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SooperKanoon Citation : sooperkanoon.com/756974

Court : Rajasthan

Decided On : Mar-22-1973

Reported in : 1973(6)WLN225

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Regular Second Appeal No. 413

Appellant : Ratanlal

Respondent : State and anr.

Judgement :

Kan Singh, J.

1. This is a second appeal by the plaintiff and is directed against the appellate decree of the learned Distric Judge, Ajmer upholding the judgment and decree of the learned Civil Judge, Ajmer dismissing the plaintiff's suit on the ground that the same was barred by the provisions of Section 207B of the Rajasthan Land Revenue Act, 1956, hereinafter to be referred as the 'Act'.

2. Plaintiff Ratanlal Kamdar was holding a prospecting licence for Beryal and other minerals in village Bander Sundri, Tehsil Kishangarh vide an order datad 6-9-52. The aforesaid licence was renewed upto 21.9.54. The plaintiff had thereafter submitted an application for a further renewal of his licence on 18.9.54 the plaintiff

made an application to the Mining Engineering, Jaipur for the grant of a mining lease for Beryl and other atomic minerals and for some other minerals. The area for which the lease was desired was 80 acres. Some 15 months thereafter the Mining Engineer wrote a letter to the plaintiff that the lease was sanctioned and the plaintiff was called upon the Assistant Mining Engineer to attend his office for signing the plans and to have the lease agreement executed and getting it registered. The plaintiff attended the Office of the Assistant Mining Engineer, but the documents were not delivered to him and he was asked to await the execution of lease deed by the Director of Mines and Geology, Udaipur. According to the plaintiff, the lease deed was not executed. Subsequently, however, the Assistant Mining Engineer called upon the plaintiff to deposit Rs. 200/- as the fee of the prospecting licence from 23.10.63 to 19.10.58. The plaintiff proceeded to say that he had deposited this amount on 21.1.59 and further deposited Rs. 40/- as prospecting licence fee for the subsequent period of one year from 20.10.58 to 19.10.59. On 1.1.69, the Director of Mines and Geology, Rajasthan. Udaipur, informed the plaintiff that the question of inclusion of Falspar and Quartz in the lease to be given to the plaintiff was under consideration of the State Government and the plaintiff would be intimated of the date of the execution of the agreement. Thereafter there seems to be no changes in the proposal for the grant of the lease, but eventually by his letter dated 9.3.60 the Assistant Mining Engineer called upon the plaintiff to deposit Rs. 4000/- as an advance dead rent from 22.9.55 to 22.9.60 within a fortnight. The plaintiff, however, replied saying that as the lease deed had not been executed and the plaintiff had already deposited the prospecting fee he wanted to know why this much amount was being demanded of him. Then there was some further correspondence between the plaintiff and the Mining Department. Eventually the plaintiff was informed that as the plaintiff was not agreeable to the period of the lease being not counted from 20.9.54 the order for granting the lease had been cancelled. He was further told that the area was declared free and the dues be recovered from the plaintiff under the Land Revenue Act.

3. It is this order dated 11.4.63 which was impugned by the plaintiff in the suit. The plaintiff claimed that this agreement was illegal and unenforceable on a number of grounds which he had set out in para 22 of the plaint. The plaintiff claimed the

following reliefs vide Para 27 of the plaint:

(a) for declaration that the defendant No. 1's order dated 11.4.63 is illegal and liable to be quashed and set aside.

(b) for restraining the defendant No. 1 by means of perpetual injunction from recovering Rs. 4000/- or any sum what soever from the plaintiff.

(c) for mandatory injunction directing the defendant No. 1 to execute the lease in plaintiff's favour to be operative from the date of its execution only.

(d) For costs.

4. The State Government contested the suit. The learned Civil Judge, Ajmer framed the following issues:

1. Is the Order dated 11th April, 1963 passed by the defendant No. 1 illegal and unenforceable for the reasons as detailed in para 22 and 23 of the plaint?

2. When did the Mining lease commence whether from the date of commencement of the mining operations or from the date of its execution?

3. Was plaintiff not liable to deposit Rs. 4000/- no account of Dead Rent in advance from 22.9.1955 to 22.9.1960?

4. Is the notice illegal and does not comply with the requirements of Law and Is the plaint not in conformity with the notice? If so to what effect?

5. Was the approval of the Central Government communicated to the plaintiff on 2.4.1957? If so, to what effect?

6. Is Section 257-B of Rajasthan Land Revenue Act a bar to that suit?

7. Has any cause of action been shown against the defendant No. 2 in the plaint, if not, what is its effect?

8. To what relief is the plaintiff entitled?

The learned Civil Judge decided only issue No. 6 and as he was of the opinion that the suit was not maintainable, he dismissed the same. He observed:

The only point under issue No. 6 would be whether Section 257 B of the Rajasthan Land Revenue Act is a bar to the present suit. It may be stated that in the present case, it is not disputed that the Government was proceeding to realise a sum of Rs. 4000.00 from the plaintiff as arrears of land revenue. The plaintiff could have deposited that amount with the Revenue Authorities and he would have been perfectly within his rights thereafter to file a suit saying that the said recovery was illegal. Without doing that, he just filed the suit for declaration and injunction and obtained *ex parte* injunction.

I am satisfied that such a course is not permissible and would completely defeat the very provisions of Section 257B of the Rajasthan land Revenue Act because in this case any person instead of paying his amount to the Revenue authorities would file a civil suit for injunction with a prayer that the revenue authorities be restrained from realising their dues under the Public Demands Recovery Act certainly appear to be barred under the scheme of Section 257 of the Land Revenue Act. The issue therefore is decided in favour of the defendant.

5. Aggrieved by the decree of the learned Civil Judge the plain iff went up in appeal to the learned District Judge. The learned District Judge fell in line with the learned Civil Judge and accordingly he dismissed the appeal. The learned District Judge observed:

Learned Counsel for the appellant has submitted that under Section 257B(1), he could deposit the amount claimed only after attachment of his property and before it is knocked down at a sale. On the other hand, the stand of defendant No. 1 is that the person against whom the amount is claimed may, at any time, pay the said amount and at the same time deliver a protest. According to him, the words 'before any property attached in such proceedings is knocked down at a sale thereof', lays down the last stage when a defaulter could pay the amount claimed. The defaulter could deposit the amount earlier but no later than that. What Section 257-B lays down is that a defaulter can pay the amount claimed at any time before his property is attached and knocked down and not after his property has been

sold. The plain meaning of Sub-section (1) of Section 257-B of the Act is that the defaulter has a right to deposit the amount claimed at any time before his property is knocked down at a sale. To say that the defaulter is not liable to deposit the amount claimed only till in property is attached is to place a wrong meaning of Section 257 B(1).

Sub-section (3) of Section 257-B of the Act lays down that the person making a payment under protest in accordance with Sub-section (1) shall have the right to institute a suit for the recovery of the whole or a part of the sum so paid under protest, which means that a suit could be filed only after the sum had been paid under protest. The money having not been deposited, the plaintiff's suit was barred under Section 257-B of the Act. The trial court seems to have been justified in taking this view.

6. Learned Counsel for the appellant has challenged the correctness of this view. He contends that the courts below had mis-construed the plaint. The suit was not only for restraining the State Government from making any recovery from the plaintiff, but also for other reliefs. Learned Counsel maintains that the plaintiff-appellant was entitled to question the order cancelling the lease or the sanction for the lease and had also prayed for a mandatory injunction directing the State Government to execute the lease in the plaintiff's favour to be operative from the date of its execution only. Therefore, the suit in its entirety could not have been dismissed. Learned Counsel further takes the stand that Section 257 B does not debar the plaintiff from filing a suit for perpetual injunction when demand was not a valid one. The question that in the circumstances arises for consideration is about the scope of Section 257-B which I may read:

Section 257 B Payment under protest and further remedy.--(1) If proceedings are taken under this chapter against any person for the recovery of any sum of money referred to in Section 256 or Section 257, such person may at any time, before any property attached in such proceedings is knocked down at a sale thereof, pay the amount claimed and at the same time deliver a protest signed by himself, or by his authorised agent to the revenue officer taking such proceedings.

(2) When any amount is paid under protest under Sub-section (1) such amount along with the protest shall be forwarded to the officer or authority at whose instance proceedings were so started.

(3) Subject to the provision contained in Sub-section (4), the person making a payment under protest in accordance with Sub-section (i), shall have the right to institute a suit for the recovery of the whole or a part of the sum so paid under protest.

(4) No suit under Sub-section (3) shall lie or be instituted if any law under which the sum of money paid under protest is due, provides a remedy, whether by way of suit, appeal, application or other proceedings, to the person from whom such sum was recovered.

(5) No appeal or reference shall lie from an order of a revenue officer passed in proceedings taken under this chapter for the recovery of sums of money referred to in Sections 256 and 257.

This section occurs in Chapter X of the Act which relates to collection of revenues. Sections 224 to 254 lay down the procedure for collection of land revenue as such. Section 255 had been omitted by an amendment. Section 256 makes provision for the recovery of miscellaneous revenue and other money as in the same manner as an arrear of land revenue. I may also read this section:

Section 256 Recovery of miscellaneous revenue and other moneys: The following moneys may be recovered under this Act in the same manner as an arrear of revenue:

(a) all sums of money declared by this Act or by any law for the time being in force, other than the Rajasthan Public Demands Recovery Act, 1952 (Rajasthan Act 5 of 1952),:

(i) to be recoverable or realisable as an arrear of revenue or land revenue or rent,
or

(ii) to be a demand or a public demand or to be recoverable or realisable as a demand or a public demand or as an arrear of a demand or a public demand;

(b) all sums of money payable to the State Government or to a department or an officer of the State Government or to a local authority on account of rates, duties, taxes, charges or other dues under any law or rule having the force of law, notwithstanding that such law or rule does not declare the same to be recoverable or realisable as an arrear of revenue or land revenue or to be recoverable or realisable as an arrear of a demand or a public demand;

(c) all sums of money payable to the State Government or to a department or an officer of the State Government or to a local authority:

(i) by way of fees, fines, penalties, compensation or costs imposed or awarded by any authority, not being a civil or criminal court, under this Act or under any other law for the time being in force, or

(ii) on account of pasturage, forests rights, fisheries mills, natural products of land, water-rates, irrigation charges, maintenance and management of irrigation works and the like;

(d) all rents, premia, cesses, rites, fees and royalties dues to the State Government on account of the use or occupation of land or water or other immovable property, whether belonging to the State Government or not, or on account of any produce thereof or proceeds therefrom or on any other account;

(e) all sums of money due to the State Government under any grant, lease or contract which provides that they shall be recoverable as arrears of revenue or land revenue.

It appears that prior to the Rajasthan Land Revenue Amendment Act No. 43 of 1960 many of the other dues of the Government were not recoverable as land revenue. For the other dues of the category dealt with in Public Demand Recovery Act, 1952 there was a different procedure than what one finds in the Act. There has been amendment of the Public Demand Recovery Act as well to bring some of the demands recoverable under that Act as those recoverable as land revenue

under the Act. I am not concerned with the details. It is sufficient to say that the present demand squarely comes under the provisions of Section 256 and even learned Counsel for the appellant has not questioned it. It will be proper also to go through the provisions of Section 257 A which too I may read:

257A. Application for recovery of moneys referred to in Sections 256 and 257.--(1) Any officer or authority, to whom any sum of money referred to in Sections 256 or Section 257 is due and payable, shall make to the Collector an application in writing in the prescribed form, containing the following particulars, namely:

- (a) the officer or authority to whom the sum is due & payable.
- (b) the name and description of the person from whom the sum is due,
- (c) the sum due and the nature thereof,
- (d) the period, if any, for which it is due and the date on which it first became payable,
- (e) the process by which the sum may be recovered,
- (f) where possible, the property against which the process may be executed, and
- (g) such other particulars as may be prescribed by the State Government:

Provided that no such application shall be necessary in cases in which, according to the law under which such sum of money is due & payable, a certificate or certified statement of account or other document, specifying, as nearly as may be, the aforesaid particulars, is required to be sent and has been sent to the Collector.(2) The application, certificate, statement of account or other document referred to in Sub-section (1) shall, for the purpose of recovery in accordance with the provisions of this chapter, be conclusive evidence of the existence of the arrear payable to the officer or authority signing the same, of the amount of such arrears and of the person who is the defaulter.

7. There is no express bar created by any of these provisions to the filing of the suit seeking injunction restraining the recovery of any amount in accordance with

the provisions of the Act. However, the clear intendment of the provisions is that the process of recovery once started should not be arrested till the payment is enforced or is made under protest, if the party questions the recovery. Otherwise with the realisation of the amount the recovery proceedings would come to an end. Where a party questions that nothing is due from him then he is required to pay the money under protest. The protest that the party may lodge with the recovering officer is required to be forwarded to the officer or authority at whose instance the proceedings started. This Act does not indicate as to how the officer or authority to whom the protest is forwarded has to deal with the matter, but Sub-section (3) of Section 257 B enables the party to institute a suit for the recovery of the whole or a part of the sum so paid under protest. While claiming the recovery of the whole or part of the sum paid under protest it would be open to the party to show that the amount was not recoverable, but before making this payment under protest the party cannot be allowed to arrest the course of the recovery proceedings. This flows from Sub-section (2) of Section 257A which lays down that the application, certificate, statement of account or other document referred to in Sub-section (1) shall for the purpose of recovery in accordance with the provisions of this Chapter be conclusive evidence of the existence of the arrears payable to the officer or authority signing the same and of the amount of such arrear who is the defaulter. In making these documents conclusive evidence of the existence of arrear payable the intention of the legislature is manifest that no evidence to the contrary can be led to show that the arrear is not due. This is, however, subject to the provisions of Sub-sections (3) or (4) which would enable the party to question the validity of the demand by a suit. However, in my opinion, a suit would not be barred for restraining the State Government from making any recovery if the process of recovery as contemplated by Section 257 A had not started. Once the proceedings had commenced with the making of an application by an officer or authority to whom any sum of money referred to in Section 256 or 257 is due and payable the Court will not be competent to issue an injunction restraining the recovery of the amount as per the application. It is further noteworthy that Sub-section (3) relates to only the recovery of the whole or part of the sum paid under protest by a suit. Suits for other reliefs are not within the mischief of the section.

8. In the present case the courts below had held the suit in its entirety to be barred by the provisions of Section 257 B of the Act. I have already given the gist of the plaint and have set out the relief that was prayed for in the suit, in the earlier part of the judgment. The reliefs other than that permanent injunction restraining the recovery are not within the mischief of Section 257 B. I further enquired of learned Counsel for the appellant if the process of recovery had started in the present case. Learned Counsel took the position that it had not so far started whereas the learned Addl. Advocate General submitted that it had very much started. He invited attention to the plaintiff's application under Order 39 Rule 2 Civil Procedure Code made on 17-2-64. In para 17 thereof the plaintiff had stated that the Tehsildar Khetri had sent notice of demand of Rs. 4000/- and had threatened to attach the goods in case of non payment. The plaintiff, therefore, prayed that an ad interim injunction be issued to defendant No. 1, that is, the State through the Collector of Ajmer to restrain from recovering Rs 4000/- from the plaintiff pending the disposal of the suit. This application leaves no room for doubt that the recovery proceedings under Section 257 A of the Act had commenced. A suit to restrain the recovery by an injunction is impliedly barred as that would interfere with the process of recovery. I may, however, make it clear that I am assuming in the absence of any challenge that Sections 257 A and 257 B are valid as they have to be so presumed to be valid in the absence of any challenge.

9. The up-shot of the above discussion is that though the relief of permanent injunction restraining the State from recovering the amount could not have been granted, the suit for other reliefs was not barred by the provisions of Section 257B of the Act. The courts below were, therefore, in error in throwing out the plaintiff's suit in its entirety.

10. The result is that I allow the appeal in part and set aside the judgment and decree of the learned District Judge and remand the case to the trial court for proceeding further in the matter according to law and in the light of the observations made above. The costs of the appeal shall abide the events.