

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 4878 OF 2012

Sarva Shramik Sanghatana, Pune ... Petitioner
Vs
1. The Collector of District Pune & Ors. ... Respondents

**WITH
WRIT PETITION NO. 4879 OF 2012**

Sarva Shramik Sanghatana, Pune ... Petitioner
Vs
1. The Collector of District Pune & Ors. ... Respondents

Ms. Seema Sarnaik for the Petitioners in both petitions.

Ms. Sushma S. Bhende, AGP, for the Respondent Nos.1 & 2 -State
in both the petitions.

Mr. Neel Helekar for Respondent No.4 in both the petitions.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 02ND MARCH, 2017

P.C. :

1 In these two writ petitions, on the earlier occasion,
after a detailed hearing, we had passed an order. By that order,
the records and proceedings of a civil suit were summoned. That
was for a specific purpose. That was because in the affidavit of

the Tahsildar, Shirur, District Pune, it is stated that the Recovery Certificate was put in execution. The auction was proposed, but before that, the private parties, namely, the employer of the members of the petitioner (respondent No.2 to this writ petition) approached the Court of a Civil Judge, Senior Division, Pune. Regular Civil Suit No.1202 of 2011 was filed challenging the auction. The record of that civil suit was called for with a view to ascertain two things. Firstly, whether either the employee individually was a party defendant to the said suit or whether the petitioner before us - Sarva Shramik Sangathana, Pune was impleaded as such. The record of that suit was summoned also to ascertain whether as stated in the affidavit of the Tahsildar Shirur, a settlement stated to have been arrived at on 30th April, 2012, covers all the claims of these employees.

2 Upon a perusal of the original record of that suit with the assistance of Ms. Sarnaik appearing for the petitioners as also Mr. Helekar appearing for contesting private parties, we have noted that the petitioner-Union was not a party-defendant to the suit. Equally, the petitioner-employees in their individual capacity were not party-defendants. There is nothing on record

indicating as to how when the matter was referred to the Mediator by the Civil Judge, Senior Division, Pune, did the Mediator proceed. Has he ascertained whether the petitioner-Union or the individual employees are agreeable to the Recovery Certificate being marked as duly discharged and satisfied in the sum offered by the employer-respondent No.2 to this writ petition or otherwise. From the record it is also not clear as to whether the petitioner-Union or the individual employees are parties to the mediation proceedings or to the settlement or other praecipe / common purshis filed in the trial court seeking disposal of the suit as compromised.

3 It is in these circumstances that we cannot agree with the learned Assistant Government Pleader that the Recovery Certificate dated 29th March, 2001, is fully satisfied. The proceedings could not have been dropped by the Tahsildar / the Collector going by this settlement. The order passed on the earlier occasion by us notes the objection of Ms. Sarnaik that the petitioners have not held back anything from the Court, particularly when the compromise has been recorded pursuant to an order dated 30th April, 2012, much after the institution of this

writ petition and secondly, the report of the Mediator relied upon to dispose of the suit does not indicate that the Union was a party thereto. From the record now, it is apparent that such a suit as instituted will not deprive the individual employees or the petitioner-Union from asserting in appropriate legal proceedings that the amount which was due and payable under the Recovery Certificate of 2001 is not paid in its entirety even till 2012. Secondly, the Recovery Certificate does not and should have been marked as satisfied given the position emerging from the record of the civil suit.

4 Hence, we direct the Tahsildar and particularly the Collector of the District to continue the proceedings in execution of the Recovery Certificate and issue notice to all the private parties so also the concerned officials and the members of the petitioner-Union/individual employees as to why the proceedings in execution of the Recovery Certificate should not be continued to the extent the amounts thereunder remaining outstanding, due and payable. It is also open for the petitioner-Union to urge that the individual employees have received only a part of the sum and which is their entitlement. They are yet to receive a

sum styled as penalty within the meaning of section 174 of the Maharashtra Land Revenue Code, 1966. Equally, it would be open for the employers to urge that in the light of the settlement, nothing is due and payable by them. The Collector shall consider this aspect specifically either by himself / herself or its duly authorised delegate in terms of the statute and pass a reasoned order as expeditiously as possible and within a period of eight (8) weeks from the date of receipt of a copy of this order.

5 As far as the claim for interest is concerned and the rate specified in the prayer of the writ petition, it would be open for the petitioner/individual employee to institute such proceedings as are permissible in law. All contentions with regard to the maintainability of such proceedings as also merits involved therein are kept open.

6 We are most unhappy because a Recovery Certificate issued by the competent court based on its adjudication and on 29th March, 2001, copy of which is at pages 13 to 15 of the paper-book in Writ Petition No. 4878 of 2012, has still not been enforced and executed. The amounts have to be recovered. We have

repeatedly held in such proceedings that it is the obligation and duty of the Collector to recover amounts under such Certificates as arrears of land revenue expeditiously. The Collector is the authority under the Maharashtra Land Revenue Code and duly authorised to recover arrears of land revenue. He is specifically chosen as an authority even under the Industrial law so that a third party/independent statutory authority mitigates the hardship and particularly to workmen expeditiously. He steps in to use his powers under the Land Revenue Code so that employers are brought to book and the defaulting parties pay workers dues expeditiously. In the present case, the employers appears to have been given a very long handle. It also appears that a suit which was filed against the Tahsildar/District Collector was allowed to be prosecuted without bringing to the notice of the Court that such a suit would not lie without impleading necessary parties, namely, the concerned employees. It is their claims which are not settled. Therefore, their presence was necessary. Secondly, the Collector did not make independent enquiries before informing the Court that the matter is duly settled. There cannot be any settlement as between the Collector who is obliged to recover amounts under the Recovery Certificate and the

defaulting employer. We do not know in what circumstances the learned Judge allowed this compromise and disposed of the suit. We are here after cautioning all concerned, including civil courts that they must, before taking cognizance of such civil suits, go to the root of the issue, namely, the maintainability thereof and whether if at all it is maintainable, whether the Court is empowered to go behind the Recovery Certificate and crystallize the dues covered therein, independent of the amounts mentioned therein. It would then mean that a Recovery Certificate issued, after full opportunities are granted by the competent court, never gets executed and enforced and the defaulter has a third or an endless opportunity to dispute his admitted liability by approaching a civil court. Their remedies possibly lie elsewhere. In such circumstances, while expressing our unhappiness and total dissatisfaction about the manner in which the Collector of Pune District has proceeded and equally the Tahsildar, we direct as above.

7 The Collector / Tahsildar shall, in the first instance, endeavour to dispose of the proceedings and for recovery of such sums which are due and payable, including penalty and within

the time stipulated above. In the event, the Union of the employees institute proceedings for recovery of interest and impleads the Collector or statutory authority as parties to the proceedings, they must place on record the true position by informing the competent court / forum as to how they have proceeded to enforce the Recovery Certificate. Needless to clarify that in the petition, the amount crystallized by the petitioners and enumerated in the prayer clauses would be reckoned as the alleged outstanding amount and due and payable by the employer.

8 The Writ Petitions are, accordingly, disposed of.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***