IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.3695 OF 2019

1) ~~Amarnath s/o Ramanand Jaiswal~~, (Dead)
Aged about 81 years, Occ. Business, Priprietor, Jai Ambe Rice Industries, At Post Navegaon Bandh, Tah. Arjuni/Mor, Distt. Gondia.

Through his power of Attorney Holder ~~Kamalkishore S/o Amarnath Jaiswal, Aged about 50 years, Occu. Business~~

Deleted as per Court's Order dt. 30.11.2023.

Kamalkishore S/o Amarnath Jaiswal, Aged about 54 years, Occu. Business Proprietor Jai Ambe Rice Industries, At Post Navegaon Bandh, Tahsil Arjuni /Morgaon, Dist. Gondia.

Amended as per Court's Order dt. 30.11.2023.

.... Petitioner(s)

// VERSUS //

1) State of Maharashtra,
through its Secretary, Department of Food & Civil Supply, Mantralaya, Mumbai-32

2) Collector, Gondia,
Tah. & Distt. Gondia.

3) Tahsildar, Arjuni/Mor,
Tah. & Distt. Gondia.

4) Regional Manager,
Maharashtra State Co-operative Tribal Development Corporation, Sainath

Nagar, Bhandara, Tah. & Distt. Bhandara.

... Respondent(s)

Shri M.R. Joharapurkar, Advocate for the Petitioner/s
Shri N.S. Rao, AGP for the Respondent Nos.1 to 3/State
Shri M.Y. Samarth, Advocate for the respondent No.4

CORAM : ANIL S. KILOR, J.
DATED : 16.01.2024

ORAL JUDGMENT :

1. Heard.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of the parties.

3. In the present matter, the question about the legality of demand notices dated 19.09.2018 and 20.11.2018 and the attachment order dated 28.01.2019 passed by Tahsildar, Morgaon Arjuni, is under challenge.

4. The demand notices were in respect of the alleged default made by the petitioner towards the procurement of rice and on failure of compliance of such demand notices dated 19.09.2018 and 20.11.2018, the Tahsildar passed an order under Rule 11 in Form

(4) of the Maharashtra Realisation of land Revenue Rules, 1967 (in short "the Rules of 1967").

5. To examine the legality and correctness of the order of attachment passed under Rule 11 in Form (4) of the Rules of 1967, it would be appropriate to refer to Rule 11 of the Rules of 1967, which reads thus :

> *"11. Attachment of immovable property :- (1) The attachment of immovable property under Section 181, 182 and 185 shall be effected by an order to be issued by the Collector in Form 4 prohibiting the defaulter from transfering or charging the property in any way and prohibiting all other persons from taking any.*
>
> *(2) The order shall be on or adjacent to such property by beat of drum or other customery mode, and a copy of the order shall be affixed on a conspicuous part of the property and also on the notice board of the office of the Talathi.*
>
> *(3) The order shall take effect as against purchasers for value in good faith from the date when a copy thereof is affixed on the property and against all other transferees from the defaulter from the date on which such order is made."*

6. From the above referred Rule, it is evident that it empowers the authorities mentioned in the said rule to attach the immovable property under Sections 181, 182 and 185 of the Maharashtra Land Revenue Code, 1966 (MLR Code).

7. In the present matter, nothing has been pointed out by the respondents that, this case falls under any of such provisions i.e. Sections 181, 182, and 185 of the MLR Code. Thus, there is no doubt that the attachment of property under Rule 11 of the Rules of 1967, is illegal.

8. As far as the demand notices are concerned, i.e. dated 19.09.2018 and 20.11.2018, it is an admitted fact that there is no adjudication or determination of the amount alleged to have defaulted by the petitioner. Such demand notices were issued by the Tahsildar under Rule 17 of the Rules of 1967. Rule 17 of the Rules of 1967 reads thus:

> *"17. **Procedure for recovering sums recoverable as and arrear of land revenue :-***
>
> *(1) Where any sum due to any department of Government or a local authority or a co-operative society is recoverable as an arrear of land revenue from any defaulter, such department, local authority or, as the case may be, co-operative society may send a requisition in writing for recovering the sum to the Tahsildar of the taluka in which the defaulter resides or has property.*
>
> *(2) Such requisition shall contain the following particulars, namely*
>
> *(a) Full name and address of the defaulter:*
>
> *(b) The sum to be recovered:*

(c) The provisions of law under which the sum is recoverable as an arrear of land revenue:
(d) The process by which the sum may be recovered:
(e) The property against which the process may be executed.
(3) On receipt of such requisition, the Tahsildar shall dispose it of in accordance with the provision of the Code and these rules."

9. From the language of Rule 17 of the Rules of 1967, it says that where any sum due to any department of Government or a local authority or a co-operative society is recoverable as an arrear of land revenue from any defaulter, in that case this will come into play on the request of the Co-operative Society or as the case may be.

10. In the present matter, there is no order directing the petitioner to pay the said amount and on failure of the petitioner to pay the said amount, it shall be recovered from the petitioner as land revenue.

11. So in absence of any such order, Rule 17 of the Rules of 1967 will also not come into play and therefore, the action taken by the Tahsildar in issuing demand notices under Rule 17 of the Rules of 1967 or the order of attachment of property under Rule 11 of the

Rules of 1967, are without jurisdiction and without following the due procedure. Accordingly, the demand notices as well as the order of attachment of immovable property, are hereby quashed and set aside.

12. The petition is **allowed** in the above terms.

13. The Office is directed to allow the petitioner to withdraw the amount deposited by the petitioner, after lapse of period of six weeks from today, in case the respondent No.4 does not file any recovery proceedings against the alleged default by the petitioner.

14. All the contentions are kept open.

15. Rule accordingly. No costs.

[ANIL S. KILOR, J.]