

(1991) 12 AHC CK 0028

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 23 of 1981

Lachman Prasad Agarwal and
another

APPELLANT

Vs

The District Magistrate and
another

RESPONDENT

Date of Decision: Dec. 5, 1991

Acts Referred:

- Cantonments Act, 1924 - Section 259, 259(1), 259(3)

Citation: AIR 1992 All 184 : (1992) 1 AWC 231

Hon'ble Judges: M. Katju, J; A.N. Varma, J

Bench: Division Bench

Advocate: Vinod Sinha, for the Appellant;

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

A.N. Varma, J.

By means of this petition, the petitioners are challenging the validity of the recovery proceedings initiated by the respondent Cantonment Board for realisation of arrears of house and water tax with respect to the disputed property particulars whereof are mentioned in paragraph 1 of the petition.

2. The challenge to the impugned recovery proceedings is two fold: first, that no notice of demand was served on the petitioners before the recovery proceedings were initiated and, second that in any case, the threatened arrest of the petitioner was without any authority of law.

3. We will take up the first point first. The allegation that no notice of demand was served on the petitioners has been denied in the counter-affidavit filed on behalf of the Cantonment Board. The denial is supported by documents which prove beyond

doubt that the petitioners had been duly served with the notice of demand. Thereupon they addressed letters to the Executive Officer of the Cantonment Board asking him to recover the tax from the tenants or from other heirs of Kamta Prasad Agarwal, the predecessor of the petitioners. Annexure CA-1 is a copy of one of these letters. In this letter the petitioner do not dispute the fact that the tax is due and recoverable. What they say is that the tax should be recovered from the tenants who are in occupation of the building in question. It is further asserted that under an agreement entered into between Ram Prasad, son of Kamta Prasad, and Sri Panna Lal Sharma, the latter has been collecting the rent since July 1979. Consequently, the taxes should be recovered from Panna Lal Sharma or the tenants.

4. This letter leaves no manner of doubt that before proceedings to recover the taxes, the petitioners had been served with a demand. The plea raised by the petitioners that they had not been served with any notice of demand before the recovery proceedings were initiated, therefore, does not merit any serious consideration, particularly when the assertions made in the counter-affidavit have not been controverted by the petitioners. No rejoinder affidavit has been filed though copy of the counter-affidavit was served on the petitioners in 1981. The contention, therefore, that the recovery is bad because it was not preceded by any notice of demand has no merit and must be rejected.

5. The second contention, however, has considerable substance. Section 259 of the Cantonments Act 1924 lays down the procedure for recovery of arrears of taxes. Subsection (1) of this provision lays down :

"259. 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 under leases or licences executed by or in favour of a Board or the Defence Estate Officer) under this Act or the rule 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 limit of the jurisdiction of such Judicial Magistrate, or by both these matters) 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 up to the value of five hundred rupees and implement and cattle used for the purpose of agriculture) shall be exempt from such distress or sale."

6. This provision clearly lays down that the only mode for recovery of tax prescribed under the Act is by distress and sale of moveable property of the defaulter or by attachment or sale of Immovable property of that person. The recovery by way of

arrest is, however, not a method prescribed under the Act. This has been made explicit by the proviso to sub-section (3) of Section 259 which states that the recovery of the amount mentioned under this provision cannot be made by the arrest or detention in prison of the defaulter.

7. In the result, the petition succeeds and is allowed in part. The respondents are restrained from recovering the impugned tax by arrest or detention of the petitioners. The Cantonment Board is, however, left free to recover the arrears of tax from the petitioners in any of the modes prescribed u/s 259 of the Cantonments Act. There will, however, be no order as to costs.

8. Petition partly allowed.