IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 804 OF 2002

Maqsood, son of Maqbool Chohan and Ors.	}	**Petitioners**
versus		
State of Maharashtra and Ors.	}	**Respondents**

Ms. Prachi Khandge i/b. M/s. M. P. Vashi and Associates for the petitioners.

Mr. Milind More-Additional Government Pleader for the State.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE :- FEBRUARY 14, 2018

P.C. :-

1. The petitioners are aggrieved and dissatisfied with demand notices, copies of which are at pages 12 and 13 of the paper book. They read as under:-

"No. MSD/NTR 1279/2001.

To,

1) Smt. Zubeda Makbul chauhan.
2) Shree. Maksud Makbul Chauhan
3) Shree Mehboob Makbul Chauhan
4) Shree Shakil Makbul Chauhan
5) Shree Jamil Makbul Chauhan
6) Shree Salim Makbul Chauhan

Sharifa Manzil, Block No. 18, 37th Rd.
Bandra (West) Mumbai – 50

Whereas, the Exe. Engg., P. W. D., Andheri has issued a Recovery Certificate No. 432 dated 29/9/2001 and the Collector of Mumbai Suburban District has directed me to recover from you Rs.1,86,000/- (Rupees one lakh eighty six thousand only) on account of Govt. dues, as an arrears of Land Revenue due from you has not been paid and that unless it is paid within ten days from the date of this notice together with sum of Rs.3.00 (separately) being the fee chargeable for this notice and process, compulsory proceedings will be taken according to law for the recovery of the whole amount due from you.

2% Execution charges Rs. 2720/-

10% Recovery charges Rs. 18600/-

Dated 5th day of Nov., 2001

Naib Tahsildar
Recovery of Govt. dues
Mumbai Suburban District"

"No. MSD/NTR/Andheri-1279/2001.
Date 03/12/2001

To,

1) Smt. Zubeda Makbul chauhan.
2) Shree. Maksud Makbul Chauhan
3) Shree Mehboob Makbul Chauhan
4) Shree Shakil Makbul Chauhan
5) Shree Jamil Makbul Chauhan
6) Shree Salim Makbul Chauhan

Sharifa Manzil, Block No. 18, 37th Rd.
Bandra (West) Mumbai – 50

Sub:- Payment of P. W. D. Andheri,
Govt. dues.

WHEREAS you have failed and neglected to pay the amountof Rs.1,86,000/- (Rs. One lakh eighty six thousand only) on account of P. W. D. dues; inspite of the service of the Notice of Demand dated 5/11/2001 as required under section 178 of Maharashtra Land Revenue Code, 1966.

AND WHEREAS I hereby give you **FINAL NOTICE** that the warrant of distraint of movable property or

> warrant of arest will be executed under section 179 to 184 and/or any other relevant provisions of the said Act under Police protection if necessary, if you fail to pay the said Government dues within 48 hours from the receipt of this final Notice.
>
> Naib Tahsildar
> For Recovery of Govt. dues
> Mumbai Suburban District"

2. The petitioner says that the respondent to this petition and particularly respondent nos. 2 to 4 are relying upon Recovery Certificate No. 432 dated 29th September, 2001. That was forwarded to the Collector, Mumbai Suburban District, Recovery Branch to recover a sum of Rs.1,86,000/- to be the Government dues. The notice was received by post as it was addressed to the petitioners and respondent nos. 5 and 6.

3. All of them are the heirs and legal representatives of one Maqbool Chauhan (hereinafter referred to as "the deceased". He was a Government contractor. He expired, as is evidenced by a copy of the death certificate, on 10th November, 1976. The two notices of demand claimed from the petitioners this sum purportedly due and payable under a contract with the Government and which the deceased was supposed to perform. The petitioners repeatedly approached the Collector as also the Public Works Department seeking the records and documents pertaining to these alleged Government dues. It is claimed that

these dues are barred by time. The petitioners' father expired in the year 1976. For 25 years there were no recoveries nor any proceedings. In these circumstances, such a demand was unsustainable. Alternatively and without prejudice, it is contended that the demand on the heirs of the deceased contractor is all the more unsustainable for the petitioners succeed to estate in accordance with the shares determined by law. How such recoveries can be effected from the heirs and who are successor in interest of the deceased contractor, when they are not carrying on any business of their father, is another issue raised for our consideration. Finally, it is urged that no crystallisation of the dues can take place unless and until there is an adjudication, particularly on the issue whether it is due and payable. No such adjudication has preceded the impugned notices nor any speaking order is available in the records. For these reasons, it is urged that the writ petition be allowed.

4. There is an affidavit in reply filed on behalf of the respondents and it is urged that these demand notices were served because the petitioners predecessor in title completed some work for the Government in the year 1969-70. He failed to comply with the notices for rectification of defects allegedly occurring in the RCC work and brick work etc. That is how the

sum was demanded to be due and payable. The demand was raised on the contractor on 8th October, 1970. There is also correspondence made, but since the deceased was not available, the proceedings were finalised in his absence. In fact, the affidavit proceeds on the footing that the police officials were approached in order to find out the whereabouts of the deceased contractor so as to file a suit in the court of law against him. Thus, if the respondents had no alternative, but to file a suit, then, we do not see any reason why such a suit was not brought. The sudden departure or deviation from that general or normal route of the recovery by terming the amount allegedly due as arrears of land revenue has, therefore, led to the issuance of these notices. It is stated that clause (20) of the contract with the deceased enables recoveries to be effected as recovery of arrears of land revenue from the legal heirs.

5. Upon hearing Ms. Khandge learned advocate appearing for the petitioner and Mr. More-AGP appearing for the State, we are unable to agree with the respondents.

6. In a decision reported in the case of *State of Kerala and Ors. vs. V. R. Kalliyanikutty and Anr.*[1], the Hon'ble Supreme Cort had an occasion to somewhat identical controversy. If any sum is

1 **AIR 1999 SC 1305**

claimed as arrears of land revenue on the footing that it is due and payable, then, the Hon'ble Supreme Court has held that precede such demand, there should be a crystallisation and determination of the sum due by a process known to law. That process is of following the principles of natural justice, inasmuch as either a suit should be brought and a decree obtained or there should be a speaking order after hearing both sides and deciding the disputed claims. When none of these is found on record and a recovery is effected suddenly in respect of the dues, which is of the year 1969-70 as in this case, then, the Hon'ble Supreme Court held that the law of limitation may not step in for the purpose of such demand, but the court would always be mindful of the principle that what can be recovered is due and payable. If the due is barred by limitation, then, this summary mode of recovery is not available to the Government. The following observations of the Hon'ble Supreme Court are pertinent:-

> "8. Looking to the object of Section 71 we have to examine whether time-barred claims of the State Financial Corporation and the banks can be recovered under it. Is the object only speed of recovery or is it also enlargement of the right to recover? The respondent-institutions rely on the words "amount due" in Section 71 as encompassing time-barred claims also. Now, what is meant by the words "amounts due" used in Section 71 of the Kerala Revenue Recovery Act as also in the notifications issued under Section 71? Do these words refer to the amounts repayable under the terms of the loan agreements executed between the debtor and the creditor irrespective of whether the claim of the creditor has become time-barred or not? Or do these words refer only to those claims of the creditor

which are legally recoverable? An amount "due" normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines "due" as anything owing; that which one contracts to pay to another. In Black's Law Dictionary, 6th Edn. at page 499 the following comment appears against the word "due". "The word "due" always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at sometime in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue" and the third by the word "payable"." There is no reference in these definitions to a time-barred debt. In every case the exact meaning of the word "due" will depend upon the context in which that word appears.

9. In the case of Hansraj Gupta & Ors. v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. (AIR 1933 PC 63) the Privy Council was required to interpret the words "money due" under Section 186 of the Companies Act, 1913. Section 186 dealt with the recovery of any money due to the Company from a contributory. Interpreting the words "money due", the Privy Council said that the phrase would only refer to those claims which were not time-barred. It noted that the section is concerned only with moneys due from a contributory. A debtor who is not a contributory is not affected by it. Moneys due from him can be recovered only by a suit in the Company's name. Secondly, the section creates a special procedure for obtaining payment of moneys. It is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights. Thirdly, the power of the court to order payment under that Section is discretionary. It may refuse to act under that section, leaving the liquidator to sue in the name of the Company. Therefore, the respondent under the procedure of Section 186 cannot be deprived of some defence or answer open to him in a suit for the same moneys.

10. The same reasoning would apply in the present case also. The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy

recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall immediately order the refund of whole or part of the money paid under protest. Under Sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest.

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14. In our view if such a wide interpretation is put on the words "amount due" under the Kerala Revenue Recovery Act, there is every likelihood of the provisions of Article 14 being attracted. This Court in the case The Director of Industries, U.P. and Ors. v. Deep Chand Agarwal (Supra) justified the special procedure for recovery of certain debts under the U.P. Public Moneys (Recovery of Dues) Act, 1965 on the ground that the amounts which were advanced by the State or by the financial institutions were for the economic betterment of the people of that State. Speedy recovery of these amounts was necessary so that these amounts could be re-utilised for the same public purpose. It is doubtful if this public purpose would extend to granting exemption to these claims from the statute of limitation. The law of limitation itself rests on the foundations of public interest. The courts have expressed at least three reasons for supporting the existence of

> statutes of limitation; (1) that long dormant claims have more of cruelty than justice in them; (2) that a defendant might have lost the evidence to disprove a stale claim; and (3) that persons with good causes of action should pursue them with reasonable diligence. (See Halsbury 4th Edn. Vol. 28 paragraph 605). In Nav Rattanmal and Ors. v. State of Rajasthan (AIR 1961 SC 1704), the Statutes of Limitation have been considered as Statutes of Repose and Statutes of Peace. The generally accepted basis for such statutes is that they are designed to effectuate a beneficent public purpose. Whether public purpose of speedy recovery would outweigh public purpose behind a statute of limitation is a moot point. But we need not examine this aspect any further in view of our interpretation of the words "amounts due" in Section 71."

7. We do not see how on the touchstone of the above principles, this demand can be sustained. We do not think that the heirs should be now harassed and vexed with a demand of the year 1969-70, which arose out of a contract of the deceased father with the Government. In these circumstances, the writ petition succeeds. The demand notices are quashed and set aside. Rule is made absolute in the above terms. There would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.) **(S.C.DHARMADHIKARI, J.)**