

Savita Ben and Etc. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Dec-17-2008

Reported in : AIR2009MP76

Judge : Dipak Misra and R.K. Gupta, JJ.

Appellant : Savita Ben and Etc.

Respondent : State of M.P. and ors.

Disposition : Appeal dismissed

Judgement :

Dipak Misra, J.

1. The expose of facts, the controversy involved, proposition of law and the proponent's being founded on a common canvas, these writ appeals were heard analogously and are disposed of by a singular order.

2. The appellants in W.A. No. 1021/2008 and W.A. No. 1023/2008 are the mother and son and they had invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by preferring two writ petitions (W.P. No. 4969/2008 and W.P. No. 4972/2008) for issue of a writ of certiorari for quashment of the recovery proceedings and notification dated 4-3-2008 issued by the concerned Tahsildar, the third respondent herein, in respect of proclamation of

sale of their immovable property for recovery of the dues of the Citizen Co-operative Bank Ltd. (hereinafter referred to as 'the Bank'). The appellants had availed the loan from the Bank upon mortgaging their agricultural land in the form of security of the loan. As there was default by the loanees, recovery proceedings initiated against them under the M.P. Co-operative Societies Act, 1960 (for brevity 'the 1960 Act') but did not pursue the said proceeding. After abatement of the same, it initiated action under the M.P. Lok Dhan (Shodya Rashion Ki Vasuli) Adhiniyam, 1987 (for short 'the 1987 Act').

3. As is manifest, the Bank sent a certificate on 10-2-2005 to the Collector for recovery of dues who, in turn, issued the Revenue Recovery Certificate on 15-2-2005 against the appellant-petitioners. On the basis of the said certificate the Tahsildar issued demand notices to the appellants and as the notices were not accepted, he issued proclamation of sale the immovable property of the petitioners mortgaged with the Bank. The property was auctioned on 11-4-2008 and the sale was ultimately finalised for a sum of Rs. 20,21,000/-. It is worth noting that the auction purchaser had deposited the amount in question with the Bank.

4. Questioning the legal propriety of the auction conducted in pursuance thereof, it was contended before the learned single Judge that the land mortgaged with the Bank being an agricultural land measuring less than four hectares could not have been attached and sold for recovery of the dues as the same is not permissible under Sections 147 and 154-A of the M.P. Land Revenue Code (in short 'the Code').

5. The learned single Judge referred to the provisions of the 1987 Act especially the dictionary clause that defines banking companies, Section 4 which deals with savings and Sections 147 and 154-A of the Code and came to hold that the provisions of the 1987 Act are applicable to the case at hand in view of the maxim *Generalia Specialibus Non Derogant* (general things do not derogate from special things). The learned single Judge came to hold that the action taken under the 1987 Act for recovery of the dues secured by mortgaging the immovable property with the Bank was justified and did not warrant interference.

6. Mr. Ankit Saxena, learned Counsel appearing for the appellants, has raised the following submissions:

(a) The learned single Judge has failed to appreciate that under Section 84-A of the 1960 Act when an award has already been passed, the proper course was to initiate recovery under Section 85 of the said enactment and the entire recovery proceeding should have been taken up under the said Act and Rules framed thereunder.

(b) Section 82(c) of the 1960 Act bars the jurisdiction of the Revenue Court in respect of any dispute and once the said recourse has been taken to get the award passed under the 1960 Act, no action could have been taken under the 1987 Act.

(c) The learned single Judge has fallen into serious error in holding that the Code is not applicable to the case at hand and, therefore, the claim put forth that the land in question being agricultural land and less than four hectares could not have been put to auction is not tenable.

(d) The learned single Judge has failed to appreciate that the loan was not granted under any scheme under the 1987 Act and hence, the entire proceeding was liable to be quashed.

7. Mr. T.S. Ruprah, learned Additional Advocate General for the State, supported the order passed by the learned single Judge.

8. To appreciate the submissions raised by Mr. Saxena, we have carefully perused the order passed by the learned single Judge and the reasons ascribed by him. It is not in dispute that the appellants, the mother and the son, had availed the loan¹ from the Bank by mortgaging their agricultural land in the form of security. Section 84-A of the 1960 Act deals with the recovery of sums due to housing society. It empowers the Registrar to grant a certificate for the recovery of the amount stated in the application made by the co-operative society pr M.P. State Co-operative Housing Federation for recovery of arrears of its dues, to be due as an arrear. Section 85 deals with the execution of the orders, etc. The essential part of the

said provision reads as under:

(a) On a certificate signed by the Registrar or any person authorised by him in this behalf be deemed to be decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(b) Be executed according to the law and under the rules for the time being in force for the recovery arrears of land revenue; or

(c) be executed by the Registrar or any other person empowered by the Registrar in this behalf, by attachment and transfer in the manner as may be prescribed, or sale or sale without attachment of any property of the person or a society against whom the order, decision or award has been obtained or passed:

Provided that any application for the recovery under Clause (b) shall be made-

(i) to the Collector and shall be accompanied by a certificate signed by the Registrar or by any person authorised in this behalf; and

(ii) within five years from the date fixed in the order, decision or award and if no such date is fixed, from the date of order, decision or award, as the case may be.

9. Section 82 which has been placed reliance upon by Mr. Saxena deals with the bar of jurisdiction of Courts. As far as Section 82 is concerned, on a bare reading of the same, there cannot be any shadow of doubt that it is not applicable to the case at hand even in a remote manner. The submission of the learned Counsel for the appellants is that once the bank has taken recourse to Section 85, it could not have withdrawn the same and proceeded under the 1987 Act. As is manifest from the order passed by the learned single Judge, the Bank did not pursue the proceeding but took recourse to recovery, under the 1987 Act. Section 2(b) of the 1987 Act defines banking companies. Sub-section (vi) of the said dictionary clause reads as under:

2. Definition.

(b) 'Banking Company' means:

(vi) a financial bank or a Central Society as defined in the M.P. Co-operative Societies Act, 1960 (No. 17 of 1961) excluding a Co-operative Land Development Bank.

Sub-section (2)(i) defines socially desirable scheme. The said provision reads as under:

2(i) 'socially desirable scheme' means a scheme notified as such by the State Government under which a banking company advances money to any person by way of loan.

10. Section 3 deals with the recovery of certain dues as arrears of land revenue. The relevant portion of the said provision reads as under:

3. Recovery of certain dues as arrears of land revenue-

(1) Where any person is a party-

(A)....

(B) to any agreement relating to loan advance or grant given to him or relating to payment of price of goods sold to him by a banking company or a Government Company under a State sponsored scheme or as the case may be, under a socially desirable scheme; or

(C) and (D).... fails to comply with the terms of the agreement then-

(a) in the case of the State Government such officer as the State Government may by notification authorise in his behalf;

(b) in the case of a Corporation or a Government Company, the Managing Director thereof by whatever name called; and

(c) in the case of banking company, the local agent thereof by whatever name called.

may send a certificate in such form as may be prescribed, and consistent with the provisions of Sub-section (2) of Section 4, to the Collector of the district in which

such person normally resides or carries on business or owns property, or to such other subordinate officer of the Collector, as the State Government or the Collector may, by an order, specify in this behalf, mentioning the sum due from such person and requesting that such sum together with the cost of proceedings and interest on the sum due at the rate specified in the agreement, up to the date of recovery, be recovered as if it were an arrear of land revenue:

Provided that a certificate issued under this sub-section may be withdrawn by the authority issuing such certificate at any time:

Provided further that the cost of proceedings shall always be calculated at the rate of three per cent of the principal sum to be recovered.

11. The said provision came to be interpreted in *Manoj Tarwala v. State of Madhya Pradesh* 2006 (3) MPHT 434 (DB) and the Division Bench held as under:

20. It will be clear from the definition of 'banking company' in Section 2(b)(vi) of the 1987 Adhiniyam quoted above, that 'a financial bank' or 'a society' as defined in the M.P. Co-operative Societies Act, 1960 excluding a Co-operative Land Development Bank is a 'banking company' for the purpose of the 1987 Adhiniyam. Section 2(d-i) of the M.P. Co-operative Societies Act, 1960 defines 'a financial bank' to mean a society the object of which includes the creation of funds to be lent to other societies or its individual members and includes land mortgage bank and State Co-operative Bank. It is not in dispute before us that the Co-operative Bank in the present case namely Citizen Co-operative Bank is covered under the said definition of 'a financial bank' in Section 2(i) of the M.P. Co-operative Societies Act, 1960. It will be further clear from Section 2(i) of the 1987 Act Adhiniyam quoted above that 'a socially desirable scheme' means a scheme notified as such by the State Government under which a 'banking company' advances money to any person by way of loan. By aforesaid notification, dated 5th November, 1988, the State Government has declared various schemes under which a banking company or a Government Company advances loans to borrowers in the priority sectors as socially desirable schemes. Thus, if the co-operative bank has advanced loan to the petitioner as a borrower in any priority sector, this will be loan advanced under a socially desirable scheme.

21. A reading of Section 3(1)(B) of the 1987 Adhiniyam quoted above shows that where any person is a party to any agreement relating to loan advanced or grant given to him by a 'banking company' or 'a Government Company' under a State Sponsored Scheme or as the case may be under a socially desirable scheme and such a person fails to comply with the terms of the agreement, then the local agent of the Banking Company may issue certificate in such form as may be prescribed to the Collector of the district in which such person normally resides or carries on business or owns property, or to such other subordinate officer of the Collector as the State Government or the Collector may by order specify in that behalf mentioning the sum due from such person and requesting that such sum together with cost of proceedings and interest on the sum due at the rate prescribed up to the date of recovery, be recovered as if it were an arrear of land revenue. Hence, dues on account of loans advanced by a Co-operative Bank to a borrower in priority sectors can be recovered as arrears of land revenue through a revenue recovery certificate in accordance with Section 3 of the 1987 Adhiniyam not only under a State Sponsored Scheme but also under a socially desired scheme. The contention of the petitioner that revenue recovery certificate can be issued only for recovery of dues of the State Government under a State Sponsored Scheme, is thus not correct. The second question of law referred to us is answered accordingly.

12. In view of the aforesaid, the submission of Mr. Saxena that the Bank, namely Citizen Co-operative Bank Ltd., should have taken recourse to proceedings under the 1960 Act does not deserve acceptance and accordingly, the same is repelled.

13. The next limb of submission of Mr. Saxena is that there could not have been recovery under the provisions of the 1987 Act and the properties of the appellants should not have been attached in view of the language employed under Sections 147 and 154-A of the Code.

14. Section 147 of the Code deals with the process for recovery of arrear. Sub-sections (b) and (bb) of the said Section read as under:

147. Process for recovery of arrear--An arrear of land revenue payable to Government for Gram Sabha may be recovered by a Tahsildar by any one or

more of the processes:

(a)....

(b) By attachment and sale of the holding on which arrear is due and where such holding consist of more than one survey number or plot number by sale of one or more of such survey numbers, or plot numbers as may be considered necessary to recover the arrears:

Provided that no holding shall be sold for the recovery of any dues of a co-operative society without first exhausting the procedure prescribed in Section 154-A.

(bb) by attachment of holding on which arrear is due and letting the same under Section 154-A.

15. Section 154-A which has been brought on the statute book by M.P. Act No. 1 of 1971 reads as follows:

154-A. Powers of the Tahsildar to let out the holding in respect of which arrear is due or any other holding of the defaulter.--(1) Where the arrear of land revenue is due in respect of a holding or where any money is recoverable in the same manner as an arrear of land revenue under Section 155, the Tahsildar may, notwithstanding any thing contained in this Code, after attachment of holding under Clause (b) for the recovery of dues of a co-operative society, or Clause (bb) or Clause (bbb) of Section 147 as the case may be, let out the holding on which arrear is due or any other holding belonging to the defaulter which is used for the purpose of agriculture to any person other than the defaulter for a period not exceeding ten years commencing from the first day of agricultural year next following upon such terms and conditions as the Collector may fix:

Provided that the holding attached for the recovery of the dues of a co-operative society shall be let out for a period not exceeding ten years:

Provided further that any land of a holding of a Bhumiswami belonging to a member of a tribe which has been declared to be an aboriginal tribe under Sub-

section (6) of Section 165, shall not be let out to any person other than a member of such tribe.

(2) Nothing in this section shall affect the liability of any person who may be liable under this Code for the payment of the arrears of land revenue or of any money recoverable in the same manner as an arrear of land revenue under Section 155.

(3) Upon the expiry of the period of lease the holding shall be restored to the person concerned free of any claim on the part of the State Government for the arrears in respect of such holding or free of any claim on the part of the State Government or any other authority whatsoever for the moneys recoverable in the same manner as an arrear of land revenue under, Section 155 for the satisfaction where of the same was let out under Section (1):

Provided that nothing in this sub-section shall apply to the holding attached and let out for the recovery of the dues of a co-operative society where the dues for the satisfaction were of the same was let out under Sub-section (1) are not fully satisfied on the expiry of the period of lease.

16. On a reading of Sections 147 and 154-A of the Code, it is clear that they do not deal with the recovery of the due of the loan availed by mortgaging the loan in favour of the State Government or banking company. The submission of Mr. Saxena is that Section 147 should be allowed to have a play in a protective manner. To elaborate : the submission of Mr. Saxena is that protection should be given to small farmers and scheduled areas has to be given due weightage. It is urged by him that as the appellants are the owners of the agricultural land admeasuring less than four hectares, that cannot be attached or sold.

17. In this context, we may refer with profit to Section 4 of the 1987 Act. It reads as under:

4. Savings.--(1) Nothing in Section 3 shall:

(a) affect any interest of the State Government, a Corporation, a Government Company or any banking company in any property created by any mortgage, charge, pledge or other encumbrance; or

(b) affect any right or remedy against any person other than a person referred to in that section, in respect of a contract of indemnity or guarantee entered into in relation to an agreement referred to in that section or in respect of any interest referred to in Clause (a).

(2) Where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, a Corporation, a Government company or a banking company, then-

(a) in every case of a pledge or hypothecation of goods, proceedings shall first be taken for sale of goods pledged or hypothecated and if the proceeds of such sale are less than the sum due, then proceedings shall be taken for recovery of the balance as arrear of land revenue:

Provided that where the Collector is of the opinion that it is necessary so to do for ensuring the recovery of the sum due to the State Government or to a Corporation, a Government company or a banking company, as the case may be, he may for reasons to be recorded, direct proceedings to be taken for recovery of the sum due, as arrear of land revenue before or at the same time the proceedings to be taken for sale of the goods pledged;

(b) in every case of a mortgage, charge or other encumbrance on immovable property, such property or, as the case may be, the interest of the defaulter therein, shall first be sold in proceedings for recovery of the sum due from that person as arrear of land revenue, and any other proceedings may be taken thereafter only if the Collector certifies that there is no prospect of realisation of the entire sum due through the first mentioned process within a reasonable time.

18. On a purposive reading of the aforesaid provision it is clear as day that when the property of a person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, a Corporation, a Government company or a banking company, then a proceeding shall be taken for sale of goods or hypothecation or if the proceeds of such sale are less than the sum due, then proceedings shall be taken for recovery of the balance as arrear of land revenue. Sub-section 2(b) makes it clear that the

property of a defaulter shall be first sold in proceedings for recovery of the sum due from that person as arrear of land revenue and any other proceedings may be taken thereafter only if the Collector certifies that there is no prospect of realisation of the entire sum due through sale. It has to be done within a reasonable time.

19. From the anatomy of the Code and the 1987 Act, it is manifest that Section 4 of the 1987 Act is a special provision whereas the provisions of Sections 147 and 154-A of the Code are general in nature. It is indubitably a special provision to expedite the recovery. The maxim *Generalia Specialibus Non Derogant* (general things do not derogate from special things), in our considered opinion, gets attracted. In a situation where two statutes are conflicting, the duty of the Court is to find out which of the two apparent conflicting provisions is more general and which is more specific. Thus, in the case of inconsistency between the provisions of two enactments both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.

20. In *Craies on Statute Law*, 1963 Edn. pp. 376-77, it has been stated thus:

The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Sewards v. Vera Cruz* (1984) 10 AC 59, 68, 'that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalia specialibus non derogant*--i.e. general provisions will not abrogate special provisions. When the legislature has given its attention to a separate

subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.

21. In *Chairman, Thiruvalluvar Transport Corporation v. Consumer Protection Council* : [1995]2SCR1 , it has been held that the Motor Vehicles Act, 1988 can be said to be a special Act in relation to claims of compensation arising out of the use of a motor vehicle. The Consumer Protection Act, 1986 being a law dealing with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in Chapter XII of the 1988 Act. In the said case, it has been held that the 1988 Act creates a forum before which the claim can be laid if it arises out of an accident. That being a special law would prevail over the relevant general law such as the 1986 Act.

22. In *Allahabad Bank v. Canara Bank* : [2000]2SCR1102 , it has been held thus:

There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation.

23. In *P.S. Sathappan v. Andhra Bank Ltd.* : AIR 2004 SC5152 , it has been held as under:

It is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all Courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between the Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion.

24. In *Amrendra Pratap Singh v. Tej Bahadur Prajapati* : AIR 2004 SC3782 , it has been held that a general law cannot defeat the provisions of a special law to the

extent to which they are in conflict, else an effort has to be made at reconciling the two provisions by harmonious reading.

25. In *Ragbunath Rai Bareja v. Punjab National Bank* : (2007)2SCC230 , the view expressed in *Allahabad Bank* (supra) was reiterated.

26. In the case at hand, as in demonstrable, recovery on behalf of the banking company is governed by the 1987 Act and Section 4 being a special provision in that regard has overriding effect over the provisions enumerated in the 1960 Act and the Code. In that view of the matter, even if the agricultural land of appellants is less than four hectares, it would not be protected under the provisions of the Code and hence, the recovery of sum due by sale of the land through auction by taking recourse to the provisions of the 1987 Act cannot be found fault with or unsound.

In view of the aforesaid analysis, we find that the order of the learned single Judge is absolutely defensible and does not warrant any interference. The inevitable result of the appeals is dismissal which we direct. In the facts and circumstances of the case, there shall be no order as to costs.

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