

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

1. CRM-M-9214-2014

Jagan Nath

...Petitioner

Versus

Cantonment Board, Jalandhar

...Respondent

2. CRM-M-10905-2014

Jagdish Chand

...Petitioner

Versus

Cantonment Board, Jalandhar

...Respondent

3. CRM-M-11098-2014

Ashwani Kumar

...Petitioner

Versus

Cantonment Board, Jalandhar

...Respondent

Reserved on : 08.03.2019
Pronounced on : 12.03.2019

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sandeep Arora, Advocate
for the petitioner(s) in all the petitions.

Mr. M. S. Sachdeva, Advocate
for the respondent in all the petition.

ARVIND SINGH SANGWAN, J.

This common judgment shall dispose of above noted three

petitions as a common question of law and facts are involved therein. However, for the sake convenience, facts are being extracted from CRM-M-9214-2014.

Prayer in these petitions is for setting aside the application, filed by the respondent-Cantonment Board, Jalandhar under Section 324 of the Cantonment Act, 2006 (Annexure P-1) as well as the subsequent order dated 15.10.2013, passed by the Judicial Magistrate First Class, Jalandhar, ordering issuance of warrants of attachment of property of the petitioner in connection with recovery of Rs. 11,24,640/- on account of rent etc. along with interest @ 18% per annum.

Brief facts of the case are that respondent-Cantonment Board, Jalandhar (*for short 'Board'*) through its Executive Officer has moved an application under Section 324 of the Cantonment Act, 2006 (*for short 'the Act'*) for the recovery of Rs. 11,24,640/-, Rs. 8,95,000/- and Rs. 5,76,000/-, respectively in all the three petitions by giving details in the application(s) on the ground that the petitioners were licensee of shop No. 1, Stalls No. 2 & 4 and Stalls No. 5 & 6, respectively in Mutton Market, Jalandhar Cantt. and the amounts shown in the applications are to be recovered from the petitioners along with future interest @ 18% per annum. It was stated in the applications that the petitioners have not disputed the amount.

The petitioners filed their respective application to allow them to contest the case and file objections for quashing the alleged demand notice and for recalling the recovery warrants which were issued by the trial Court on the applications filed by the respondent-Board. In the applications filed by the petitioners, the following points were raised:

“(a) That the claim and the demand of the applicant is time barred.

(b) That the alleged demand of the applicant is unreasonable.

(c) That the possession of the shop has been delivered to the applicant in the year 2003 and all the dues were cleared at that time., the receipts issued by the applicant are also attached herewith.

(d) That the application has not been filed by a competent person.

(e) That this is the basic principle of law that opportunity of being heard must be provided to every person but in this present case opportunity has not been provided to the applicant and straight way recovery warrants have been issued by this Hon’ble Court.

(f) That the alleged statement of account is totally unreasonable. The applicant has concealed the fact regarding the payment made by the applicant/defendant and it has been wrongly pleaded by the applicant that licence fee settled was not paid by the applicant/respondent. The entire amount mentioned in the application of the applicant is totally illegal, unlawful and unreasonable.

(g) That the provisions of Section 324 of the Cantonment Act are not applicable to the facts of the present case. The alleged amount is not settled or decided by a Court of competent jurisdiction. It is for the Cantonment Board to first get decided the rate per month to be recovered from the respondent for use and occupation. As per Section 324 of Cantonment Act the arrears of tax rent on land and building are to be recovered through civil suit and the provisions of Section 324 of Cantonment Act are only

applicable for the amount legally recoverable whereas in the present case there is no such legally recoverable amount. There are no orders of any court in favour of the applicant by which the applicant could recover three times of licence fee.

(h) That there is no resolution of the Cantonment Board by which the present petition has been filed.

(i) That no demand notice has been issued to the answering respondent.”

It was also stated by the petitioners that there is no order of any competent court of jurisdiction by which the amount claimed by the Board has been ascertained and, therefore, the application is not maintainable.

The respondent-Board filed reply to the said applications/objections and contested that as per the provisions of Section 324 of the Act, the application cannot be allowed and petitioner cannot be permitted to file objections and whatever amount is due against the petitioners, the trial Court is competent to issue warrants of recovery for the said amount. For ready reference, Section 324 of the Act is reproduced below:

“324. Method of recovery.-

(1) Notwithstanding anything elsewhere contained in this Act arrears of any tax, and any other money recoverable, including rent on land and buildings due or damages and fine due under leases or licences executed by or in favour of a Board or the Defence Estates Officer under this Act or the rules made thereunder may be recovered together with the cost of recovery either by suit or on application to a Judicial Magistrate having jurisdiction in the cantonment or in any place where the person from

whom such tax, rent or money is recoverable may for the time being be residing, either by the distress and sale of movable property of such person, or by the attachment and sale of immovable property of that person, which is within the limits of the jurisdiction of such Judicial Magistrate, or by both these methods, and shall, if payable by the owner of any property as such, be a charge on the property until paid: Provided that the tools of artisans, growing crops upto the value of five thousand rupees and implements and cattle used for the purposes of agriculture shall be exempt from such distress or sale.

(2) An application to a Judicial Magistrate under sub-section (1) shall be in writing and shall be signed by the President or Vice- President of the Board or by the Chief Executive Officer or the Defence Estates Officer or the Officer Commanding the Station or any other officer authorised by any of these officers, but shall not require to be personally presented.

(3) Upon receiving the application, the Judicial Magistrate referred to in sub- section (1) may take action for the recovery of the amount of tax, rent or money from the person specified in the application as if such amount were a fine recoverable under a sentence passed by him and the provisions of section 421 and 422 of the Code of Criminal Procedure, 1973 , shall, so far as may be, apply to the recovery of such amount: Provided that the recovery of no such amount shall be made by the arrest or detention in prison of the said person.

The trial Court, vide impugned orders dated 15.10.2013 (in all the three petitions), dismissed the applications filed by the petitioners for contesting the case and to file objections by passing the following order:

“I have heard both the parties. A bare perusal of Section 324 of Cantonment Board Act, 2006 transpires that this Court is not empowered to conduct a trial. Section 324 of the Cantonment Board Act, 2006 does not speak of any power lying with the Magistrate to conduct the trial and rather speaks of directly issuance of warrants of attachment.

Therefore, in view of Section 324 of Cantonment Board Act, 2006, this Court is authorized only to issue recovery warrants. Hence, the present application is declined being without merits. Let recovery warrants against the respondent Ashwani Kumar directing the Collector Jalandhar for recovering the amount of Rs. 11,24,640/- along with interest at the rate of 18% per annum be issued for 15.11.2013.

**Parsmeet Rishi
JMIC/15.10.2013”**

Aggrieved, the petitioners have filed the present petitions challenging the impugned orders.

Learned counsel for the respondent-Board has taken a primary objection that these petitions are not maintainable as the proceedings initiated before the trial Court are civil in nature and only warrants of recovery have been issued, however, in reply to the primary objection, learned counsel for the petitioners has submitted that since under Section 324 of the Act, it is provided that an application can be filed before a Judicial Magistrate having jurisdiction over the cantonment for recovery of the amount and as per sub-section 3, the Magistrate, in exercise of the powers given under Sections 421 and 422 of Cr.P.C. can issue warrants for effecting the service of recovery, therefore, the present petitions are not maintainable under Section 482 Cr.P.C.

On merits, learned counsel for the petitioners has argued that a bare perusal of Section 324 of the Act shows that though the Board is granted the right to recover money including rent of land or building or damages and fine due under leases or licences executed by or in favour of a Board or the Defence Estates Officer under this Act or the rules made thereunder may be recovered together with the cost of recovery either by suit or on application to a Judicial Magistrate having jurisdiction in the cantonment or in any place where the person from whom such tax, rent or money is recoverable may for the time being be residing, either by the distress and sale of movable property of such person, or by the attachment and sale of immovable property of that person, which is within the limits of the jurisdiction of such Judicial Magistrate, or by both the methods.

Learned counsel for the petitioners has further argued that the essential requirement under Section 324 of the Act is if the money recoverable is not ascertained then the remedy is granted to the Board to file a civil suit for recovery wherein after ascertaining the amount due, a decree can be passed or in case where the amount is already adjudicated by any competent authority, an application can be moved before the Judicial Magistrate.

Learned counsel for the petitioners has relied upon **1979 AIR (Punjab) 157, The Cantonment Board, Ferozepur vs. Inder Singh**, wherein while relying upon the judgment rendered by Hon'ble Supreme Court in **1996 AIR (SC) 108 The Cantonment Board, Ambala vs. Pyare Lal**, this Court has interpreted the word '**recoverable amount**' and held that said amount is an amount which is not claimable and cannot be recovered and, therefore, the Board is competent to maintain the suit for recovery of

the amount.

Learned counsel for the petitioner has, thus, argued that the applications, filed by the Board under Section 324 of the Act by *suo motu* declaring that the aforesaid amounts are pending against the petitioners, are not maintainable, especially in view of the fact that once the petitioners have filed applications seeking permission to file objections, it was the duty of the Magistrate to entertain the same and first ascertain the amounts due and only thereafter, to proceed further.

In reply, learned counsel for the respondent-Board has opposed the prayer of the petitioners on the ground that it is not disputed that the petitioners were licensee of the aforesaid shops/stalls and after they left the possession, the aforesaid amounts along with interest @ 18% per annum are pending against them and, therefore, the petitions are not maintainable.

After hearing learned counsel for the parties, I find merit in the present petitions.

So far the objection of learned counsel for the respondent-Board regarding maintainability of these petitions is concerned, the same loses its significance in view of the fact that the arguments on merits have been heard.

In the light of the judgment in *Inder Singh's case*, as per provisions of Section 324 of the Act, if an application is moved before the Judicial Magistrate for the recovery of any amount due, if the petitioners have raised objections, it was incumbent upon the Court to first decide the objections and ascertain as to how much amount is recoverable from the petitioners. Since it is clear from the language of Section 324 of the Act that Board has two remedies, i.e. either to file a civil suit where the amount is

not ascertained and the Court, after allowing the parties to lead evidence, will first ascertain the amount and pass a decree or in the alternative, may file an application before the Judicial Magistrate if the recoverable amount is undisputed. Once the petitioners are contesting the amounts, they cannot be condemned unheard by the Judicial Magistrate and the trial Court has to entertain the objections and allow the petitioners to lead their respective evidence and after ascertaining the amount, it can proceed further.

Accordingly, these petitions are allowed and impugned orders dated 15.10.2013 (impugned in all petitions) are hereby set aside.

The matter is remanded back to the trial Court which will entertain the objections summarily and after allowing the parties to lead their respective evidence, will first ascertain the recoverable amount and then proceed further for recovering the same, if any, by issuance of warrants.

A photocopy of this order be placed on the file of other connected cases.

March 12, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No