

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 7064 of 2008**

**Order Reserved on : 20/12/2019**

**Order Delivered on : 21/01/2020**

1. Dilip Kumar Sharma, S/o Shri Mohanlal Sharma, aged about 41 years, Occupation-Cultivator, R/o Village - Chilhatikala, Tahsil - Dondi Lohara, District – Durg, Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Bank of India, through Branch Manager, State Bank of India, Branch-Suregaon, Tahsil- Dondilohara, District – Durg, Chhattisgarh.
2. State of Chhattisgarh, through Principal Secretary, Deptt. Of Revenue, Secretariat, Raipur, Chhattisgarh.
3. Naib Tahsildar, Sub Tahsil Marri Bangla(Deori), District, Durg, Chhattisgarh.
4. Smt. Mithila @ Kajal wife of Om Prakash Singhare, R/o Village Koba, P.H. No.21 Tahsil Dondi Lohara, District-Durg, Chhattisgarh.
5. B.B. Panchbhai, S/o. Budhram, Panchbhai aged about 40 years, then Naib Tahsildar, Sub Tahsil Marri Bangla(Deori), District-Durg presently posted as Tahsildar Magarlod, District-Raipur, Chhattisgarh.
6. Durga Prasad, S/o Devi Prasad Kumhar, R/o Village Dubchera, Tahsil and P.S.-Dondilohara, District-Balod, Chhattisgarh.

**---- Respondents**

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For petitioner :Mr. Sumit Singh Rathore, Advocate.

For Respondent No.2 & 3/State :Mr. Sudeep Verma, Dy. Govt. Advocate.

For Respondent No.4 :Mr. H.B. Agrawal, Sr. Advocate with Ms.

Richa Dwivedi, Advocate.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**CAV Order**

**21/01/2020**

1. This petition has been brought being aggrieved by the order dated 19.12.2006 passed by the Board of Revenue Chhattisgarh in Revision Case No.RN/05/R/A-76/225/2006 thereby setting aside the order of Upper Collector, Durg dated 12.1.2006 and restoring the order of Nayab Tahsildar dated 6.11.2001.
2. It is submitted that petitioner had borrowed Rs.95,000/- from respondent No.1 prior to year 2001 for the purposes of manufacturing bricks. As the petitioner could not make repayment of loan till 31.6.2001, respondent No.1 by a letter dated 1.8.2001 made a request to respondent No.3 to make recovery of loan directly from the petitioner. It is submitted that the loan was granted to the petitioner, under the scheme of Pradhan Mantri Rojgar Yojna, therefore, the outstanding loan was not to be recovered under the provisions of M.P. Lok Dhan (Shodhya Rashiyon ki Vasuli) Adhiniyam, 1987( for short 'the Act, 1987'). However, respondent No.3 initiated proceeding in haste and without having any Revenue Recovery Certificate, notice was issued on 1.8.2001 by respondent No.1 and on the basis of which recovery proceeding was initiated. Petitioner filed objection against the recovery proceedings before the Collector, Durg, on the basis of which the recovery case was transferred to Tahsildar, Dondi Lohra. Respondent No.3 sold the property of petitioner in auction in a hurry and in arbitrary and illegal manner. It is also submitted that respondent No.3 being Naib Tahsildar of Marri Bangla (Deori) had no jurisdiction to initiate recovery proceeding for the reason that the Tahsildar, Dondilohara only had jurisdiction in the matter.
3. It is submitted that the petitioner preferred Writ Petition No.891/2002 before this Court, which was pending. The petitioner challenged the order of respondent No.3/5 dated 6.11.2001 before SDO, Dondilohra, which was dismissed by order dated 3.6.2002 against which a Second Appeal was preferred before the Additional Commissioner, Raipur, Division, Raipur, which was allowed by the order dated 12.1.2006.

Subsequent to which, the petitioner withdrew his Writ Petition No.891/2002. The respondent then filed revision petition before the Board of Revenue, which has passed the impugned order.

4. It is submitted that the respondent No.3 has malafidely initiated the proceedings with intention to favor respondent No.4, who is his relative. The recovery proceeding could not have been made under the provision of the Act, 1987 and, further, the hypothecation deed (Annexure-P/2) includes only movable assets. It is also submitted that the petitioner has offered to pay the remaining amount of loan but the same was not accepted by the authorities, which further shows that respondent No.3 had an ulterior motive to prosecute because of which the property of the petitioner has been auctioned which was never a subject matter of hypothecation.
5. There is no representation on behalf of respondent No.1. Learned State counsel appearing on behalf of respondents No.2 & 3 submits that no error has been committed by the Board of Revenue in passing the impugned order. The Naib Tahsildar had all the authority to proceed for recovery of loan in accordance with rules and there is no such rule barring the recovery proceeding as it has been done by Naib Tahsildar in this case. It is also submitted that the allegation that respondent N.3 had acted in illegal manner to benefit respondent No.4 is totally false, hence, the petition is without any substance which may be dismissed.
6. Mr. H.B. Agrawal, Senior Advocate for Respondent No.4 submits that it is very clearly mentioned in the impugned order that on request being made by respondent No.1, the Collector, Durg, had instructed the respondent No.2 to initiate proceeding in accordance with the Act, 1987. The notice was issued to the petitioner, who did not appear, and the proceedings was drawn *ex-parte*, whereby the property was attached and auctioned in the same proceeding. It is also mentioned that during the whole proceeding the petitioner never expressed his interest or intention to make repayment of loan. It is also submitted that auction sale once made cannot be canceled. It has been held by the Supreme Court in Mohd. Yunus v. Mohd. Mustaquim & others, reported in (1983) 4 SCC 566 that while exercising the supervisory power under Article 227, the High Court cannot act as an Appellate Court or

Tribunal. It will not review or re-weigh the evidence upon which the determination of inferior court or tribunal purports to be based or to correct errors of law in the decision. If there is no failure on the part of the subordinate Court in exercising jurisdiction then the High Court should not interfere. Supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is limited "to see that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. Therefore, the petition is without any substance which may be dismissed.

7. I have heard both the parties and perused the documents on record.
8. Respondent No.1 is a banking company, as defined under Section 2B of the Act, 1987. Section 3 of the said Act provides for recovery of certain dues as arrears of land revenue which includes loan advanced by the bank. This provision further gives authority to the Collector to issue Revenue Recovery Certificate. There is no such provision in this Act putting restriction for recovery of any loan issued under any scheme.
9. On perusal of all the documents present in the record of the petition, it is found that there is no dispute that the Collector had issued Revenue Recovery Certificate for which he has authorization under Section 3 of the Act, 1987, which clearly mentions that once RRC is issued, the same authority will take steps for recovery of the amount stated therein as arrears of land revenue under the provision of the Chhattisgarh Land Revenue Code, 1959 and under chapter 11 of CG Land Revenue Code, 1959, such a recovery can be made by attachment and auction sale of the property of the person concerned. Therefore, there is nothing to show that such proceeding adopted by the respondent authorities was barred by any law. Further, the allegation made by the petitioner regarding personal interest of respondent No.3 cannot be entertained and examined in this petition, because the petitioner did not choose to appear before the Naib Tahsildar, who is respondent No.3 and apart from that this kind of objection and allegation was never raised before the appellate and revisional authority, as it appears from the perusal of the said orders. Once RRC is issued, it gives vast powers to the recovery authority and there can be no restriction for the

said authority to proceed for recovery of loan against the hypothecated articles only. Therefore, after due consideration, I am of this view that the Naib Tahsildar has exercised the jurisdiction under Chhattisgarh Land Revenue Code, 1959 and Act 1987 in accordance with law and similarly issuance of RRC by the Collector of the said District is also found well within the scope of Section 3 of the Act, 1987. Hence, no substance is found in this petition which is dismissed accordingly.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge

Nisha