnataka

Decided On : Jun-12-1974

Reported in : AIR1975Kant24; ILR1974KAR918

Judge : K. Jagannatha Shetty, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 157, 157(1), 157(2), 160, 161, 162, 163, 164, 165, 168 and 173; Karnataka Land Reforms Act - Sections 10

Appeal No. : Writ Petn. No. 916 of 1973

Appellant : M.K. Devaraj

Respondent : State of Mysore and ors.

Advocate for Def. : K.S. Puttaswamy, 1st Addl. High Court Govt. Adv.

Advocate for Pet/Ap. : M. Gopalakrishna Shetty, Adv.

Judgement :

ORDER

1. Questions relating to the recovery of land revenue under the [Karnataka Land Revenue Act, 1964](#), hereinafter referred to as the Act, fall for decision in this petition under Article 226.

2. Petitioner is the owner of certain lands which are in the possession of his tenant. The land revenue payable in respect of the said lands for Fasli years 1380

and 1381 was due from the petitioner. The Tahsildar, Mangalore took action for recovery of the said land revenue by issuing a proclamation of sale of some other properties in the possession of the petitioner. Challenging the action of the Tahsildar, petitioner has preferred this writ petition.

3. The following two contentions were urged for the petitioner. (1) That the Tahsildar before issuing a demand notice under Section 165 of the Act, should have taken recourse to the remedies provided under Section 161 of the Act; and (2) The liability to pay land revenue when it is in default, is that of the tenant in possession of the lands and it has to be recovered from him.

4. The first contention has already been considered and rejected by me in W. P. No. 108 of 1971 (Mys) and I therefore do not propose to deal it again herein.

5. For the purpose of appreciating the second contention, it is necessary to set out Section 157. It provides:--

'157. Liability for revenue,-- (1) In the case of unalienated land, the occupant, and in the case of an alienated land, the superior holder, shall be primarily liable to the State Government for the payment of the land revenue, including all arrears of land revenue due in respect of the land. Joint occupants and joint holders who are primarily liable under this section, shall be jointly and severally liable.

(2) In the case of default by any person who is primarily liable under this section, the land revenue including arrears as aforesaid shall be recoverable from any person in possession of the land:

Provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands for the year in which the recovery is made:

Provided further that when the land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payment which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him in account with the person who is primarily liable.'

It is seen from the above provisions that the holder of the land is primarily liable to the State Government for the payment of land revenue, including all arrears due. Similar provision is found in the Karnataka Land Reforms Act. Section 10(b) of the said Act provides that the landlord is responsible for the payment of land revenue and other taxes due in respect of his land. Sub-section (2) of Section 157 no doubt creates a liability on the tenant to pay the arrears of land revenue when it has not been paid by his landlord. But I do not find any support for the contention from any provision in the Act that that land revenue which is in arrears should be recovered only from the tenant. The contention, if accepted, would lead to anomalous result. Every year, the landlord may conveniently commit default in payment of land revenue and ask the authorities to re-cover the same from the tenant. That is not the scheme of the Act if one peruses the provisions of Sections 160 to 165 of the Act. Section 160 provides that if land revenue or part thereof is not paid on the due date, the person primarily responsible for its payment shall be the defaulter, Under Section 157(1), the holder of the land is primarily liable for the payment of land revenue. Therefore, if he has not paid the arrears, he becomes a defaulter. Section 162 provides that a notice of demand may be issued in the prescribed form to recover the arrears of land revenue from the defaulter. Section 161 sets out more than one procedure for recovery of arrears of land revenue. It may be recovered either by forfeiture of occupancy or alienated holding in respect of which the land revenue is due, or by distraint and sale of the defaulter's moveable property including the produce of the land or by attachment and sale of the defaulter's immoveable property. All these provisions are applicable to recover the arrears of land revenue from a defaulter who, in the circumstances, is none other than the person who is primarily liable to pay the land revenue.

Against this background, one must consider the scope and effect of Sub-section (2) of Section 157. No doubt, it states that in the case of default by any person who is primarily liable, the land revenue shall be recoverable from any person in possession of the land. It is needless to add that the employment of the verb 'shall' is inconclusive and similarly mere absence of the imperative is not conclusive either. The question whether it is mandatory or directory has to be decided, particularly in the context of the other provisions of the Act and the general scheme thereof. Considered from these principles, I have no doubt that the word

'shall' occurring in Sub-section (2), is not a command to the revenue authorities to recover the arrears only from the tenant or from a person in possession of the land.

6. The last contention urged for the petitioner relates to the amount demanded from the petitioner. It is said that out of the demand made by the authorities, a substantial portion of it has already been paid by the petitioner. On this question, it is stated on behalf of the respondents that what is due from the petitioner is only Rs. 267.65 P. and not Rs. 1,313-95P as demanded by the Tahsildar. In view of this statement, it is now necessary for the authorities to issue a fresh proclamation of sale to recover the sum of Rs. 267-65P. While issuing the proclamation the authorities have to bear in mind the provisions of Section 173 of the Act which provides that the property to be sold, moveable or immoveable, under the provisions of the Act, shall, as far as may be practicable, be proportionate to the amount of the arrears of land revenue to be recovered and the expenses of attachment and sale.

7. In the view that I have taken, it is unnecessary to quash the impugned proclamation of sale. The petition is accordingly disposed of without any order as to costs.

8. Order accordingly.