Indu Bhushan Gupta vs State Of U.P. & Ors on 1 August, 1979

Equivalent citations: 1979 AIR 1857, 1980 SCR (1) 179, AIR 1979 SUPREME COURT 1857, 1979 ALL. L. J. 1169, 1979 UJ (SC) 620, 1979 (4) SCC 47

Author: A.P. Sen

Bench: A.P. Sen, N.L. Untwalia

PETITIONER:
INDU BHUSHAN GUPTA

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT01/08/1979

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
UNTWALIA, N.L.

CITATION:
1979 AIR 1857 1980 SCR (1) 179
1979 SCC (4) 47

ACT:
U.P. Zamindari & Land Reforms Act 1950 Ss. 6, 289(1), 291(3)-Scope of-Taccavi loan taken by agriculturist-If could be deducted from compensation payable to him for abolition of Zamindaris.

HEADNOTE:
The appellant and the sixth respondent, who were brothers, constituted a joint Hindu family. Though younger in age than the sixth respondent, the appellant by virtue of a settlement, became Karta. Of the joint family. The family owned vast Zamindari properties. One of which was a Farm known as Mukundpur Farm. For the improvement of the Farm the appellant took taccavi loan by offering his half share in the joint family property as security. On his failure to repay the loan the Collector of the District ordered attachment of the hypothecated property under s. 150 of the U.P. Land Revenue Act, 1901. The appellant alleged that as a

result of the partition of properties between him and his brother the hypothecated property fell to the share of his brother, that under the compromise decree his brother undertook to discharge the loan and that therefore it was he who was responsible for repayment of the loan. (The Government, however was not impleaded as a party to the suit in which compromise was arrived at between the brothers.)

Sometime later the sixth respondent resiled from the compromise decree and stated that he was not liable to repay the loan because it was not taken by the appellant in his capacity as Karta of the joint family but that it was taken only in his (appellant's) personal capacity and that, therefore, he alone was liable to repay it. The Collector made enquiries and held that the loan was taken by the appellant in his individual capacity and not as Karta of the joint family and held that he was personally liable to repay the loan. Eventually it was decided that the realisation of the dues should be made from the hypothecated property as well as from his person and accordingly proceedings for realisation of the principal and interest on the loan were started.

The High Court rejected the appellant's writ petition. In appeal the following three questions were raised. (I) whether the taccavi loan was taken by the appellant as Karta of the joint family, and, therefore, had to be recovered from the sixth respondent to whose share the hypothecated property had fallen in the partition of the property; (2) Whether the Collector was precluded from taking resort to any one of other modes prescribed by s. 7(1) of the land Improvement Loans Act, 1883 for recovery of the sum remaining unrealised towards the taccavi loan; (3) Whether the Government had no right to recover the outstanding amount due except from the compensation amount in terms of s. 6 (e) thereof ?

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HELD: 1. The loan in question was taken by the appellant in his individual capacity and not as Karta of the joint family. By the terms of the taccavi bond the appellant had bound himself to discharge the liability from his property. Even

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assuming that he took the loan as Karta, he was personally and severally liable to pay. In the compromise suit the Government was not made a part and therefore, was not bound by the terms of the compromise decree; nor was the Government bound by the alleged partition effected between the. appellant and the sixth respondent. [185-D-E; 186C]

2.(a) Section 7(1) of the Land Improvement Loans Act empowers the Collector to recover taccavi dues from the defaulter as arrears of land revenue and the Collector could have taken resort to s.289(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, for the recovery of the unrealised amount of taccavi loan by attachment and

sales of properties belonging to the appellant. Section 289 applies only to those cases in which the provision of s. 243(1) have been made applicable and it is nobody's case that a notification contemplated by s. 243(2) was ever issued. The question of s. 289(2) operating as a bar to the recovery proceedings upon expiry of period of three years, therefore, does not arise. If s. 289(2) is read in the context of sub-s. (1) it will be clear that upon the expiry of the period of three years the village has to be restored free of claim on the part of the Government for any arrear of land revenue due in respect thereof. The consequence that ensures is that liability for payment of land revenue in respect of the village or any area therein in respect of which arrears are due stands discharged. But in regard to other Sums of money recoverable as arrears of land revenue the liability continues. [186D; G, 187E-F]

(b) As s. 291(3) contemplates that upon expiry of the period of lease, the holding shall be restored to the tenure-holder concerned free of any claim on the part of the State Government for any arrears in respect of such holding. In this case the period of the lease had not expired when the recovery proceedings were initiated. [188A-B]

3. Section 6(c) provides that all amounts due under the Land Improvement Loans Act shall become due forthwith upon the vesting of the Zamindari right. It also provides that such dues may, without prejudice to any other mode of recovery provided therefor, be realised by deducting the amount from the compensation money payable to such intermediary. What it provides is an additional mode of recovery for realisation of the dues. Under the scheme the Government has the option and the mode indicated in the section is not the one and the only mode available. The recovery proceedings pending before the Collector were for the remainder of the loan after such adjustment together with interest. [188F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2371 of 1969.

From the Judgment and order dated 23-5-1968 of the Allahabad High Court in Special Appeal No. 247/66.

G. L. Sanghi, Mrs. S. Bagga for the Appellant. G. N. Dikshit and O. P. Rana for Respondents 1-5.

The Judgment of the Court was delivered by SEN J.-This appeal, by certificate, is directed against a judgment of the Allahabad High Court dated May 23, 1968, whereby it upheld a judgment of a Single Judge of that Court dated March 16, 1966, dismissing the applicants writ petition to quash recovery proceedings initiated by the Collector, Azamgarh for realisation of the sum remaining due

on account of a taccavi loan under s.7 (1) of the Land Improvement Loans Act, 1883.

The facts leading to this appeal, in brief, are as follows: The appellant and his brother Shashi Bhushan Gupta the sixth respondent, constituted a joint Hindu family owning extensive zamindari properties, over several districts in United Provinces including Azamgarh zamindari comprising of 34 villages. They owned an agricultural farm known as Mukundpur Farm situated in Azamgarh zamindari. It is alleged that by virtue of a family settlement in 1940, the appellant even though younger in age, became the karta of the joint family.

By his application dated February 25, 1947 the appellant applied for a taccavi loan of Rs. 1,22,000 in the prescribed form for improvement of Mukundpur Farm, to the Director of Agriculture, United Provinces through the Collector, Azamgarh. The property offered as security for advance of the loan was the zamindari rights in Azamgarh zamindari comprising of the aforesaid 34 villages bearing a land revenue of Rs. 11,000/-. During the verification proceedings, the appellant by his application dated February 22, 1948, offered a security of his half share in Azamgarh zamindari, which on enquiry by the Collector for the grant of sanction for the loan, was evaluated at Rs. 1,43,869.66p. The taccavi loan was duly sanctioned by the Government on September 23, 1948.

The appellant having defaulted in payment of the loan, the Collector, Azamgarh by his order dated March 24, 1952 directed that the entire ilaqa lying in Tahsil Sagri, district Azamgarh forming part of the hypothecated property be attached under s. 150 of the U.P. Land Revenue Act, 1901. It, however, seems that no attachment of any land situated in Tahsil Sagri forming part of the hypothecated property had, in fact', been effected either under s.150 of the U.P. Land Revenue Act or s. 289 (1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950. It appears that some plots at the Mukundpur Farm lying in two villages, Mahnajpur and Ghaibipur, were later taken under the management of the Collector under s. 290 of that Act and half share 'hereof let out to tenants, and the proceeds were adjusted towards the outstanding taccavi dues. It also appears that a sum of Rs. 38,951.8P representing the appellant's half share of the compensation money due ,, and payable to him were adjusted under s.6 (e) of the Act towards the loan.

It is the appellant's case that there was a partition between the appellant and his brother, the sixth respondent in 1951, and the hypothecated property was allocated to the share of the sixth respondent. This resulted in a compromise decree between the appellant and his brother, the sixth respondent, in Civil Suit No. 72 of 1952 under the terms of which, the sixth respondent undertook upon himself the liability to discharge the loan as the property offered in security had fallen to his share. In compliance thereof, the sixth respondent actually paid Rs. 16,012.50P. The Government was admittedly not impleaded as a party to, the suit.

On July 15, 1952, the sixth respondent resiled from the terms of compromise and objected to the recovery proceedings being taken against him on the ground that the loan in question had not been taken by him nor had the appellant borrowed it in the capacity as karta of the joint family. He, indeed, denied the factum of partition. These objections were, however, over-ruled by the Sales officer, Azamgarh on October 22, 1952.

On May 15, 1953, the appellant applied to the State Government for expunging his name from the debtor-sheet. The application was forwarded by the Government to the Collector, Azamgarh for enquiry and report. The appellant raised an objection alleging inter alia that the loan had been incurred by him in his capacity as karta of the joint Hindu family and that since the hypothecated property had fallen to . to the share of the sixth respondent, he was not personally liable to repay the loan. The Collector by his order dated January 18, 1955, after holding an enquiry held that the appellant had taken the taccavi loan in his individual capacity and not as karta of the joint family and accordingly he was personally liable to repay the loan. He, however, directed the Sales officer that the recovery be made, in the first .. instance, from the hypothecated property before proceeding against the appellant personally. The action taken by the Collector was duly endorsed by the Land Reforms Commissioner by his letter dated April 7, 1955, and approved of the State Government by its order dated July 22, 1955. The recovery proceedings were accordingly initiated against the appellant.

lt appears that the appellant was a Member of the Legislative Assembly and apparently wielded considerable influence. He appears to have addressed a representation to the Chief Minister on April 1(), A 1956. The State Government referred the matter to the Commissioner, Gorakhpur Division, Gorakhpur who by his letter dated October 19, 1956 stated that he was fully in agreement with the Collector that the appellant must be treated as having taken the loan in his individual capacity and proceedings for its recovery had to be taken against the hypothecated property as well as against him personally. The latter also mentioned that the Collector had been asked, if necessary, to explain the case personally to the Chief Minister.

Evidently, the State Government after reviewing the matter at all levels, by its order dated August 13, 1957 directed that the realisation of the taccavi dues outstanding against the appellant should be made from the hypothecated property as well as from his person immediately. It further directed that 'all the modes for recovery legally permissible should be adopted against him simultaneously and pursued vigorously'.

Despite all this, the appellant has not paid a pie towards the outstanding debt except through coercive process. On December 17, 1) 1957, the appellant addressed a representation to the Board of Revenue although under the taccavi rules no appeal or revision lay to the Board. It is somewhat strange that the Addl. Land Reforms Commissioner, contrary to the Government's orders in that behalf, submitted a report, on his own, upholding the appellant's contention that he had borrowed the loan in his capacity as karta of the joint family, and recommending that the loan in question should be recovered from the hypothecated property. The state Government naturally did not act upon this gratuitous advice. On June 19, 1959, the appellant has informed of the Government's decision. Thereafter, the Collector started proceedings for realisation of Rs. 72,152.50P as principal and Rs. 23,689.81P as interest.

Thereupon, the appellant on August 4, 1959 moved the Allahabad High Court under Art. 226. The appellant's writ petition was dismissed by a learned Single Judge. It appears that the contention that the loan was incurred by him as karta of the joint Hindu family was not raised before the learned Single Judge, as he observes "It appears that recovery proceedings were taken against the

Mukundpur Farm, which, it is not disputed, belongs exclusively to the petitioner". He negatived the contention that the Collector had let out a part of the Mukundpur Farm in 1952 and therefore, after expiry of a period often years, the Government was precluded by reason of s.291 (3) of the U.P. Zamindari Abolition and Land Reforms Act from further continuing the recovery proceedings. He held that this involved a 13-475 SCI/79 disputed question of fact as according to the Government certain plots of Munkundpur Farm were first let out in 1959- 60 and not in 1952, and therefore, the bar of s.291 (3) was not applicable. As regards the contention based on s.6 (e) of the Act that the Government had no power to make the recovery except from out of the compensation amount, he held that the provision did not debar the Government from proceeding otherwise. On the question of accounting he held that the submission calls for an accounting of the amount received by such letting out and there was no material upon which the decision of the Court could rest.

On appeal, the appellant for the first time raised an objection as to his personal liability alleging that the loan in question was incurred by him in the capacity of karta, and, therefore, recoverable from the hypothecated property alone. There was a difference of opinion on the question between the learned Judges constituting the Bench as to whether he had taken the loan as karta of the joint family or in his individual capacity, but nonetheless the appeal failed because they repelled all other contentions.

Four questions arise in this appeal: 1. Whether the taccavi loan was incurred by the appellant as a karta of the joint Hindu family and not in his individual capacity and, therefore, the loan in question has to be recovered from the sixth respondent, inasmuch as the hypothecated property had fallen to his share in a family partition ? 2. Is the Collector precluded from taking resort to any one or other modes prescribed by s.7 (1) of the Land Improvement Loans Act, 1883, for recovery of the sum remaining unrealised towards the taccavi loan, by reason of s.289 (2) or s.291 (3) of the U.P. Zamindari Abolition and Land Reforms Act, 1950? 3. Have the Government no right to recover the outstanding amount due except from the compensation amount in terms of s.6 (e) thereof? 4. Was the Government bound to render an account of the rents and profits derived from letting out of the plots of Mukundpur Farm?

Section 7 (1) of the Land Improvement Loans Act, 1883, reads as follows:

> "7 (1) Subject to such rules as may be made under section ten, all loans granted under this Act, all interest (if any) chargeable thereon, and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely:-
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> (a) from the borrower-as if they were arrears of land-revenue due by him;
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> (b) from his surety (if any)-as if they were arrears of land- A revenue due by him; (c)
>
> (c) out of the land for the benefit of which the loan has been granted-as if they were arrears of land-revenue due in respect of that land;

> (d) out of the property comprised in the collateral security (if any)-according to the procedure for the realization of land-revenue by the sale of immovable property other than the land on which that revenue is due."

on the first point, we agree with one of the learned Judges (Uniyal J.). The conclusion reached by the learned Judge that 'the taccavi loan was taken by the appellant in his individual capacity' is the only conclusion possible. The appellant maintained that the loan was incurred for family purposes i.e., for improvement of Munkundpur Farm by the appellant in his capacity as the karta and it having fallen to the share of the sixth respondent in the family partition, the recovery proceedings against the appellant under s. 7 were not maintainable. We fail to see how can the appellant escape liability on this account. The Government was not a party to Civil Suit No. 72 of 1952 and was, therefore, not bound by the terms of the compromise decree. Nor was the Government bound by the alleged partition effected between the appellant and the sixth respondent.

It matters little whether there was a partition or not in 1951; and if so, whether the hypothecated property had fallen to the share of the sixth respondent. The appellant had bound himself by the terms of the taccavi bond to discharge the liability from his property The instrument is not on record. The document was, however, before the High Court. Uniyal J. in the course of his judgment, with regard to appellant's personal liability, observes:

> "He pledged his half share in 34 villages of Tahsil Sagri. After verification of the proprietary rights of the appellant in the hypothecated property, the Collector issued a certificate declaring that the same as sufficient to cover the amount of taccavi loan. Thereupon a formal document in the nature of taccavi bond was executed by the appellant of the one part and the Collector of the other part evidencing the transaction of loan. A list containing particulars of the immovable property was annexed to the bond, and it was stated therein that a half share of the appellant in the said zamindari property had been pledged by way of security." (Emphasis supplied) The correctness of this observation is not open to question. The learned Judge then goes on to say:
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> "The naqsha maliyat attached to the taccavi bond clearly mentioned the details of the hypothecated property in tahsil Saygri consisting of one half share of the appellant."

He then rightly concludes, saying:

> "It is of no consequence if the creditor proceeds against the share of the Karta alone in the joint family property hypothecated as security for the loan, or from his person, or both."

We concur in the conclusion reached by the learned Judge that the loan in question was taken by the appellant in his individual capacity and not as a karta of the joint Hindu family. Even assuming he took the loan as karta, still he would be personally and severally liable to repay it.

The remaining points are equally devoid of substance. The contention based on s. 289 (2) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 does not arise. No doubt, the Collector is em powered under s. 7 (1) of the Land Improvement Loans Act to recover all the taccavi dues from the defaulter as arrears of land revenue, and by reason of s. 288, the provisions of s. 289 are attracted. By s. 288 it is provided that the provisions of the Act with regard to the recovery of arrears of land revenue shall apply to all arrears of land revenue and' 'sums of money recoverable as arrears of land revenue' due at the commencement of the Act. The Collector could, therefore, have taken resort to s. 289 (1) for the recovery of the unrealised amount of the taccavi loan by attachment and sale of properties belonging to the appellant. But, the ilaka of Tahsil Sagri was not, in fact, ever attached under s. 289 (1). In the instant case, no previous sanction of the Board of Revenue was obtained under s. 272(2). Consequently, the attachment could not be said to be one made under s. 289 (1). Further, s. 289 applies only to those cases in which the provisions of s. 243(1) have been made applicable by the Government under a notification issued under s. 243 (2) . It is nobody's case that a notification contemplated by s. 243 (2) was ever issued. The question of s. 289 (2) operating as a bar to the recovery proceedings after expiry of a period of three years, therefore, does not arise.

There is also a fallacy in the argument. The provisions of s. 289 run thus.

> "289. Attachment of village for arrears of land revenue.- (1) At any time after an arrear of land revenue has accrued, the Collector may attach the village or any area therein in respect of which the arrear is due and place it under his own A management or that of an agent appointed by him for that purpose for such period as he may consider necessary:
>
> Provided that the period for which any village or any area therein may be so attached, shall not exceed three years from the commencement of the agricultural year next following the date of attachment, and the attachment shall be cancelled if the arrears are sooner liquidated.
>
> (2) Upon the expiry of the period of attachment, the village shall be restored free of any claim on the part of the Government for any arrear of land revenue due in respect thereof."

When an arrear of land revenue has accrued, the Collector may under s. 289(1) attach a village or any area therein in respect of which the arrear is due and place it under his own management or that of an agent appointed by him for that purpose. The proviso to s. 289 (1), however, interdicts that the period for which any village or any area therein may be so attached, shall not exceed three years from the commencement of the agricultural year next following the date of attachment, and the attachment shall be cancelled if the arrears are sooner liquidated.

If s. 289 (2) is read in the context of sub-s. (1), it will be clear that upon the expiry of the period of three years the village has to be restored free of any claim on the part of the Government for any arrear of land revenue due in respect thereof. The consequence that ensues is that liability for payment of land revenue in respect of the village or any area therein in respect of which arrears are

due stands discharged. There is a distinction between arrears of land revenue and other government dues recoverable as if they were arrears of land Revenue. In respect of other sums of money recoverable as arrears of land revenue, the debtor is not discharged of his liability for payment of such dues even after three years.

The next question is whether by virtue of s. 291 (3), the appellant stood relieved of all liability for payment of arrears of taccavi due after the expiry of ten years. We may here read s. 291 (3). It is in these terms:

> "291 (3) Upon the expiry of the period of lease the holding shall be restored to the tenure-holder concerned free of any claim on the part of the State Government for any arrears in respect of such holding."

The High Court has relied upon the affidavit of the Chief Revenue Accountant, Collectorate stating that certain plots of Mukundpur Farm were for the first time let out in the year 1959-60. It would, therefore, appear that the period of ten years had not expired when the recovery proceedings were initiated.

There remains the question whether the Government is bound to recover the unrealised sum of taccavi loan from the amount of compensation money and relying upon s. 6 (e) of the U.P. Zamindari Abolition and Land Reforms Act it is urged that is the only remedy left. The contention, we are afraid, proceeds on a misconception of the purport and effect of s. 6 (e) of the Act, which reads:

> "6(e). all amounts ordered to be paid by an intermediary to the State Government under Sections 27 and 28 of the U.P. Encumbered states Act, 1934, and all amounts due from him under the Land Improvement Loans Act, 1883, or the Agricultural Loans Act, 1884, shall, notwithstanding anything contained in the said enactments, become due forthwith and may, without prejudice to any other mode of recovery provided therefor, be realized by deducting the amount from the compensation money payable to such intermediary under Chapter III."

It is plain upon its terms, that the provisions of s. 6(e) are not obligatory. It is an enabling provision. It provides that all amounts due under the Land Improvement Loans Act, shall notwithstanding anything contained therein, become due 'forthwith', upon the vesting of the zamindari rights. It then lays down that such dues may, with out prejudice to any other mode of recovery provided therefor, be realised by deducting the amount from the compensation money payable to such intermediary. It, therefore, provides an additional mode of recovery for realisation of the dues. The word 'may' in s. 6(e) clearly indicates that the Government has the option to fall back upon the compensation amount. It does not entail in the consequence that the mode indicated in s. 6(e) is the one and the only mode available. The High Court has observed that the entire amount of compensation money which fell to the appellant's share amounting to Rs. 38,951.8P had been adjusted towards the loan, on the basis that the half share of the appellant in the zamindari property had been hypothecated as security for the loan. The recovery proceedings now pending before the Collector is for the balance

remaining after such adjustment together with interest.

It was faintly argued by learned counsel for the appellant that the Government was bound to render an account of the rents and profits realised from the letting of plots of Mukundpur Farm, but he did not A pursue the argument any further and rightly so. The High Court has observed that it had scrutinized the accounts maintained by the Government and the same have been maintained as required by the taccavi rules as per appendix 'A' to Form VII. It was certainly not open to the High Court to grant any such relief under Art. 226 of the Constitution particularly when it involved consideration of disputed question of fact.

The result, therefore, is that the appeal fails and is dismissed with costs.

P.B.R. Appeal dismissed.