HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 14327 of 2005

ORDER:

Assailing the distraint order passed under Section 8 of the A.P.Revenue Recovery Act in Form I, the present writ petition came to be filed.

The facts in issue are as under:

The petitioner entered into service as a Junior Assistant in the Revenue Department, in the year 1989. While he was working in the office of the Special Deputy Collector, Land Acquisition, Steel Plant, Visakhapatnam, a report was given against him with regard to missing of cheques. A case in Crime No.130 of 1993 came to be registered for the offences punishable under Sections 420, 468, 471 and 380 of I.P.C. In view of the registration of the above crime, the petitioner was placed under suspension and he was served with a charge memo dated 29.01.1994. Challenging the same, he filed O.A.No.91 of 1994, seeking stay of the departmental proceedings. On 26.02.2000, the said O.A. was disposed of with a direction to make a representation. Accordingly, a representation was made by the petitioner seeking reinstatement and on 01.03.2002, the same was rejected. Thereafter, he filed another O.A.No.1021 of 2000, wherein no interim orders were passed. Pursuant thereto the petitioner filed W.P.No.7231 of 2000. By an order dated 12.07.2000, this Court granted stay of departmental proceedings. At that point of time, the impugned distraint order came to be passed, directing the second respondent to distrain the property for default of arrears of revenue under Revenue Recovery Act. The impugned order further states if the amount due together with Batta and all other expenses of distress are not discharged, the distrained property would be immediately brought to public sale. The order refers to recovery of an amount of Rs.4,36,898/- for arrears of revenue. Subsequently, W.P.No.7231 of 2000 was disposed of on 29.08.2003 with a direction to APAT to dispose of the O.A. and accordingly, the said O.A. was dismissed. Thereafter, the authorities proceeded with the departmental proceedings. Challenging the distraint order issued under Section 8 of the Act, the present writ petition came to be filed.

The only argument advanced by the learned counsel for the petitioner is that the distraint order came to be passed without giving notice to the petitioner asking him to explain the contents of the said notice. He further states that the notice does not indicate as to how the authorities arrived at such a figure as the amount due.

Learned Government Pleader for Revenue would contend that notice itself came to be issued in accordance with the proforma appended to the Act and as such one cannot find fault with the same. He further submits that though the petitioner was acquitted in a criminal case, but in the departmental proceedings his guilt was proved and his services were terminated. As seen from the record, out of Rs.13,89,583/-, which was alleged to have misappropriated, an amount of nearly Rs.7,82,000/- was recovered in the form of cash and Rs.2,50,000/- in the form of cheques.

On 05.07.2005, this Court while issuing *rule nisi,* directed the petitioner to deposit Rs.2 lakhs, within eight weeks from that day. It is stated that the said amount was also deposited. The record further discloses that the police investigated into the above said crime and filed a charge sheet which was taken on file as CC No.75 of 1997. However, by its judgment dated 01.02.2006, the Chief Metropolitan Magistrate, Visakhapatnam, acquitted the accused for the offences charged, beyond reasonable doubt. The question now would be whether the impugned notice was issued without giving any notice to the petitioner? Section 8 of the Act reads as under:

> "8.Rules for seizure and sale of movable property:

In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed:

First:Demand in writing: The Collector, or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter; a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The persons employed to distrain shall produce the writing which, if the arrear together with the batta due to him, under Section 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.

Second: Writing to state that the distrained property will be sold: The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount, with interest, batta, and all the expenses of the distress be previously discharged.

Third: Service when defaulter is absent: When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence or on the premises where the property may have been distrained, before the expiration of the third day, calculating from the day of the distress."

A reading of the distraint order issued in Form I, under Section 8 of the Act discloses that if the defaulter fails to pay the amount, the distrained property would be immediately brought to public sale. The order discloses name of the defaulter, the period of arrears and the amount of arrears due. It does not anywhere indicate, giving of a notice prior to issuing of the order in Form-I and further the notice is silent as to how the authorities have arrived at such conclusion.

The issue somewhat identical to the case on hand came up for consideration before this Court in *B.G.Mulajkar Vs. Government of A.P., represented by its Secretary, Industries and Commerce Department, Hyderabad and others*[1]. It was held that "As per Section 52 of the Act, recovery of the amount should be preceded by an anterior determination of the liability and the amount due towards such liability. It was further held that the amount may be recovered in the same manner as arrears of land, regulating the provisions of the Act.

Section 8 of the Act, as referred earlier, prescribes Rules for seizure and sale of a movable property before affecting seizure and sale of the movable property. The Section itself prescribed issuance of a demand in writing.

---

[1] (1970 I Andhra Weekly Report 360)

Admittedly, no such notice was given in the instant case. Dealing with the said issue, the Court in the judgment referred to above, held as under:

"Normally in all cases where the amounts are due under a loan or contract or by way of compensation for breach of a contract, the party aggrieved has to proceed by way of a suit in a civil Court and the party sought to be made liable will then have an ample opportunity of contesting the claim. But Section 52 of the Act which is a special provision and which enables the Government to recover the amounts as arrears of land revenue, is a drastic provision and presumably this provision is made in the interest of expeditious collection of the amount due to the Government. Even so, the provisions of Section 52 of the Act have to be interpreted in such a manner so as to accord with the principles of natural justice and the party sought to be proceeded against should at least have the minimum safeguard of having an opportunity to know the basis and the material on which the liability is sought to be imposed upon him and to rebut the same by placing the necessary material in that behalf before the appropriate authority of the Government. Whether the proceedings taken under Section 52 of the Act are quasi-judicial or administrative in character, it is incumbent upon the Government to observe the basic principle of natural justice, viz., that the party affected should have a reasonable notice of the case he has to meet and a reasonable opportunity of making his representations against the same by producing the relevant material on which he relies. Justice and fair play demand that such a notice should be given even by an administrative authority. In our opinion, therefore, before the Government could recover the sums due under Section 52 of the Act, the appellant should be furnished with the relevant material on which the amount is said to be due, and given an opportunity to make his representations and produce the relevant material to substantiate his representations and thereafter the liability determined. Only on such determination of the liability and the amount due thereunder, the Government can take proceedings under Section 52 of the Act for recovering the amount. In other words the recovery proceedings under Section 52 of the Act should be preceded by an anterior determination of the liability and the amount due towards such liability".

Similarly, in *Govindu Rama Rao Vs. The Revenue Divisional Offier, Srikakulam and others*[2], a Division Bench of this Court held as under:

"The amount of arrears, which is now sought to be recovered comes under the category of "all sums due to the State Government", which is one of the categories of amounts that can be recovered under the Revenue Recovery Act. The sum due to the Government is an amount ascertained by the appropriate authority of the Government or by a Court, as the case may be. The expression, "due" necessarily implies legal liability. Before a legal liability is fastened to any particular individual, he must be given due opportunity to meet the case of the Government, that a particular amount was owed by him to the Government. Otherwise one-sided or arbitrary determination of the amount cannot lead to the conclusion that there is a legal liability fastened to the particular person. It is only when due opportunity is given to him and the amount is determined after giving that opportunity to the person concerned, the amount is said to be due to the State Government. Does it also mean that the ascertainment would not be complete with the determination of the sum by the authority concerned after giving due notice and opportunity to the person concerned? Is it further necessary or can it be said that it will not become an amount due or sum due until the highest appellate authority completes consideration of the matter? The latter

[2] (1975(2) H.C.342)

contention cannot stand the test of scrutiny because on making practical approach it cannot be said that in every case there will be an appeal to the highest authority. If there is no appeal, the sum determined by the appropriate authority becomes final. Once that authority fixes the amount after due ascertainment, he cannot go on awaiting the sweet pleasure of the person concerned to go to appeal. Apart from the fact that Section 52 does not give any room for such a construction, if the contention taken on behalf of the petitioner is incorporated into Section 52, the very purpose of Section 52 will be defeated and the intention of the Legislature will be violated. The recovery proceedings postulated by the Revenue Recovery Act are summary in nature and were not intended by the Legislature to be a prolonged affair. Once an officer or authority who is empowered to determined the amount fixes it, after giving adequate opportunity to the person concerned, it becomes due to the State Government. Availability of the remedy of appeal does not alter the legal character of the amount which has become due. Therefore, once the Revenue Divisional Officer has determined the amount of arrears after notice to the petitioner, the sum has become due to the Government, it was only thereafter that the property was attached and the sale conducted. Section 52, in our opinion, does not in any way subscribe to the argument raised by Sri Koka Raghava Rao that the amount does not become due unless and until the highest appellate authority finally disposed of the dispute raised by the person concerned."

The propositions laid down in the two judgments is not disputed by the learned counsel for the respondents. The Form-1 distraint order, issued in the instant case, cannot be treated as a notice as it refers to sale of the property, if the amount is not paid within the prescribed time.

In view of the above and the judgments referred to above, the writ petition is allowed setting aside the impugned order, but however giving liberty to the respondents to issue a fresh notice as required under law and then take steps for recovery of the amount, if any due, according to the provisions of the Act and in accordance with law.

There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Writ Petition, shall stand closed.

C. PRAVEEN KUMAR, J

23.08.2017
vhb