Rakesh Kumar and ors. Vs. Collector and ors.

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Court : Allahabad

Decided On : Jul-05-2004

Reported in : 2005(1)AWC630

Judge : Devi Prasad Singh, J.

Acts : Constitution of India - Articles 14 and 21; Uttar Pradesh Agricultural Credit Act, 1973 - Sections 11A; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 278 to 286A, 287A and 341; Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rules 235, 236, 239, 240, 243, 245, 246, 272 to 273A and 283; Code of Civil Procedure (CPC) , 1908 - Order 5

Appeal No. : Writ Petition Nos. 236, 237 and 238 (M/S) of 2004

Appellant : Rakesh Kumar and ors.

Respondent : Collector and ors.

Advocate for Def. : D.K. Rastogi and ;N.K. Seth, Advs.

Advocate for Pet/Ap. : Janardan Singh, Adv.

Disposition : Petition allowed

Judgement :

Devi Prasad Singh, J.

1. Heard Sri Janardan Singh, learned counsel for the petitioner and Shri D. K. Rastogi, holding brief of Sri N. K. Seth learned counsel for the opposite parties as well as learned standing counsel.

2. Sri D. K. Rastogi holding brief of Shri N. K. Seth, learned counsel for the respondents-Bank at the time of commencement of hearing submitted that in case entire dues is paid to the respondent-bank in easy instalments he has got no objection and ready to accept the same. Affidavits have been exchanged. Hence, with the consent of parties, I have proceeded to decide the writ petition at admission stage.

3. Petitioner Nos. 1, 3 and 4 and father of the petitioner No. 2 had taken agricultural loan for the purchase of a tractor from opposite party No. 3. On account of default of payment of dues, the respondent-bank had sent a reference to recover the amount as arrears of land revenue. It was submitted by the petitioners' counsel that the petitioners had approached the respondent-bank to provide statement of account, as earlier it was Raj Mani father of petitioner No. 2 having knowledge relating to the loan in question but the opposite party No. 3 had not provided the necessary details, instead referred the matter to the revenue authorities to recover the amount in question as arrears of land revenue. Certificate of recovery sent under Section 11A of Agricultural Credit Act, 1973, has been filed as Annexure-1 to the writ petition. During the course of argument it was submitted by the petitioners' counsel that, the Tahsildar, Tahsil Colonelganj, district Gonda, without serving the copy of the citation of recovery had proceeded ahead with the attachment and sale of the petitioners' property in pursuance to agricultural loan taken from the respondent-bank.

4. By an interim order the Tahsildar of Tahsil Colonelganj, district Gonda, was directed to provide the copy of the citation. An affidavit was filed by the petitioners that inspite of direction of this Court the Tahsildar had not provided the copy of the citation. Accordingly the Tahsildar, tahsil Colonelganj, district Gonda, was summoned in person along with the record. On 29.3.2004, this Court had proceeded to pass the following order:

'Heard the parties.

In pursuance to the order passed by this Court Sri Jitendra Kumar Srivastava Tahsildar Colonelganj, district Gonda, appeared in person and placed the record before me. The record shows that earlier a citation was issued on 15.1.2004 for recovery of Rs. 2,17,048 but the record does not indicate that it was served on the petitioner. The present writ petition was filed on 12.1.2004 with the allegation the opposite parties are proceeding ahead with the attachment and sale of the petitioners' property without serving a copy of the citation; In pursuance to the Rule 294Ka of the U.P.Z.A. and L.R. Rules, 1952. By the order dated 27.1.2004, this Court had directed the petitioners to approach the opposite party No. 2 for copy of the citation, inspite of the order passed by this Court the copy of the citation was not provided to the petitioners.

Petitioners had filed supplementary-affidavit with the categorical averment that when the petitioners had approached the opposite party No. 2, i.e., Tahsildar Colonelganj, district Gonda, he had declined to provide the copy of the citation. This fact has been stated in para 3 of the supplementary-affidavit sworn on 3.3.2004. After filing the supplementary-affidavit, by the order dated 3.3.2004 the Tahsildar was summoned in person.

It appears that after receipt of notice by this Court's order another citation dated 10.3.2004 has been issued by the respondent No. 2, Tahsildar which is on record and produced before me. This practice to proceed with the attachment, auction, sale or for the recovery of the dues in accordance with the provision contained in U.P.Z.A. and L. R. Rules, as arrears of land revenue without serving notice or citation to the poor agriculturists is not permissible under the statutory provision. It was the duty of respondent No. 2-Tahsildar to serve effectively, the copy of citation. Moreover the respondent No. 2-Tahsildar who appeared today had not provided the copy of the citation in compliance of the interim order dated 27.1.2004. The opposite party No. 2 is directed to file a counter-affidavit to the averment contained in the writ petition as well as supplementary-affidavit and also to indicate that why the contempt proceeding may not be initiated against him for non-compliance of the interim order dated 27.1.2004, passed by this Court. He may file affidavit within a week. Let the copy of the citation be served on petitioner or his counsel who may file the same along with the supplementary-affidavit by the next date.

List on 16.4.2004. On the next date Tahsildar shall appear in person. Till then no coercive method shall be adopted to recover the bank dues. The learned counsel for the respondent Bank may receive the instruction by the next date.'

5. It appears that after receipt of notice from this Court and when the Tahsildar was directed to appear in person another citation was issued on 10.3.2004, which was later on served on the petitioners. Earlier it was on 15.1.2004 a citation was issued for recovery of amount Rs. 2,71,648. At least it is evident from the material on record that the copy of the citation dated 15.1.2004 was not served on the petitioner. On account of filing of present writ petition and order passed by this Court the opposite party No. 2, i.e., Tahsildar has issued a new citation on 10.3.2004, which was later on served on the petitioners.

6. Number of petitions are filed from time to time in this Court on the ground that the copy of citation are not being provided to the borrower by the Tahsil authorities and straightway the Revenue Authorities proceed ahead with the attachment and sale of the property of the borrowers which results into serious miscarriage of justice. Sometime the citation is affixed outside the houses of the borrowers and some time it is being served on near and dear of the person who has taken loan from the bank. Such incidents are happening in substantial number and poor farmers and agriculturists suffer adversely for no fault on their part.

7. Service of the citation of recovery or notice including the notice of attachment and sale of a property in pursuance to the recovery proceeding as the arrears of land revenue' is not only statutory duty of the revenue authorities but is also necessary to maintain the transparency in the administration of justice and stop the abuse of process of law. Effective service of notice is necessary by the tahsil authorities before adopting any coercive method in pursuance to the relevant rules to recover the amount. A poor farmer and agriculturist or any person may not have a courage or capacity to approach the tahsil authorities to ask for the copy of the citation of recovery. Duty lies on the tahsil authorities to serve notice effectively on the borrower who had taken the loan.

8. Section 278 of U.P.Z.A. and L. R. Act, 1950 (in short Act') provides that the statement of account certified by the Tahsildar shall, for the purposes of the'' Act shall be conclusive evidence of the existence of the arrears of land revenue. Section 279 provides that the cost of any process shall be added to the recoverable amount. Section 280 provides that as soon as an amount become due a writ of demand shall be issued by the Tahsildar on the defaulter calling upon him to pay the amount within the time stipulated. Section 281 relates to arrest and detention and it provides that in the event of default of payment a person may be kept under civil imprisonment not exceeding 15 days. Section 282 empowers the Collector to attach and sell the movable property. Section 284 provides that the Collector may in addition attach the holding in respect of which an arrears is due. The Collector may sell holding free from all encumbrances. Section 284A provides that a person may adjudicate from land attached without any title. Section 286 provides that in case, the arrears of land revenue cannot be recovered by any of the processes mentioned in Section 279, the Collector may realise the same by attachment and sale of the interest of the defaulter, in any other immovable property. For convenience Sections 278, 279. 280, 281, 282. 284, 284A, 286, 286A and 287A are reproduced hereunder :

'278. Certified account to be evidence as to arrears of land revenue.-A statement of account certified by the Tahsildar shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrears of land revenue of its amount and of the person who is the defaulter :

Provided that in any village in respect of which an order under Section 276 has been made such statement, may, in respect of an individual defaulter, be certified by the Land Management Committee.

279. Procedure for recovery of an arrears of land revenue.-(1) An arrears of land revenue may be recovered by any one or more of the following process :

(a) by serving a writ of demand or a citation to appear on any defaulter;

(b) by arrest and detention of his person;

(c) by attachment and sale of his movable property including produce;

(d) by attachment of the holding in respect of which the arrears is due;

(e) by lease or sale of the holding in respect of which the arrears is due;

(f) by attachment and sale of other immovable property of the defaulter; and

(g) by appointing a receiver of any property, movable or immovable of the defaulter.

(2) The costs of any of the processes mentioned in subsection (1) shall be added to and be recoverable in the same manner as the arrears of land revenue.

280. Writ of demand and citation to appear.-(1) As soon as an arrears of land revenue has become due a writ of demand may be issued by the Tahsildar on the defaulter calling upon him to pay the amount within a time to be specified.

(2) In addition to or in lieu of a writ of demand the Tahsildar may issue a citation against the defaulter to appear and deposit arrears due on a date to be specified.

281. Arrest and detention.- Any person who has defaulted in the payment of an arrears of land revenue may be arrested and detained in custody up to a period not exceeding 15 days unless the arrears including costs, if any, recoverable under Sub-section (2) of Section 279, are sooner paid :

Provided that no woman or minor shall be liable to arrest or detention under this section :

Provided further that no person shall be liable to arrest or detention for an arrears in respect of a holding of which he is not the bhumidhar merely because of his joint responsibility for payment of land revenue under Section 243.

282. Attachment and sale of movable property.-(1) The Collector may, whether the defaulter has been arrested or not, attach and sell his movable property.

(2) Every attachment and sale under this section shall be made according to the law in force for the time being for the attachment and sale of movable property in

execution of a civil court.

(3) In addition to the particulars mentioned in Clauses (a) to (o) of the proviso to subsection (1) of Section 60 of the Code of Civil Procedure, 1908 (V of 1908), articles set apart exclusively for the use of religious worship shall be exempted from attachment and sale under this section.

284. Attachment, lease and sale of holding.-(1) The Collector may in addition to or instead of any of the other processes herein before specified either of his own motion or on the application of the Land Management Committee, attach the holding in respect of which an arrears is due.

(2) Where any holding is so attached the Collector, may, notwithstanding anything contained in this Act, but subject to such conditions as may be prescribed, let out the holding, for such period not exceeding ten years commencing from the first day of July next following as he deems fit, to any person, other than the defaulter, who pays the whole of the arrears due on the holding and agrees to pay the same amount of land revenue during this period of the lease as has been payable by the defaulter in respect of the holding immediately preceding its attachment.

(3) If during the period of lease, the lessee commits defaults in payment of the land revenue due under lease, the arrears may be recovered from him by any one or more of the processes mentioned in Clauses (a) to (e), (f) and (g) of Sub-section (1) of Section 279 and his lease shall also be liable to be determined.

(4) Upon the expiry of the period of lease the holding shall be restored to the tenure-holder concerned free of any claim on the part of the State Government for any arrears of revenue in respect thereof.

(5) If the Collector is satisfied that no suitable person is forthcoming to take the land on lease under Sub-section (2) then notwithstanding anything contained in this Act he may sell the holding free from all encumbrances in such manner as may be prescribed and appropriate the proceeds in satisfaction of the arrears, and refund the excess, if any, to the defaulter.

(6) The Collector shall report to the Board of Revenue any sale made under Sub-section(5).

284A. Ejectment of persons occupying the attached land without title.-Any person taking or retaining possession otherwise than in accordance with the provisions of this Act, of any land attached under this Chapter shall be liable to ejectment and to pay damages :

(a) in case of the land being let out or sold under Section 284, on the suit of the lessee or purchaser, as the case may be, and

(b) in any other case on the suit of the Collector or of the Land Management Committee according as the attachment is made by the Collector or the Committee.

286. Power to proceed against interest of defaulter in other immovable property.-(1) If any arrears of land revenue cannot be recovered by any of the processes mentioned in Clauses (a) to (e) of Section 279, the Collector may realise the same by attachment and sale of the interest of the defaulter in any other immovable property of the defaulter.

(2) Sums of money recoverable as arrears of land revenue but not due in respect of any specified land, may be recovered by process under this section from any immovable property of the defaulter including any holding of which he is a bhumidhar.

286A. Appointment of receiver.-(1) Notwithstanding anything in this Act when (an arrears of revenue or any other sum recoverable as an arrears of revenue) is due, the Collector may, in addition to or instead of any of the processes hereinbefore specified, by order :

(a) appoint, for such period as he may deem fit, a receiver of any movable or immovable property of the defaulter;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver :

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents, as the defaulter himself has or such of those powers as the Collector thinks fit.

(2) Nothing in this section shall authorise the Collector to remove from the possession or custody of property to any person whom the defaulter has not at present rights to remove.

(3) The Collector may from time to time extend the duration of appointment of the receiver.

(3A) No order under subsection (1) or Sub-section (3) shall be made except after giving notice to the defaulter to show cause, and after considering any representations that may be received by the Collector in response to such notice.

(4) The provisions of Rules 2 to 4 of Order XL contained in the First Schedule to the Code of Civil Procedure, 1908, shall apply in relation to a receiver appointed under this section as they apply in relation to a receiver appointed under the said Code with the substitution of references to the Collector for references to the Court.

287A. Payment under protest and suit for recovery.-[1) Whenever proceedings are taken under this Chapter against any person for the recovery of any arrears of land revenue, or for the recovery of any sum of money recoverable as arrears of land revenue he may pay the amount claimed under protest to officer taking such proceedings, and upon such payment, the proceedings shall be stayed and the person against whom such proceedings were taken may sue the State Government in the civil court for the amount, so paid, and in such suit the plaintiff may, notwithstanding anything contained in Section 278, give evidence of the amount, if any, which he alleges to be due from him.

(2) No protest under this section shall enable the person making the same to sue in the civil court, unless it is made at the time of payment in writing and signed by

such person or by an agent duly authorised in this behalf.'

9. U.P.Z.A. and L. R. Rules, 1952 (in short Rules 1952') contains details of procedure which should be followed by the authorities while proceeding ahead to recover the amount as arrears of land revenue.

10. Chapter X deals with the procedure relating to the recovery of dues as arrears of land revenue. Under Section D of Chapter X Amin has been empowered to collect dues directly from borrower. Under Rules 22 and 24 every Amin shall issue receipt of collected amount to the borrower or the person from whom dues is recovered under Z.A. Form 64.

11. Section F of Chapter X deals with the coercive method which can be adopted by the Tahsil Authorities to recover the amount as arrears of land revenue. Rules 235 and 236 empowers the Tahsildar to issue relevant forms relating to citation, writs, warrant of arrest and warrant of attachment. Rules 239 and 240 provide that the citation to appear or a warrant must be issued separately. Rules 241 to 245 provides how the writ of demand and citation should be issued and may be served on the person concerned. For convenience Rules 235, 236, 239, 240, 241, 242, 243, 245 and 246 are reproduced hereunder :

'235. Section 294.-(1) Process against a defaulter being or having property in a district other than that in which the arrears fell due, can be issued against him or against such property only upon a certificate under Section 3 of the Revenue Recovery Act, 1890.

(2) Land Revenue realised upon such a certificate shall not, if the district of issue of the certificate and the district of realisation are both within Uttar Pradesh be remitted to the treasury of the district in which it is realised and an intimation to the effect that the amount has been realised, shall be sent to the officer who issued the certificate. The latter shall then have the fact of realisation noted in the accounts of his district, while in the district in which the amount was realised, the amount shall be credited as realised on behalf of the demand of the district from which the certificate was issued.

(3) When the district of issue of the certificate is not within Uttar Pradesh, the amount so recovered shall in the first instance be paid into the treasury of the district in which it is realised. At the end of the month, all sums so credited shall be withdrawn and remitted to the District Officer by whom the certificate was issued. Sums exceeding Rs. 15 shall be remitted by remittance transfer receipt and sums of Rs. 15 or less by postal money order, the money order commission being debited to the contract contingencies of the District Officer making the remittance.

(4) A register in Z.A. Form 67 shall be maintained by District Officers for the record of certificates of recovery of land revenue issued to and received from other districts.

236. Writs, citations, warrants of arrest and warrants of attachment of movable property shall be in the Z.A. Forms 68, 69, 70 and 71. They shall be signed by the issuing officer and sealed with his official seal.

239. A single writ of demand or a single writ for attachment and sale of movable property, may be Issued against any one, or against some or all of number of defaulters who are jointly responsible for the payment of the arrears but a citation to appear or a warrant of arrest must be issued separately in respect of each defaulter required to attend or to be arrested.

240. Subject to the provisions of the Act, process shall ordinarily be issued in respect of the whole of the arrears due from the defaulter, whether such arrears are due in respect of one or more khata khataunis.

241. Section 280.- Process under Section 280 (writ of demand or citation to appear) shall be issued by the Tahsildar of the Tahsil in which the arrears fell due, or by the order of the Collector or the Assistant Collector incharge of the sub-division. If the Tahsildar issues such process against a defaulter residing in another Tahsil within the district he may do so either or through the Tahsildar of such other Tahsil.

242. Process under Section 280 is not required by law to precede process under Section 282 (attachment of immovable property) but ordinarily a writ in Z.A. Form

68, or citation to appear in Z.A. Form 69 should issue before any other process is resorted to.

243. The fee charged for the issue of a writ or citation to appear shall be rupees two. This fee shall be added to the arrears to which the writ or citation is issued, and shall be included in the amount specified therein.

245. Not more than one writ shall be issued in respect of the same arrear to any defaulter, except under the express orders of the Collector. If the arrears are not paid within 15 days from the date of service, more severe measure should promptly be taken.

246. (1) Service of the writ or citation shall, if possible be made on the defaulter personally, but if service cannot be made on the defaulter it may be made on his agent. If the defaulter or his agent cannot be found or if there is more than one defaulter against whom a writ or citation has been issued a copy of the writ, or citation may be fixed at a prominent place on or adjacent to the defaulter's residence.

(2) Personal service shall be made by delivery to the defaulter or his agent of the foil of the writ or citation. The other portion shall be brought back to the Tahsil by the process-server and attached to the counterfoil. When returning this portion, the process-server shall report to the officer whom the Tahsildar may appoint for the purpose, the date of service, the manner in which the writ or citation was served, and if it was not served on the defaulter personally, the reason why it was not served. The official receiving the report shall note the particulars on the process, if this has not been done already.

(3) With the sanction of the Collector, writs of demand may also be served by registered post. In such cases the post office receipt shall be attached to the counter-foil.

Rules 247A and 247B deals with the process of arrest and detention and for convenience are reproduced hereunder :

'24 7A. The warrant of arrest may be executed by any one of the process-servers referred to in Rule 244 or an Amin or any other officer whose name is entered in the warrant of arrest. Where the person authorised to execute the warrant is a process-server who has not furnished any security to Government, an Amin shall be deputed to accompany such process server.

247B. (1) Where a defaulter at the time of his arrest pays the entire amount of arrears specified in the warrant of arrest along with the process fee referred to in Rule 248 to the process-server, the Amin or the officer, as the case may be, empowered in the said warrant to receive such arrears and process-fee he shall not be arrested, and if arrested shall be released, and a receipt for the amount so paid shall be issued to him on the spot in Z.A. Form 64 by the process server, Amin or officer, as the case may be.

(2) The amount of arrears and the process-fee paid by the defaulter shall immediately be deposited in the Tahsil in the same manner as a land revenue collection is deposited. The fact of payment of the aforesaid amounts as also the reference of the Receipt No. and Book No. of the receipt issued to the defaulter shall also be noted down on the warrant which shall then be put up before the officer issuing the warrant of arrest who shall ensure that the amounts noted on the warrant have been duly deposited in the Tahsil.'

12. The process of attachment and sale of movable property has been provided under Rules 254, 256, 257 and 258 which are reproduced hereunder :

'254. Section 282.-Process under Section 282 (attachment and sale of movable property) may be issued only by, or under the orders of the Collector or Assistant Collector-in-charge of the subdivision.

256. When it is necessary to enter a dwelling house for the purpose of making an attachment the provisions of Section 62 of the Code of Civil Procedure, 1908, shall be observed.

257. Every warrant for the sale of movable property in Z.A. Form 72 shall specify the amount for the recovery of which sale is ordered, and shall require the property

to be sold in default of such amount after the lapse of such period as may be specified.

258. The costs of every sale of movable property shall be met by levying a sum of (six Naya Paise) in the rupee (excluding fractions of a rupee), calculated on the amount of the arrear, including the charge on account of the warrant of the attachment, which may be realised by the sale. Any sum in excess of such arrears realised by the sale shall be paid to the defaulter, and shall be excluded from the amount on which costs of the sale are calculated.'

13. The procedure for the attachment or lease of land have been provided under Rules 272, 272A, 272B, 273, 273A and 278, for convenience which are reproduced hereunder :

'272. Sections 279, 284, 289 and 291.-(I) Process for attachment of a holding under Clause (d) of Section 279 or for lease of a holding under Section 291 may be issued only by the Collector.

(2) Process for attachment of a village or any area therein under Section 289 may be issued by the Collector with the previous sanction of the Board of Revenue. While submitting his proposal for attachment to the Board of Revenue, the Collector shall report how he proposes to manage the land during the period of attachment, and the period for which the attachment is proposed.

(3) Where a holding is attached under Clause (d) of Section 279, the Collector shall forthwith make necessary arrangements for the cultivation of land either by grant of a lease under Section 291 or in such other manner as he considers desirable.

272A. Before proposing attachment under Section 289, the Collector should satisfy himself by reference to the Pargana Book and other sources of information available to him, that there is a reasonable probability of the arrears being recorded by this process within the period of three years allowed by the Act. If the Collector or the Board of Revenue is not satisfied the attachment shall not be made except as a preliminary measure to some more severe process.

272B. The direction contained in paragraphs 713 to 716 of the Revenue Manual as to provision for the cost of collecting establishment and local management, shall apply mutatis mutandis to land under management after attachment for arrears of revenue.

273. Where any land is attached.-In pursuance of the provisions of Clause (d) or (f) of Section 277 or Sub-section (1) of Section 284, or of Section 286 or is let out under Sub-section (2) of Section 284, a proclamation in Z.A. Form 73 shall be affixed at a conspicuous place in the village in which the land is situate, and it shall also be notified by beat of drum.

273A. The attachment of holding or other immovable property under Clause (d) or (f) of Section 279 or under Section 284 or Section 286, shall be effected in the manner prescribed in Order XXI, Rule 54 of the Code of Civil Procedure, 1908 and the order to the defaulter shall be issued in Z.A. Form 73D.

278. Section 284 (2).-As soon as may be, after the holding is attached under Sub-section (1) of Section 284, the Collector shall proceed to let out the holding to any person other than the defaulter, whom he thinks fit, and who pays the whole of the arrears due on the holding before a lease is given to them in respect of that holding.'

14. Under Rule 281 procedure has been given for the sale of immovable property. For convenience Rules 281, 282 and 283 are reproduced hereunder :

'281. (1) Recourse can only be had to the sale of the holding under Section 284 when the processes specified in Clauses (a), (b), (c) or (d) of Section 279 would be insufficient for the recovery of the arrear.

(2) Process for sale of holding under Section 284 and other immovable property under Section 286 shall be issued by the Collector.

(2A) In the case of sale of a holding the Collector shall auction the holding in lots of 1.26 hectares (3.125 acres) to 5.04 hectares (12.50 acres) after working out and announcing the land revenue and the estimated value of each lot.

It should also be made clear that only those persons would bid in the auction, acquisition of land by whom would not contravene the provisions of Section 154.

282. Section 286. -The proclamation of sale shall be in Z.A. Form 74.

283. In the proclamation for sale under Section 286, the Collector shall state the amount of the annual demand and the estimated value of the property calculated in accordance with the rules in Chapter XV of the Revenue Manual.'

15. All the aforementioned provisions contained in the Act and Rules are in affirmative, and command the revenue authorities to fulfil requirements while proceeding to recover the dues as the arrears of land revenue. The various Z.A. Forms provided under the rule should be effectively served on the borrower before proceeding ahead with the auction and sale of the mortgaged property. The provision of the Act as well as rule stated hereinabove have got statutory force and are mandatory in nature. The violation of rules may vitiate the entire recovery proceedings.

16. The Apex Court while considering the applicability of statutory provisions, their binding features held that the provisions which are mandatory must be complied with otherwise the action taken by the authorities shall be vitiated.

17. In a case in Mannalal v. Kedar Nath, AIR 1977 SC 536. the Apex Court proceeded to hold as under :

'In Raza Buland Sugar Co. Ltd. v. Municipal Board Rampur, (1965) 1 SCR 970 : AIR 1965 SC 895, this Court referred to various tests for finding out when a provision is mandatory or directory. The purpose for which the provision has been made, its nature, the intention of the Legislature in making the provision, the general inconvenience or injustice which may result to the person from reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision are all to be considered. Prohibition and negative words can rarely be directory. It has been aptly stated that there is one way to obey the command and that is completely to refrain from doing the forbidden act. Therefore, negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory.'

21. If anything is against law though it is not prohibited in the statute but only a penalty is annexed the agreement is void. In every case where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act....................'

18. Under the ratio of the Apex Court judgment (supra), the provision contained in the rule relating to the recovery of dues are mandatory and it shall be incumbent upon the authorities to follow them in letter and spirit so that the valuable right of the borrower may not be jeopardised resulting into serious miscarriage of justice. There may be situation when a borrower may intend to deposit the entire dues, may be at the stage of issuance of citation of recovery or at the stage of attachment and sale or even at the stage of auction of mortgaged property. At every stage, the borrower may exercise his right to deposit the entire dues up to satisfaction of the authorities to save his property. Accordingly, it shall always be incumbent on the authorities to serve the appropriate forms/notices provided under the rules on the borrower effectively.

19. In view of above, the provisions contained in U.P.Z.A and L.R. Rules referred hereinabove are mandatory in nature. Accordingly, the compliance of these provisions are necessary while proceedings to recover an amount as the arrears of land revenue. In case it is held as directory, then the very object of the provisions will be defeated. The authorities should take care while proceeding to recover an amount as arrears of land revenue to follow these provisions in letter and spirit. So that the valuable right of the parties may not be adversely affected causing gross injustice to the borrowers or guarantors or affected persons.

20. Now it is the settled law that right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution of India. Every action taken by the authorities, while proceeding to recover an amount as the arrears of land revenue, must satisfy the conditions enshrined under Article 14 of the Constitution of India. While attaching and selling the property as arrears of land revenue, a person's

property is being put to attachment sale and auction. Any arbitrary act or non-compliance of statutory provision may put the family of a person under extreme financial hardship and may also result into serious consequences which include to face death on account of starvation or the lack of source of livelihood.

21. In view of above, effective service of every Z.A. Form provided under the rules and provisions referred hereinabove is mandatory otherwise the action taken by the authorities shall be illegal, arbitrary, unjust and improper and will vitiate the proceedings.

22. This Court takes judicial notice of the facts coming on record by various writ petitions with a complaint that notices are served on near and dear of the borrower. Without effective service, properties are attached and sometime auctioned. It is common ground taken by the authorities that notices are being served to kith and kin of borrowers to save their own skin. The rules do not provide the effective mode of service of notice, citations and various Z.A. Forms. How the notice shall deem to be served? How the authorities should serve the notices, citations and Z.A. Forms on the borrowers to recover the dues? Personal service on the near and dear of the borrower or guarantor or affixing of notice at conspicuous places or information of auction and sale by beating of drum have become obsolete methods and are often being abused by authorities for extraneous reasons and consideration causing extreme hardship and sometime irreparable loss to the agriculturist.

23. Judicial notice may be taken also to some incidents where the properties of borrowers or guarantors were auctioned for meagre amount. The estimated value of property put for auction were never published either in the newspapers or in the proclamation of attachment and sale resulting in serious miscarriage of justice.

24. Accordingly, it is necessary that some effective mode of service of notices/citation should be provided to check the abuse of the process of law.

25. Section 341 of the Act provides that the provision contained in Code of Civil Procedure shall be applicable. For convenience Section 341 is reproduced as under :

'Application of certain Acts to the proceeding of this Act.- Unless otherwise expressly provided by or under this Act. the provisions of the Indian Court Fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908), and the (Limitation Act, 1963 (XXXVI of 1963)), (including Section 5 thereof) shall apply to the proceedings under this Act.'

26. In view of Section 341 of the Act the provision contained in Order V of the Code of Civil Procedure may be made applicable in a proceeding where dues are recovered as arrears of land revenue under the rules.

27. Since the relevant rule contains the provision relating to punitive action against those who does not make payment in pursuance to citation of recovery, the rules referred herelnabove have got mandatory force. Accordingly, various Z.A. Forms provided under the Act and rules relating to the service of notice or proclamation of sale etc. should be effectively served otherwise it may result into abuse of process of law and a person may suffer irreparably. Accordingly, while proceeding in pursuance to relevant rules as provided under U.P.Z.A and L.R. Rules, 1952, to recover an amount it shall be necessary for the authorities to serve the notices, citation or recovery as well as proclamation of attachment sale effectively on the borrower or the persons from whom the authorities are proceeding ahead to recover the dues.

28. The present provisions in the U.P.Z.A and L.R. Act and Rules framed thereunder are not effective to stop the abuse of the process of law by authorities for extraneous reasons or considerations. The State Government may take appropriate steps to amend the relevant provisions in such a manner so that borrower may not suffer particularly the agriculturists who take agricultural loan, and suffer for extraneous reasons or considerations. Accordingly, while proceeding with the recovery of dues as arrears of land revenue, keeping in view the principle enunciated under Order V of the Code of Civil Procedure, a Tahsildar or any other competent authority shall proceed in the following manner and satisfy the conditions mentioned hereunder :

First.-A copy of citation of recovery or notice should be sent by personal service as well as by registered post.

Second.-In case the notices are not served by personal service or by registered post, then the competent authorities shall publish the notice in the newspaper as substituted mode of service. The proclamation of attachment and sale of a movable and immovable property should also be served personally as well as by registered post and in case the person concerned is not served, the notice should be published in two widely circulated newspapers (out of which one may be widely circulated local newspaper) indicating the amount due as well as the date of auction and sale which should be a date beyond thirty days, from the date of publication.

Third.-In any case either after receipt of citation or proclamation of attachment and sale or even on the date of auction and sale of movable or immovable property the borrower or the guarantor wants to pay entire amount due along with expenses, the competent authority shall not proceed with the auction and sale of the property and shall permit the person concerned to deposit the dues. In case dues are deposited, the movable or immovable property shall be released in favour of the owner.

Fourth.-In case an objection is filed by the borrower, guarantor or owner of the property against the attachment and sale of the immovable property then the authorities shall not proceed with the attachment and sale of the property without deciding the objection.

Fifth.-The service on friends, relatives or family member of the person concerned shall not be treated as actual and affective service. It shall be duty of the authorities to serve the citation or notices on the actual borrower, guarantor or person concerned in the manner indicated hereinabove.

Sixth.-Keeping in view the letter and spirit of Rule 283, in every notice or proclamation of attachment and sale of movable or immovable property, the estimated value of the property should be mentioned by the authorities. While deciding the estimated value of a property, the market rate of the property and in case it is an agricultural land then the circle rate of the property notified by District Magistrate for the purpose of execution of sale deed should be considered as guiding factor by the authorities.

29. It is clarified that aforementioned procedures shall be adopted by authorities in addition to other existing provisions contained in the rules.

30. The Apex Court in a case in Seth Banarsi Dass v. District Magistrate. Mekrut, 1996 RD 397, held as under :

'6. Therefore, the officer conducting the sale has the power to grant time to pay the price. In the absence of such facility being given, the auction purchaser must pay the full price at the time of the sale, otherwise the property is liable to be resold.

7. The second objection of the appellant, however, deserves to be accepted. It is contended by him that two sets of objections were raised by him to the proposed auction sale when the shares were attached. These objections to the sale were pending when the auction sale took place. These objections go to the root of the liability of the appellant to pay the amounts under the recovery certificate as well as to the sale ability of the shares proposed to be sold. These objections ought to have been adjudicated upon before the auction sale. An auction which is held without deciding objections to it is bad in law. Recovery proceedings are equivalent to execution proceedings under the Civil Procedure Code. The objections to the attachment and sale of the said shares were raised by the debtor. Under Section 47 of the Code of Civil Procedure, all questions arising between the parties relating to execution, discharge or satisfaction of the claim were required to be determined by the officer-in-charge of execution before proceeding with execution by way of sale. The objections, for example, related to the amount which is claimed in the recovery certificate. According to the appellant the amount mentioned in the recovery certificate was not correct because subsequent citation was for a different amount. The appellant had also claimed repayment of various amounts. It was also pointed out by the appellant that the shares were already pledged with the Oriental Bank of Commerce. Yet no notice was given to the Oriental Bank of Commerce and the shares were purported to be sold ignoring the pledge of the shares in favour of the Oriental Bank of Commerce. We need not examine the merits of the objections raised by the appellant. But it is important to notice that these objections were not decided prior to the holding of the auction sale. The first respondent has given no explanation for. not deciding these

objections earlier. In our view the High Court was not right in observing that the objections could be decided at a later date even after the sale of the shares to which the objections pertained. Proceeding with the auction sale without adjudicating upon the objections is a material irregularity which vitiates the sale. The appellant has thereby lost his valuable right to have his objections adjudicated upon in accordance with law. The objections were raised much prior to the auction sale and they ought to have been decided before the auction sale took place. Failure to do so vitiated the sale.'

31. In the present case, at the face of record, the citation of recovery was not served on the petitioner, which vitiates the entire proceedings. However, since, learned counsel for the respondent had consented that he is ready to accept the amount in easy instalments, it is provided that in case the petitioner deposits the l/4th of the amount within a period of six weeks from today and continue to deposit the rest of the amount in five quarterly instalments then the further recovery proceedings shall be kept in abeyance. In event of default of payment, the authorities will have right to proceed afresh in accordance to law as discussed in the present judgment.

32. Since the present judgment covers an important procedural aspect relating to the realisation of amount as arrears of land revenue, let a copy of present judgment be sent to Chairman, Board of Revenue, Principal Secretary Law as well as Chief Secretary, Government of U.P., who may circulate the present judgment or the relevant portion of the judgment to the Collector, Tahsil authorities of various districts expeditiously and preferably within a period of two months from the date of receipt of copy of the present judgment so that they may proceed ahead in accordance with law while recovering the dues as the arrears of land revenue.

33. Office shall send the copy of the present judgment to these authorities within two weeks from today. Learned Chief Standing Counsel/standing counsel is also directed to inform the Government accordingly.

34. A writ of certiorari is issued, quashing the impugned citation dated 10th March, 2004, with all consequential benefits. However, the competent authority may

proceed afresh in accordance with law in the event of non-payment of dues in violation of conditions provided under the present judgment.

35. Writ petitions are allowed accordingly. No order as to costs.

36. Let certified copy of this order be given to the learned counsel for the parties within three days on payment of usual charges.