Power Machines India Limited vs State Of Mahdya Pradesh & Ors on 17 April, 2017

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Bench: S. Abdul Nazeer, Arun Mishra

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5317 OF 2017
(Arising out of S.L.P.(C) No.29266 of 2016)

POWER MACHINES INDIA LIMITED …Appellant(s)

VERSUS

STATE OF MADHYA PRADESH & ORS. …Respondent(s)

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted.

2. This appeal has been preferred by the appellant – Power Machines India Ltd., aggrieved by the judgment and order dated 18.7.2016 passed by the High Court of Madhya Pradesh at Jabalpur, thereby dismissing the Writ Petition filed by the appellant for declaring Rule 5 of Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006 (hereinafter referred to as "the Rules') ultra vires, which had been framed by the Government of Madhya Pradesh in exercise of the power conferred by section 30 read with section 21(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the Act of 2006"). Rule 5 provides for recovery of the amount for which award is passed under section 18(3) of the Act of 2006 as arrears of land revenue thereby providing additional remedy for recovery of the awarded sum than the one provided in section 36(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996").

3. It is pertinent to mention that the award was passed under the Act of 2006 by which the appellant was directed to pay awarded sum to respondent No.3 i.e. Lakshmi Engineering Industries (Bhopal) Pvt. Ltd. The award was passed by the Madhya Pradesh Facilitation Council for a sum of Rs.1,15,77,630/- along with an amount of Rs.1,04,96,746/- towards interest up to 10.1.2013. Payment of actual amount of interest was @ three times of the bank rate as notified by the Reserve Bank of India to be paid within 30 days of the award. The award was passed on 15.1.2014.

4. The Collector, Noida, initiated recovery of the amount as per letter dated 2.4.2016 issued by the Madhya Pradesh Micro and Small Enterprises Facilitation Council under the Rules. The recovery citation was served upon the appellant on 20.4.2016 purported to be one under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. Another citation was received by the appellant on 16.5.2016 which was issued on 20.4.2016. Thereafter, appellant filed a writ petition before the Allahabad High Court for quashing the recovery proceedings. However, Tehsildar of Dadri, Gautam Buddha Nagar on 23.5.2016 withdrew an amount of Rs.1,18,78,588.14/- from the appellant's bank account with ICICI Bank pursuant to the recovery citation. On 24.5.2016, it is averred by the appellant that a further amount of Rs.2,12,33,618.57/- was recovered from the bank account of the appellants with the State Bank of India. The appellant filed Writ Petition [C] No.11824 of 2016 in the High Court of Madhya Pradesh for declaring Rule 5 as ultra vires. The appellant filed another W.P. [C] No.12127 of 2016 for quashing the recovery proceedings on the ground that the recovery was not in compliance with Rule 5. The said writ petition questioning the rule had been dismissed. Writ Petition [C] No.12127 of 2016 had been allowed by the High Court of Madhya Pradesh and it permitted respondent No. 3 to initiate recovery proceedings under the rule de novo and in accordance with law. The petition filed in the High Court of Allahabad was dismissed in view of the fact that the aforesaid writ petition had been allowed by the High Court of Madhya Pradesh.

5. The Tehsildar, Dadri issued fresh recovery proceedings under Rule 5 for recovery of Rs.5,29,58,937/- as per the award dated 15.1.2014. Fresh recovery citation was served on the petitioner on 19.9.2016. The High Court of Madhya Pradesh in the impugned judgment and order has held that Rule 5 is not ultra vires and is in strict conformity with the Act of 2006. Aggrieved thereby, the appeal has been preferred.

6. It was submitted by Mr. P. Chidambram and Dr. A.M. Singhvi, learned senior counsel representing the appellant that Rule 5 is ultra vires, arbitrary and violative of Article 14 of the Constitution of India and is repugnant to the provisions contained in section 36 of the Act of 1996 read with the provisions contained in section 18 of the Act of 2006. It is beyond rule making power conferred under sections 21 and 30 of the Act of 2006. Once the provisions of the Code of Civil Procedure (for short, 'the CPC') had been made applicable, recovery could have been initiated only under Order 21 of the CPC which provides adequate safeguards to the judgment debtor. Order 21 Rule 22 of the CPC provides that in case execution is made after more than two years, delay has to be explained. There is power with the court to stay execution under Order 21 Rule 26 of the CPC. Order 21 Rule 58 of the CPC provides for an objection to attachment of property and the procedure is provided under Order 21 for adjudication of objections. In case objection is not entertained, there is a right to file a suit as provided in Order 21 Rule 58(1) of the CPC. Elaborate procedure is provided under Order 21 Rules 66, 69, 89 and 92 of the CPC with respect to sale, if required. The remedy

provided under Rule 5 of the Rules does not contain the aforesaid safeguards and the amount can be recovered outrightly as arrears of land revenue. Thus, the remedy is harsh under Rule 5 and thus could not have been resorted to. It was also strenuously urged on behalf of the appellants that in the four States only, i.e., West Bengal, Madhya Pradesh, Punjab & Haryana and Andhra Pradesh recovery is made as per the CPC provided under section 36 of Act of 1996. Thus, there is a discriminatory provision made by the four States which is quite arbitrary and impermissible. States could not have enacted a provision in derogation to what is contained in the Central legislation.

7. It was contended on behalf of the respondents that the rule has been framed within the purview of section 30 of the Act of 2006. It is in furtherance of the objective of the Act to provide speedy recovery. There is no repugnancy with the provisions of the Act of 2006 or that of the Act of 1996. It is impermissible to provide inconsistent remedies also. In such matters there is no question of conflict of provisions. It is open to elect one of the remedies out of the available ones.

8. Before adverting to the rival submissions, it is appropriate to refer to the relevant provisions of Rule 5 of the Rules which provides for recovery of the amount awarded under the Act of 2006 read with the Act of 1996. Rule 5 is extracted hereunder :

> "5.Recovey of amount due as arrears of land revenue:
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> If a buyer does not file any appeal under section 19 of the Act for setting aside any decree, award or other order made either by the Council itself or by any institution or centre or if such appeal is dismissed, in that situation such decree, award or order shall be executed by the Collector of the District concerned and the amount due shall be recovered as arrears of land revenue."

9. The aforesaid Rule 5 has been framed in exercise of the power conferred by the State Government to frame the rules under section 30 of the Act of 2006 which enables the State Government to make the rules. Section 30 is extracted hereunder :

> "30. Power to make rules by State Government.—(1) The State Government may, by notification, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
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> (a) the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of Section 21;
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> (b) any other matter which is to be or may be, prescribed under this Act. (3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House." Section 30 enables the State

Government to make rules to carry out the provisions of the Act. The power is general and pervasive in nature. It encompasses any other matter which is to be and may be prescribed under the Act, and the Rule is required to be laid in the House of the State Legislature.

10. The Act of 2006 has been enacted for the benefit of micro, small and medium enterprises. The object of the Act is to provide for facilitating the promotion and development, enhancing the competitiveness of micro, small and medium enterprises and the matters connected therewith or incidental thereto. Section 18 of the Act of 2006 is extracted hereunder :

> "18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
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> (2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act. (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act." (4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.
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> (5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.." Section 18(1) of the Act of 2006 provides that the dispute with respect to any amount due under section 17 may be referred to the Facilitation Council. On reference being made, the Council can itself conduct reconciliation with the assistance of any institution or ADR Centre. In that case provisions of sections 65 to 81 of the Act of 1996 shall apply and in case conciliation under section 18(2) is not successful, Council shall either itself take up the dispute for arbitration or refer it to some other Centre or institution for arbitration and thereupon the provisions of the Act of 1996 shall apply.

11. Section 36 of the Act of 1996 provides that once the time for filing application to set aside an arbitral award under section 34 has expired, the same shall be enforced in accordance with the provisions of the CPC as if it were a decree of the court. Section 36(1) is extracted hereunder :

> "36. Enforcement.— (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.
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> (2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.
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> (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:
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> Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)." No doubt about it that by virtue of the provisions contained in section 18(3) of the Act of 2006, the provisions contained in section 36 of the Act of 1996 are clearly applicable and it is permissible to execute the arbitral award in accordance with the procedure prescribed for execution of a decree under the CPC.

12. However, the question in the instant case is whether it was permissible to the State Government to enact Rule 5 of the Rules for recovery of the amount as arrears of land revenue and whether speedy remedy could have been provided under the Rules framed under the Act of 2006, notwithstanding the remedy as provided in section 36 of the Act of 1996 for executing the arbitral award as a decree in accordance with the provisions of the CPC, while providing remedy the State has exceeded its ken of powers.

13. Section 30 of the Act of 2006 extracted above clearly authorizes the State Government to frame the rules to carry out the provisions of the Act and the power is general, as is apparent from reading of section 30(1), 30(2) and 30(2)(b). The objective of the Act is to provide protection to the micro, small and medium enterprises and to facilitate their development. In order to carry out the objective of the Act speedy recovery mechanism has been provided under Rule 5 of the Rule by providing that amount awarded in an arbitral award can be recovered as arrears of land revenue. No doubt that Rule 5 is inconsistent with the provisions contained in section 36(1) of the Act of 1996 which provides recovery mechanism under Order 21 of CPC as a decree, but, in the matter of providing

such remedies, it is open to legislate different remedies which may be inconsistent. It is a question of electing a remedy. Election of a remedy for recovery of the amount would depend upon the choice of the award-holder. Both the provisions i.e. section 36 of the Act of 1996 as well as Rule 5 of the Rules of 2006 intend to recover the amount though by different procedures. Intendment of provisions is same. There is no question of any prejudice being caused to the judgment debtor.

14. In Bihar State Co-operative Marketing Union Ltd. v. Uma Shankar Sharan & Anr. (1992) 4 SCC 196 question arose of plurality of the remedies provided under sections 40 and 48 of the Bihar and Orissa Cooperative Societies Act, 1935. Both the provisions may be attracted to a case. It was held that application of section 40 will not exclude operation of section

48. It is only a question where one of the provisions has to be opted. This Court has further held that when two remedies are provided under a statute even if inconsistent, would continue to be in operation until one of them is elected for application. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, for commencing an action. As no action under section 40 was taken, this Court held that section 48 was available to the appellant for recovery of the loss. This Court in Bihar State Cooperative Marketing Union Ltd. (supra) has laid down thus :

> "6. Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly. In the present case there is no such problem as no steps under Section 40 were ever taken by the appellant. The provisions of Section 48 must, therefore, be held to be available to the appellant for recovery of the loss.
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> 7. Our view that a matter which may attract Section 40 of the Act will continue to be governed by Section 48 also if the necessary conditions are fulfilled, is consistent with the decision of this Court in Prem Jeet Kumar v. Surender Gandotra arising under the Delhi Co-operative Societies Act, 1972. The two Acts are similar and Sections 40 and 48 of the Bihar Act and Sections 59 and 60 of the Delhi Act are in pari materia. The reported judgment followed an earlier decision of this Court in Pentakota Srirakulu v. Co-operative Marketing Society Ltd. We accordingly hold that the High Court was in error in assuming that the application of provisions of Section 48 of the Bihar Act could not be applied to the present case for the reason that Section 40 was attracted." It is apparent from the aforesaid dictum of this Court that providing of plural remedies is valid when two or more remedies are available to a person even if inconsistent, they are valid. It is for the person to elect one of them and there is no question of repugnancy in providing such remedy.
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> 15. In "Principles of Statutory Interpretation" by Justice G.P. Singh, 14th Edn. while dealing with the question of inconsistency and repugnancy, it has been observed that

harmonious construction has to be adopted and the principle that special provision excludes the application of general provision has not been applied when two provisions deal with the remedies for the reason that the validity of plural remedies cannot be doubted, even if the two remedies are inconsistent, court has to harmonize the provisions. Following discussion has been made :

"(b) Inconsistency and repugnancy to be avoided; harmonious construction It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise". Accordingly, the provisions of the Maharashtra Regional and Town Planning Act, 1966, were read together by the Supreme Court and after noting the purpose of the Act. The Act was held not to envisage a situation of conflict, and therefore, the edges were required to be ironed out to read those provisions of the Act which were slightly incongruous, so that all of them are read in consonance with the object of the Act, which is to bring about orderly and planned development. It should not be lightly assumed that "Parliament had given with one hand what it took away with the other". The provisions of one section of a statute cannot be used to defeat those of another "unless it is impossible to effect reconciliation between them". The same rule applies in regard to sub- sections of a section. In the words of Gajendragadkar, J. "The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy". As stated by Venkatarama Aiyer, J., "The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction". That, effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a "useless lumber" or dead letter" is not harmonious construction. To harmonise is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in particular situations. The principle is expressed in the maxims Generalia specialibus non derogant, and Generalibus specilia derogant. If a special provisions is made on a certain matter, that matter is excluded from the general provision. Apart from resolving conflict between two provisions in the Act, the principle can also be used for resolving a conflict between a provision in the Act and a rule made under the Act. Further, these principles have also been applied in resolving a conflict between two

different Acts and two provisions in the Constitution added by two different Constitutions Amendment Acts and in the construction of statutory rules and statutory orders. But the principle, that a special provision on a matter excludes the application of a general provision on that matter, has not been applied when the two provisions deal with remedies, for validity of plural remedies cannot be doubted. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from. Until he elects one of them."

16. Thus, the submission raised by learned senior counsel on behalf of the appellant that Rule 5 is inconsistent and repugnant to the provisions of section 36 of the Act of 1996 cannot withstand judicial scrutiny and is liable to be rejected on the anvil of the aforesaid reasoning.

17. This Court while considering the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in Mardia Chemicals Ltd. & Ors. v. Union of India (2004) 4 SCC 311 has held that secured interest can be enforced without intervention of the court. This Court has also laid down that there is a presumption of constitutionality in favour of the legislation. While considering presumption in favour of such legislation it would be necessary to see that the person aggrieved gets a fair deal at the hands of those vested with power under such legislation. This Court also considered the question whether the SARFAESI Act was uncalled for and a superimposition of an undesired law in the light of operation of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in the field. This Court has laid down that given the level of indebtedness and NPAs on the balance-

sheets of banks and financial institutions, the time taken for recovery of debts via the civil courts, the importance of liquid and solvent banks and financial institutions to economic progress, especially in the present day global economy with a need to give up old and conventional methods of financing and recovery of debts, and the failure of the 1993 Act to bring about the desired results, it could not be said that a step taken towards securitization of debts and to evolve means for faster recovery of NPAs was not called for. This Court has also laid down that primacy is to be given to public interest over private interest. Thus, the provision of recovery outrightly, without recourse to the Civil Court, was upheld. In the instant case, the recovery of arrears of land revenue has been resorted to after adjudication process when arbitral award had been passed and when it is not objected to within the time prescribed under section 34 of the Act of 1996. Thus, the procedure cannot be said to be illegal or arbitrary in any manner and cannot be said to be violative of Article 14 of the Constitution, as contended by the appellant. On the basis of aforesaid reasoning it is clear that Code of Civil Procedure cannot be the only remedy. It is open to legislate recovery mechanism without interference of Civil Court.

18. The submission was raised on behalf of the appellant that Order 21 of the CPC provides more safeguards under different rules, which are referred to above, to a judgment debtor to raise various kinds of objections to file suits and has a right to object also at various stages. No doubt that a

detailed procedure is provided under the CPC. But by now it is well known that after a decree is obtained, it has become more difficult to ensure its speedy execution due to misuse of the provisions by unscrupulous judgment debtors of a detailed procedure prescribed for execution of a decree in CPC which was never envisaged. Thus, providing a speedy recovery by way of arrears of land revenue, in fact, was the need of the day and Rule 5 has been rightly enacted to ensure speedy recovery and to ensure that small, micro and medium industries do not suffer.

19. We find no force in the submission that the recovery procedure as arrears of land revenue is harsh. It is quite reasonable and is provided in various enactments for recovery of the sums due. The procedure cannot be said to be illegal, arbitrary, onerous or harsh in any manner.

20. Learned counsel appearing on behalf of the appellant has placed reliance on the decision in Agricultural Market Committee v. Shalimar Chemical Works Ltd. (1997) 5 SCC 516 which has been laid down thus :

> "24. The power of delegation is a constituent element of the legislative power as a whole under Article 245 of the Constitution and other relative Articles and when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by the Acts as part of the Administrative Law. The Legislature has to lay down the legislative policy and prin-ciple to afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf (See: Vasantlal Maganbhai Sanjanwala v. The State of Bombay and Others, [1961] 1 SCR 341. This Court in another case, namely, The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, AIR (1968) SC 1232 as also in an earlier decision in In Re : The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947, and The Part C States (Laws) Act, 1950, [1951] SCR 747 has laid down the principle that the Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act concerned.
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> 25. In Avinder Singh v. State of Punjab, [1979] 1 SCC 137, Krishna Iyer, J.

laid down the following tests for valid delegation of legislative power. These are :

> "(1) the legislature cannot efface itself :
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> (2) it cannot delegate the plenary or the essential legislative function; (3) even if there be delegation, Parliamentary control over delegated legislation should be a living continuity as a constitution-al necessity."

It was further observed as under :

> "While what constitutes an essential feature cannot be delineated in detail it certainly cannot include a change of policy. The legislature is the master of legislative policy and if the delegate is free to switch policy it may be usurpation of legislative power itself."

26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the Legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice but the Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to Taxing Statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary Rules and Regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making Rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act." This Court has laid down that the legislature has to lay down the legislative policy to delegate for carrying out the said policy. What can be delegated is the task of the subordinate legislation necessary for implementing the purposes and objects of the Act. In the instant case by exercising the rule making power conferred under Section 30, the purpose of the Act of 2006 is being protected. The rule intends to implement the object. It cannot be said that authority has been exceeded nor it can be said that the scope of the Act has been widened or constricted under the garb of rule making power. Object of both provisions is to ensure recovery.

21. Reliance has also been placed on a decision of this Court in Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council & Ors. (2004) 8 SCC 747 in which this Court has observed that delegated legislations are subject to certain fundamental factors. The delegatee is not intended to travel wider than the object of the legislature. A delegatee cannot extend the scope or general operation of the enactment but power is strictly ancillary. This Court has laid down thus:

> "13. It may be noted that under Paragraph 8, the Chairman or the Speaker of a House is empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules being delegated legislation are subject to certain fundamental factors. Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what

> is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter "Delegated Legislation" in Francis Bennion's Statutory Interpretation, 3rd Edn.) The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision. No rules can be framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, the rules should be interpreted consistent with the aforesaid principle." In our opinion Rule 5 of the Rules being a remedial provision is ancillary. It is open to provide for an additional speedier remedy so as to carry out the objective of the Act.

22. Reliance has also been placed on a decision of this Court in B.K. Srinivasan & Ors. v. State of Karnataka & Ors. (1987) 1 SCC 618 in which this Court considered the question that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Mode of publication of subordinate legislation should be reasonable, which is necessary, only then it will take effect. The question was entirely different. Even otherwise procedure for recovery of land revenue is quite reasonable.

23. Reliance has been placed on Academy of Nutrition Improvement & Ors. v. Union of India etc. (2011) 8 SCC 274 in which this Court has laid down thus :

> "66. Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words "to carry out the provisions of this Act" or "to carry out the purposes of this Act". This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words "in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters". Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularization of the matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in Section 23(1-A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the rule can be justified with reference to the general power conferred on the Central Government under Section 23(1), provided the rule does not travel beyond the scope of the Act. "But even a general power to make rules or regulations for carrying out or giving effect to the Act, is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the Act. Therefore, such a power 'will not support attempts to widen the purposes of the Act, to add new and different means to carrying them out, to depart from or vary its terms'." Considering the question of power of food authority under section 7(iv) to ban a food article in

> interest of public vis-à-vis power of the Central Government under section 23 to make rule, it was held that the Central Government cannot exercise power under section 23 to ban use of non- iodised salt for human consumption. Thus, provision of Rule 44-I of Prevention of Food Adulteration Rules, 1955 was held to be ultra vires. Rule 44-I was wholly outside the scope of the Act. It was held not to be a rule made or required to be made to carry out the provisions of the Act having regard to its object and the scheme whereas the position in the instant case is juxtaposed. Hence the decision is of no help to the appellants.

24. Similarly reliance has been placed on a decision of this Court in General Officer Commanding-in-Chief & Anr. v. Dr. Subhash Chandra Yadav & Anr. (1988) 2 SCC 351. Rules were framed enabling the transfer of one Cantonment Board's employee to another. It was held that service was not transferable as such Rule 5 was ultra vires of section 280(2)(c) of the Cantonments Act, 1924. On facts the case has no application.

25. Reliance has also been placed on International Airports Authority of India v. K.D. Bali & Anr. (1988) 2 SCC 360 in which it has been laid down that when subordinate legislation is in conflict with the Parent Act then it must give way to the substantive statute. The principle has no application in the case of remedial statutory provisions as plurality of inconsistent remedies can always be provided and only one remedy has to be chosen. In Avinder Singh & Ors. v. State of Punjab & Ors. (1979) 1 SCC 137, it has been laid down that a delegate is not free to switch policy laid down by the Legislature. On the anvil of the aforesaid reasons, the decision is of no utility to the cause espoused.

26. Reliance has also been placed on Suraj Mall Mohta & Co. v. A.V. Visvanatha Sastri & Anr. (1955) 1 SCR 448 in which it has been observed that if persons dealt with by the impugned Act are deprived of the substantial and valuable privileges which they would otherwise have if they were dealt with under the Indian Income-Tax Act, in that situation it is no defense to say that discriminatory procedure also advances the course of justice. The matter has to be judged from the point of view of the ordinary reasonable man and not from the point of view of the Government. The ordinary reasonable man would say, when the stakes are heavy and serious charge of evasion of income-tax are made against him, why one person similarly placed should have the advantage substantially of the procedure prescribed by the Indian Income Tax Act, while another person similarly situated be deprived of it. The ratio of said decision has no application to the instant case, provision in question being remedial one and no substantial or valuable privilege is being deprived of by Rule 5. It is only procedural provision and intends to simplify the procedure of execution, once arbitral award is passed.

27. Reliance has also been placed on Shree Meenakshi Mills Ltd., Madurai etc. v. Sri A.V. Visvanatha Sastri & Anr. AIR 1955 SC 13 in which this Court has laid down thus :

> "3. The procedure prescribed by the Act for making the investigation under its provisions is of a summary and drastic nature. It constitutes a departure from the ordinary law of procedure and in certain important aspects is detrimental to the persons subjected to it and as such is discriminatory. The substantial differences in

> the normal procedure of the Income Tax Act for catching escaped income and in the procedure prescribed by Act 30 of 1947, were fully discussed by this Court in Suraj Mal Mohta v. Sri A.V. Visvanatha Sastri AIR 1954 SC 545 and require no further discussion here." In said case, there was substantial difference in the normal procedure of the income-tax Act for catching escaped income and in the procedure prescribed by Act 30 of Taxation on Income (Investigation Commission) Act, 1947. The classification made was held to be impermissible without any rationale. Such is not the situation in the instant case. The procedural provision of recovery of arrears of land revenue cannot be said to be prejudicial to the appellants. Once adjudication of dues has been made it was expected of the appellant to honour it after lapse of time under Section 34 of Act of 1996.

28. The decision in Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay & Ors. (1974) 2 SCC 402 has also been referred to in which this Court has laid down thus :

> "14. To summarise: Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in Anwar Sarkar's case and Suraj Mall Mohta's case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art.14. Even there, as mentioned in Suraj Mall Mohta's case (supra) a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in Saurashtra case (supra) and Jyoti Pershad's case (supra) the statute will not be hit by Art.14. Then again where the statute itself covers only a class of cases as in Haldar's case (supra) and Bajoria's case (supra) the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the contention that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supported by reason or authority." In Maganlal Chhaganlal (supra), this Court considered the alternative procedure for eviction of unauthorized occupants on Government premises;

one by suit and the other by summary procedure alleged to be more drastic and onerous under Chapter V-A of the Bombay Municipal Corporation Act, 1888 or the Bombay Government Premises Act, 1955.

The procedure for recovery of land revenue envisaged under Rule 5 of the Rules could not be said to be discriminatory, it being quite reasonable procedure. It cannot be said to be harsh or drastic but is quite a reasonable procedure and it furthers the mandate of the Act. The difference between the procedure of execution of Rule 5 and that of CPC cannot be said to be unconscionable so as to attract the vice of discrimination.

29. Resultantly, the appeal is found to be without any merit and the same is hereby dismissed. IA No. 6 of 2017 has been filed for de-freezing the bank account of the appellant. In case, the appellant has deposited the amount of Rs.5,29,58,937/- as per the fresh recovery citation No.484002 and the interest as well, till the date when the amount was deposited, it would be open to the concerned Tehsildar to de-freeze the account on being satisfied that the amount has been so deposited. The cost is quantified at Rs.50,000/- to be deposited in Advocates on Record Welfare Association within six weeks.

.....J. (Arun Mishra) .....J. (S. Abdul Nazeer) NEW DELHI APRIL 17, 2017