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from the statute itself. It was held by the Supreme Court in *Thakur Amar Singhji and others v. State of Rajasthan and others* (1), that recourse to rules of construction would be necessary only when a statute is capable of two interpretations, but where the language was clear and the meaning plain, effect must be given to it.

In view of what I have said above, the answer to the question of law referred to us for decision would be in the negative. There will be no order as to costs.

A. N. Grover, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*

GURBAKHSI SINGH,—*Petitioner*

*versus*

THE DEPUTY COMMISSIONER, AMRITSAR,—*Respondent*.

Civil Writ No. 1427 of 1966.

March 28, 1967

*Punjab Land Revenue Act (XVII of 1887)—Ss. 3(8) and 75—Lambardar collecting land revenue and failing to pay it to the Government—Whether a “defaulter”—Recovery proceedings under Chapter IV of the Act—Whether can be taken against him—S. 75—Whether ultra vires the Constitution.*

*Held*, that a Lambardar as headman of the village is responsible for collection of land revenue and deposit it with the Government. If he fails to deposit the same, he is a “defaulter” under section 3(8) of The Punjab Land Revenue Act. The provisions of Chapter IV of the Act dealing with recoveries are concerned not only with landowners but a headman or Lambardar as well, so far as they

(1) A.I.R. 1955 S.C. 504.

have made defaults in payment of land-revenue dues which accrued and which they have realised from the owners.

*Held*, that section 75 of The Punjab Land Revenue Act empowers the Collector, with previous sanction of the Commissioner, to direct a sale of the property in recovery of the sum which is found due from the defaulter. The provision which has been on the statute book since 1887, to ensure the speedy realisation of land revenue cannot be struck down for the reason that it vests uncontrolled or arbitrary powers in the Collector. Such an order is open to appeal and revision and what is more, a suit can also be filed under sub-section (1) of section 78 of the Act.

*Petition under articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued restraining the respondent from putting his property to auction on 7th July, 1966.*

K. K. CUCCRIA, ADVOCATE, for the Petitioner.

B. S. WASU, ADVOCATE, FOR ADVOCATE-GENERAL, for the Respondent.

#### ORDER

SHAMSHER BAHADUR, J.—Gurbakhsh Singh, a Lambardar of village Mahana, tehsil Tarn Taran in district Amritsar, in this writ petition has challenged the proceedings initiated by the Collector to collect some dues from him as arrears of land revenue by putting him under arrest and directing a sale by auction of his property under section 75 of the Land Revenue Act.

The order passed by the Collector is challenged on every conceivable ground and the sole respondent in this case, who is the Deputy Commissioner of Amritsar, has filed a return which shows that the assertions made by the petitioner on questions of fact have been controverted.

The petitioner has been a Lambardar of village Mahana since 1955 and in that capacity it was his duty to recover land revenue and local rates from the landowners of the village. For the years 1955 to 1963 the petitioner on his own showing had collected a sum of Rs. 10,496.44 and had deposited a sum of Rs. 9,172.39 in the treasury. According to the respondent, a sum of Rs. 2,438 was due from the petitioner and the Naib Tehsildar (Recovery) had issued a notice on 12th May, 1965, for its recovery. According to the petitioner, no demand

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had ever been made from him. In paragraph 8 of the written statement it is averred that a notice for recovery had been sent to the petitioner on 12th May, 1965, and the report of the process serving agency was that the petitioner had accepted the amount that was due from him and had promised to pay the same within a week.

The petitioner had been put under arrest and later released for recovery of this sum and it is only when his land was attached and put to auction that he has filed this writ petition.

It is submitted by the learned counsel for the petitioner that the sum which has been demanded from the petitioner could not be recovered as arrears of land revenue, the petitioner being a headman of the village. Under sub-section (1) of section 69 of the Punjab Land Revenue Act (hereinafter called the Act):—

“At any time after an arrear of land revenue has accrued a Revenue officer may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue officer.”

Under section 70 of the Act, distress and sale of movable property could be effected against the person from whom arrears of land revenue are to be recovered. Section 72 relates to attachment of estate or holding and in section 75, under which the petitioner is now being proceeded with, it is provided that:—

“When an arrear of land revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector with the previous sanction of the Commissioner, may in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due . . . .”

It is not disputed that the Collector is taking proceedings for the sale of the petitioner's property with the previous sanction of the Commissioner. The counsel for the petitioner says a Lambardar is not a defaulter as defined in sub-section (8) of section 3:—

“‘defaulter’ means a person liable for an arrear of land revenue, and includes a person who is responsible as surety for the payment of the arrear.”

The suggestion of the learned counsel for the petitioner is that Chapter VI, which deals with the collection of land revenue, is only concerned with recoveries which are to be effected from landowners and not from village headman. Apart from his bare assertion, there is not the slightest support either in the Act or the Rules framed thereunder for this proposition. Indeed, under clause (i) of Rule 20 of the Land Revenue Rules, it is said that a village headman in addition to his other duties shall "collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or subdivision of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post." The counsel points out that under rule 16, which relates to dismissal of a headman, it is provided in clause (f) that a headman shall be dismissed when "he neglects to discharge his duties, or is otherwise shown to be incompetent". The ensuing contention of the learned counsel is that if the petitioner is found to have misappropriated the land revenue which is due from him he can be dismissed and nothing more. I think the petitioner is a defaulter and the process of recovery under section 75 of the Act can be executed against him.

It is not denied that a Lambardar as headman of the village is responsible for collection of land revenue. As mentioned in paragraph 516 of Sir James Douie's Punjab Land Administration Manual (1931 edition):—

"'Defaulter' is defined in the Land Revenue Act as meaning 'a person liable for an arrear of land revenue', and as including 'a person who is responsible as surety for the payment of the arrear'. The definition has a wider scope than might at first sight appear. Reading it with section 61 of the Act, it is clear that all the landowners in an estate are defaulters if an arrear accrues in respect of any particular holding. In practice, the milder coercive processes, which are all that are usually needed, are directed either against the owner of the holding in respect of which the default arises or against his headman."

Again in para 522, at page 195, it is mentioned:—

"The actual defaulter or the headman who represents him may be arrested and detained at the tehsil or district office for ten days."

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It seems clear to me that the provisions of Chapter VI dealing with recoveries are concerned not only with landowners, but a headman or Lambardar as well, so far as they have made defaults in payment of land revenue dues which have accrued and which they have realised from the owners.

It is further contended by the counsel that section 75 of the Act is *ultra vires*. It is strange that such a contention should be raised when the Punjab State is not even made a party in these proceedings. Section 75 of the Act which has been reproduced aforesaid, empowers the Collector with previous sanction of the Commissioner to direct a sale of the property in recovery of the sum which is found due from the defaulter. The provision which has been on the statute book since 1887, to ensure the speedy realisation of land revenue cannot be struck down for the reason that it vests uncontrolled or arbitrary powers in the Collector. Such an order is open to appeal and revision and what is more, a suit can also be filed under sub-section (1) of section 78 of the Act which says:—

“Notwithstanding any thing in section 66, when proceedings are taken under this Act for the recovery of an arrear, the person against whom the proceedings are taken may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit in a civil court for the recovery of the amount so paid.”

It is significant that the petitioner himself has taken steps to file a suit as provided in sub-section (1) of section 78. A notice under section 80 of the Code of Civil Procedure has been sent by the petitioner and its copy has been filed as Annexure A to the petition. Section 13 of the Act provides for an appeal against any order passed by a Revenue Officer under this Act. The order being of Collector, an appeal could have been preferred to the Commissioner, or at least to the Financial Commissioner if it is found that the Commissioner having given his previous approval to the order of the Collector under section 75 could not have heard it. A further review is provided in section 15. The petitioner without resorting to these remedies has rushed to this Court in *certiorari* proceedings and he cannot be heard to agitate the question regarding the merits of the controversy whether the amount which is sought to be recovered from him through the recovery processes of section 75 of the Act is

actually due from him. The principal grievance of the petitioner is, and always seems to have been, that the amount which is sought to be recovered from him is not actually due. This is a point which should have been agitated before the appropriate authorities under the Act.

The petition must also fail on another ground as well. The impugned order had been passed by the Collector with the previous sanction of the Commissioner. The Commissioner has not been made a party to these proceedings. As I said in *Phalgu Dutt Kirpa Ram v. Smt. Pushpa Wanti and others* (1).

“It is absolutely necessary that the tribunal to quash whose order the application for the issue of a writ of *certiorari* is taken should be a party because without issuing notice to him, the records of the proceedings cannot be brought up to the High Court. The omission to make him a party to the petition goes to very root of the relief sought.”

It is the central point in the petitioner's case that there was no writ of demand issued against him and further, the action under section 75 had been taken without prior resort to section 72 and other preceding sections of the Act. Both these allegations of fact are denied and as mentioned aforesaid a writ of demand had actually been made on 12th of May, 1965, and a report of the process serving agency is that the petitioner, when served with the notice, had admitted his liability. Again, there is a clear assertion made on behalf of the respondent that proceedings had been taken under section 72 of the Act by attachment of the property. Moreover, the petitioner himself has admitted that he had been arrested under section 69 of the Act. It cannot, therefore, acceptably be urged that action by sale of property is being effected for the first time under the provisions of section 75 of the Act.

I have been asked by the counsel for the petitioner to ignore and brush aside the denials on questions of fact made in the written statement filed on behalf of the Deputy Commissioner for the reason that the document is not executed on a proper paper and the verification is defective. These technical defects cannot sway me from taking legal considerations into account and such presentation

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(1) A.I.R. 1960 Punj. 432.

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of facts as has been made by the counsel for the respondent based on facts brought on the record.

This petition being wholly without substance and merits is dismissed with costs.

K.S.K.

APPELLATE CIVIL

Before Harbans Singh, J.

AMAR NATH AND OTHERS,—*Appellants*

*versus*

GRAM PANCHAYAT RANWAN AND ANOTHER,—*Respondents*

Regular Second Appeal No. 1583 of 1962.

March 29, 1967

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Ss. 2(g) and 4—Shamilat land being utilised by a co-sharer to the exclusion of all others by cultivating himself through a servant or a tenant—Whether excluded from the definition of Shamilat—Muafidars—Status of—Whether similar to that of occupancy tenants—Lands occupied by them—Whether vest in the Gram Panchayat.*

*Held*, that the very idea of excluding from the definition of 'shamilat deh' such portion of it, as is in cultivating possession of a co-sharer and which is not in excess of his share, is that if a co-sharer has actually taken possession of some part of the *shamilat deh* before 1950, then he will continue to be in possession thereof, and the Gram Panchayat will have nothing to do with it. The idea apparently is that if a co-sharer is utilising a portion of the *shamilat* land to the exclusion of all others, then he is not to be disturbed. On the same reasoning, a part of the *shamilat* land utilised by a co-sharer to the exclusion of all others by cultivating himself through a servant or a tenant will be excluded out of the definition of *Shamilat*. His case would be covered by clause (ii) of section 4(3) of The Punjab Village Common Lands (Regulation) Act, 1961.

*Held*, that the main characteristic of an occupancy tenant is that he is in continuous occupation of the land and either does not pay anything to the landlord or makes very insignificant payment. The *muafidars* have also more or less all the characteristics of an occupancy tenant. Like an occupancy tenant, they