

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th March, 2011

+ W.P.(C) No.1598/2011 & CM No.3375/2011 (for stay)

% P.C. AGGARWAL Petitioner
Through: Mr. R.K. Saini, Adv.

Versus

GOVT. OF NCT OF DELHI Respondent
Through: Ms. Rachna Saxena, Adv. for Mr.
Rajiv Nanda, ASC.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the warrant of arrest dated 8th October, 2010 issued by the Assistant Collector of the Govt. of NCT of Delhi against the petitioner and also seeks quashing of the proceedings leading to the issuance of the warrant of arrest. The counsel for the respondent

appears on advance notice. Considering the nature of the controversy, need is not felt to issue formal notice or to call for the reply. The counsels have been heard finally.

2. It is the case of the petitioner:-

(i) That he is 65 years of age and suffering from various ailments and leading a retired live.

(ii) That he was/is one of the Directors of M/s Pankaj Cement Ltd. (PCL) which had taken financial assistance of ₹65.41 lacs in the year 1993-94 from Rajasthan Financial Corporation (RFC), Jaipur (not impleaded as a party to this writ petition) and for repayment of which dues, the petitioner had guaranteed.

(iii) PCL defaulted in repayment of the loan amount and possession of the land building and machinery of the factory of the said company in District-Jaipur was handed over to the RFC on 6th August, 1997.

(iv) RFC auctioned the said unit in the year 2003 for a total consideration of ₹47.36 lacs.

- (v) That a total sum of ₹28,49,310/- was repaid by PCL to RFC.
- (vi) That RFC inspite of so receiving a total sum of ₹75,85,310/- against loan of ₹65.41 lacs was still showing a sum of ₹72,15,243/- as outstanding as on 3rd November, 2003.
- (vii) Had RFC not waited for over five years to auction the unit of PCL, a better price would have been received and then the entire outstanding would have been liquidated.
- (viii) That some police official from P.S.-Neb Sarai visited the residence of the petitioner to arrest him in compliance of warrant of arrest issued by the respondent. The petitioner then applied for inspection of the file of the respondent on 21st February, 2011 and realized that RFC had moved an application dated 22nd September, 2009 before the District Collector, Jaipur for recovery of ₹2,02,80,353/- then due from the petitioner and Smt. Shashi Bala in accordance with Sections 256/257 of the Rajasthan Land Revenue Act, 1956; that the District Collector, Jaipur forwarded the request to the respondent; that the Assistant Collector of respondent passed an

order dated 13th April, 2010 issuing notice to the petitioner; that though the record showed issuance of a notice dated 20th April, 2010 under Section 136 of the Delhi Land Reforms Act, 1954/under Section 67 of the Punjab Land Revenue Act, 1887 calling upon the petitioner to deposit the amount aforesaid by 30th April, 2010, failing which action for realization of amount will be taken, but no such notice was received by the petitioner; that the Assistant Collector of respondent on 7th May, 2010 issued another notice to the petitioner to show cause as to why he should not be arrested and committed to civil prison for failure to deposit the money; that the said notice was also not received by the petitioner; that on 4th October, 2010 the respondent ordered issuance of arrest warrant since no reply had been received.

(ix) That the petitioner on 21st February, 2011 applied to the respondent for withdrawal of warrant of arrest but the warrant has not been withdrawn.

3. The petitioner in his representation dated 21st February, 2011 (supra) sought withdrawal of warrant of arrest impugning illegalities to RFC. The counsel for the petitioner before this Court also has attempted to find fault with the actions of RFC. However, the counsel fairly agrees that having not impleaded RFC as a party to this writ petition, no challenge with respect to any of its action can be made in the present writ petition.

4. The counsel for the petitioner has however contended that the action of the respondent of issuance of warrant of arrest is bad.

5. In this regard, it may be noticed that Section 32G of the State Financial Corporations Act, 1951 empowers the State Financial Corporations, as RFC is, to recover its dues as arrears of land revenue.

6. The counsel for the petitioner calls the issuance of warrants bad, by inviting attention to Section 136 of the Delhi Land Reforms Act, 1954 under which the warrant of arrest has been issued. The same provides for recovery of arrears of land revenue by one or more processes mentioned therein and one of which is by arrest and detention of his person.

7. The counsel for the petitioner next invites attention to Section 190 of the Reforms Act which is as under:-

“190. Application of certain Acts to the proceedings of this Act—(1) Unless otherwise expressly provided by or under columns 4 and 6 of Schedule I of this Act, the provisions of the Court Fees Act, 1870, the Code of Civil Procedure, 1908, and the Indian Limitation Act, 1908, shall apply to the proceedings under this Act.

(2) The provisions of the General Clauses Act, 1897, shall mutatis mutandis apply, as far as may be, to this Act in the same manner as they apply to a Central Act.”

8. The argument is that to the action of arrest under Section 136, the provisions of Civil Procedure Code (CPC) would apply.

9. Attention is next invited to Section 51 and Order XXI Rule 37 of the CPC to contend that where the decree is for payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity to show cause why he should not be committed to prison, reasons are recorded in writing of satisfaction that the judgment-debtor, with object or effect of obstructing or delaying the execution of the decree—is likely to abscond or leave the local limits of the jurisdiction of the Court or has, after the institution of the suit leading to

the decree, dishonestly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property or that the judgment-debtor inspite of having means to having paid the decretal amount has refused or neglected to pay the same or that the judgment-debtor is bound to decretal amount in a fiduciary capacity.

10. Reference is also made in the writ petition to Order XXI Rule 40 of the CPC to contend that RFC has not placed any material to show that the conduct of the petitioner is *mala fide* or dishonest or that there is willful failure to pay inspite of sufficient means.

11. Though in the writ petition reference is made to certain other judgments also but the counsel for the petitioner has based his case on:-

(a) ***Jolly George Verghese Vs. The Bank of Cochin*** AIR 1980 SC 470 on the proposition that a decree for recovery of money cannot be executed by arrest unless there is some proof of willful failure to pay inspite of sufficient means and simple default to discharge the decree is not enough.

(b) ***P. Azeez Ahmed vs. State Bank of India, Vaniyambadi*** AIR

1995 Madras 194 where a Single Judge held that the mere affidavit of the decree holder without any other documentary or oral evidence to show that the judgment-debtor has means to pay the decretal amount is not sufficient to direct execution of a money decree by arrest in civil prison.

(c) ***Suresh Jindal Vs. Delhi Financial Corporation*** 166 (2010)

DLT 462 where a Single Judge of this Court held that extreme coercive process of arrest and detention of a defaulter will be resorted to not on account of mere non-payment or inability to pay but only where a person is liable to pay and dishonestly makes default in payment. It was further held that the Delhi Financial Corporation in that case having failed to place any material in this regard, was not entitled to proceed under Section 32G of the State Financial Corporations Act. Accordingly, the proceedings under Section 32G and for arrest were set aside.

12. At first blush it would appear that the matter is fully covered by the judgment of this Court in ***Suresh Jindal*** (supra) and this writ petition is entitled to succeed inasmuch as there does not appear to have been any

satisfaction recorded by the Assistant Collector of the respondent in the present case, of the petitioner being able to pay and having dishonestly defaulted in payment. The counsel for the petitioner has also sought only an opportunity for the petitioner to satisfy the Assistant Collector in this regard.

13. I may however notice that the petitioner in his representation dated 21st February, 2011 supra to the respondent has not pleaded so. The petitioner claims to be an advocate by profession and to be residing in the posh Sainik Farms Colony, of Delhi. Even the writ petition is bereft of any particulars whatsoever of the financial status of the petitioner. The writ petition appears to be an attempt to, after having the matter remanded to the Collector, further delay the payment of public dues.

14. I have therefore examined the matter further. This Court in ***Suresh Jindal*** held that the judgment of the Apex Court in ***Jolly George Verghese*** (supra) is not applicable to the payment of statutory dues of Financial Corporations (thus the reliance by the petitioner herein on the same is of no avail); for doing so, reference was made to ***Ram Narayan Agarwal Vs. State of Uttar Pradesh*** (1983) 4 SCC 276. On the basis of ***Ram Narayan***

Agarwal it was further concluded that Section 51 of the CPC is applicable to recoveries of land revenue also.

15. I am afraid, I am unable to cull out from **Ram Narayan Agarwal** (supra) that the provisions of Section 51 of the CPC apply to recovery of land revenue by arrest. On the contrary, **Ram Narayan Agarwal** (dealing with the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 and Rules, 1952 framed thereunder) held:-

(a) That Section 279(1)(b) of the U.P. Act authorized recovery of land revenue by arrest and detention of the person who has committed the default.

(b) Rules 247 to 253 contained the procedure to be followed while recovering the arrears of land revenue by arrest and detention of the defaulter.

(c) Under Rule 247, the Collector/Assistant Collector was required to issue the process against a defaulter.

(d) Under Rule 247(b) if the defaulter at the time of arrest paid the entire amount of arrears specified in the warrant of arrest etc., he

is not to be arrested and if arrested to be released on receipt of the said amount.

(e) Under Rule 251 (2), the defaulter after arrest is not to be detained in custody, “unless there is a reason to believe that the process of detention will compel the payment of the whole or a substantial portion of the arrear”.

(f) That *Jolly George Verghese* was a case governed by Section 51 of the CPC. Where public dues are to be collected, some amount of coercion is necessary to make recalcitrant defaulter who has means to pay or who has fraudulently secreted his assets to screen them from being proceeded against to pay up the dues.

(g) Section 281 of the U.P. Act prescribed the maximum period for which the defaulter could be detained for non-payment of land revenue as fifteen days unless the arrears are sooner paid; the women, minor could not be arrested or detained for recovery of arrears.

(h) That the Rules aforesaid also provided sufficient safeguards.

(i) The argument that Rule 251 (2)(supra) which contemplates an enquiry after the defaulter is arrested and produced and not before his arrest as provided under Section 51 of the CPC and was thus unconstitutional, was negated. It was held that each State is well within its right to devise its own machinery for the recovery of its own public demand and no person can complain that the law of his State is more rigorous than that of the neighbouring State or the procedure prescribed by the CPC for execution of decrees.

(j) That the only question was whether the procedure prescribed in Rule 251 (2) (supra) was fair, reasonable and not arbitrary and satisfied the minimum constitutional requirement having regard to the nature of arrear, the prevailing conditions in our society and other relevant matters.

(k) It was held that the procedure prescribed under the U.P. rules provides adequate opportunity to the defaulter to satisfy the officer concerned that there is no justification to order his “detention” as distinct from “arrest”.

(l) That the procedure aforesaid of arrest did not amount to imposition of any unreasonable restrictions on the liberty of the defaulters.

(m) That the procedure under the U.P. Act and Rules is a complete code on the process of arrest and detention of a defaulter and was not to be modified by any of the provisions of CPC.

(n) That wherever the U.P. Act or Rules required the procedure of CPC to be followed, express provision was made therefor but there is no such provision in the Rules governing the process of arrest and detention.

(o) That section 51 of the CPC could thus not be relied upon.

(p) That the defaulter however to be ordinarily served with a writ of demand before any other process is adopted for recovery of arrears of land revenue.

(q) The decision of the Allahabad High Court in ***Seth Banarasi Das Gupta Vs. State of U.P.*** 1975 Revenue Decision 246 laying

down that the procedure under Section 51 of the CPC would apply, does not lay down the law correctly.

16. It could thus be seen that ***Ram Narayan Agarwal*** which in ***Suresh Jindal*** has been held to hold that the procedure as prescribed in Section 51 of the CPC is applicable to arrest for recovery of arrears of land revenue does not so hold and rather holds to the contrary. With respect I state that judgment in ***Suresh Jindal*** noticed the judgment in ***Ram Narayan Agarwal*** only till paragraph 10 and did not notice the subsequent paragraphs particularly para 16 expressly laying down that Section 51 of CPC does not apply for recovery.

17. At this stage, I may state that the provisions of the Reforms Act and the Rules framed thereunder are in *pari materia* to the U.P. Act and Rules considered by the Supreme Court in ***Ram Narayan Agarwal*** (supra). Section 138 provides for detention for maximum fifteen days and Rule 119 provides that after arrest, the defaulter shall not be detained in custody unless there is reason to believe that the process of detention will compel the payment of whole or substantial portion of the arrear. It may also be

noticed that though Rule 118 in the matter of entering a dwelling house for the purposes of making arrest provides that the provisions of Section 55 of the CPC shall be applicable thereto but Rule 119 does not provide for application of Section 51. On the parity of reasoning in ***Ram Narayan Agarwal***, the Delhi Land Reforms Act and the Rules framed thereunder are also a complete Code and reference to Section 51 is misconceived.

18. It would thus be seen that the only requirement preceding arrest is to notify the defaulter of the demand and upon failure to pay, the procedure to be followed is to arrest the defaulter and it is only after arrest that the decision is to be taken as to whether he is to be detained further or not depending upon whether detention will compel payment or not.

19. Upon the same being put to the counsel for the petitioner, he has contended that ***Suresh Jindal*** in para 18 thereof, inspite of ***Ram Narayan Agarwal*** has held that in recovery of land revenue also arrest will not be effected without recording satisfaction that default in payment is dishonest.

20. I am unable to agree. ***Suresh Jindal*** has proceeded only on the premise that ***Ram Narayan Agarwal*** has held Section 51 CPC to be

applicable, and which as aforesaid is not correct. In the face of the judgment of Apex Court, even otherwise, this Court could not have held to the contrary.

21. The only aspect which remains to be considered is whether Section 190 (supra) of the Reforms Act and of equivalent whereof under the U.P. Act there is no mention in the judgment in ***Ram Narayan Agarwal***, makes the position in Delhi different. A perusal of the U.P. Act shows that Section 340 thereof is *pari materia* to Section 190 of the Delhi Land Reforms Act. Thus, the position in Delhi is no different from that considered in ***Ram Narayan Agarwal***. I have already observed that the Rules regarding the arrest do not mention CPC. Section 190 even otherwise makes the provisions of CPC applicable to “proceedings under the Reforms Act” unless otherwise expressly provided by or under Columns 4 & 6 of Schedule I of the Act. Since Section 190 refers to the Schedule I to the Act, I have perused the said Schedule to see whether it provides for any proceedings for recovery of land revenue. I do not find

so. Thus proceedings for recovery of land revenue cannot be said to be one to which Section 190 is applicable.

22. Before parting reference may also be made to the judgment of the Division Bench of this Court in ***Harmeet Singh Ghai Vs. Anand S. Khullar*** (59) 1995 DLT 152 and to ***Raghuvir Singh Verma Vs. Delhi Financial Corporation*** MANU/DE/1417/2003 in neither of which also it was held that the provisions of Section 51 of the CPC are to be complied with in making the arrest in default of payment of land revenue and held that it is only Rules 118 & 119 of the Reforms Rules which have to be complied with.

23. That brings me back to the facts of the present case. The petitioner even if was not served with the notice (though I find it hard to believe) has had sufficient notice by now to pay the amount due. The petitioner has not paid the same. The next step in accordance with the Reforms Rules is of the “arrest” of the petitioner and it is only post “arrest” and before “detention” that the petitioner will be required to satisfy that his detention will not compel payment.

24. No opportunity before arrest is required to be granted to the petitioner, as under CPC.

25. I am even otherwise of the view that the petitioner who instead of contesting the claim of RFC by filing proper proceedings in Jaipur, if aggrieved from the proceedings under Section 32G of the State Financial Corporation Act, has chosen to file this writ petition merely with a view to delay payment of public dues, is not entitled to any indulgence from this Court in equity jurisdiction. The Supreme Court in *Andhra Pradesh State Financial Corporation Vs. M/s GAR Re-Rolling Mills* 1994 (2) SCC 647 has held that time has come for the Court to stop granting any such indulgence to such persons. It was held that the aim of equity is to promote honesty and not to frustrate the legitimate rights of Financial Corporations which after advancing the loans take steps to recover their dues from the defaulting party. The Full Bench of this Court as far back as in *Digambar Prasad v. S.L. Dhani* MANU/DE/0243/1969 held that the grant of a writ is in the discretion of the court and court will decline to exercise discretion where conduct of the petitioner is such that it would be

inequitable and unjust to grant him the relief. This Court would be loath to exercise discretion in favour of petitioner who inspite of opportunity has failed to repay the public dues. Mention may also be made of ***S.P. Chengalvaraya Naidu v. Jagannath*** MANU/SC/0192/1994 : AIR 1994 SC 853 where also the Apex Court noted that the process of the court is being abused - bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely.

26. The writ petition is accordingly dismissed. I refrain from imposing any costs.

CM No.3376/2011 (for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 14, 2011
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