Supreme Court of India
Collector Of Aurangabad & Anr vs Central Bank Of India & Anr on 2 May, 1967
Equivalent citations: 1967 AIR 1831, 1967 SCR (3) 855
Author: V Ramaswami
Bench: Ramaswami, V.

PETITIONER:
COLLECTOR OF AURANGABAD & ANR.

Vs.

RESPONDENT:
CENTRAL BANK OF INDIA & ANR.

DATE OF JUDGMENT:
02/05/1967

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1967 AIR 1831 1967 SCR (3) 855

ACT:
Hyderabad Land Revenue Act (8 of 1317F), ss. 104, 116 and 119 whether s. 119 applies to movable propery in the custody and possesssion of the Court-Whether taxes due to Government have priority over debts to Others-Doctrine of "Priority of Crown debts" applicability in Hyderabad State before the Constitution came into force.

HEADNOTE:
In execution of a decree obtained by the first respondent against 'the second respondent, a firm in Aurangabad in the erstwhile Hyderabad State, a house which was furnished as security for the amount of decree which might be passed against the second respondent, was sold and the sale proceeds were deposited in the executing Court. Subsequently, the Collector of Aurangabad made an order under s. 119 of the Hyderabad Land Revenue Act, 1317F, distraining a part of the amount on account of arrears of sales-tax due from the second respondent.
On the question of the validity of the Collector's order, the High Court held that the order was not valid because : (1) s. 119 of tile Hyderabad Land Revenue Act applied only to property which was in the custody and possession of the

judgment-debtor and not in the custody and possession of the court; (2) the debt, due to the Government in respect of arrears of sales-tax had no priority over the dues of tile first respondent; and (3) the first respondent as a decree-holder had a prior charge; and the debt due to the Government in respect of salestax on account of the quality of the debt due to the first respondent, had no priority.
In appeal to this Court,
HELD : (1) The construction put by the High Court on s. 119 was not correct. The section in general terms empowers the distraint and sale of the defaulter's movable property and there is nothing in its language or context which prohibits tile Collector from ,making an order of distraint with regard to the movable property in the custody
and possession of a court. [859 C-F]
(2)But, a reading of ss. 104 and 116 of the Hyderabad Land Revenue Act, shows, that in respect of taxes other than Land revenue, only the procedure for recovery under s. 116 applies and not the substantive law of priority under s. 104 of the Act; and therefore the Government had no priority in 'respect of arrears of sales-tax over the dues of the firs', respondent. 1860 H-861 B]
(3)The Government could claim priority regarding payment of salestax according to the doctrine of "Priority of Crown debts'.', quite apart from the provisions of the Hyderabad Land Revenue Act, but there was no proof that the doctrine was given judicial recognition in the Hyderabad State prior to January 26, 1950, and therefore, the doctrine was not a "law in force" in that territory which was continued by virtue of Art. 372(1) of the Constitution. [862 H-863A]
Builders Supply Corporation v. Union of India, [1965] 2 S.C.R. 289; 56 I.T.R. 91 (S.C.) and Superintendent & Remembrancer of Legal Affairs, L9Sup.Cl/67-11
856
West Bengal v. The Corporation of Calcutta [1967] 2 S.C.R. 170 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1128 of 1965.

Appeal by special leave from the judgment and order dated December 17, 1962 of the Bombay High Court in Letters Patent Appeal No. 29 of 1960.

S.T. Desai, R. Ganapathy Iyer and S. P. Nayyar, for the appellants.

Hans Raj Sawhney, P. C. Bhartari and 0. C. Mathur, for the respondents.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Bombay High Court dated December 17, 1962 in Letters Patent Appeal No. 29 of 1960. Respondent No. 2, the firm of Chandmal Manmal was in debted to the 1st respondent, Central Bank of India, Aurangabad branch. On March 11, 1955 the first respondent filed a suit being Civil Suit No. 28/1 of 1955 against the second respondent for recovering a sum of Rs. 14,541/- and odd in the Court of Subordinate Judge at Aurangabad. On the application of the first respondent an order for interim injunction was passed in respect of certain properties belonging to the second respondent. The Court had ordered the second respondent to furnish security for the amount of the decree which may be passed against the firm in the suit. On April 28, 1955 Jogilal Mulchand, one of the partners of the second respondent furnished security by creating a charge on his immovable property, which was a house at Aurangabad. After the security bond was furnished, the attachment was released. The security bond furnished by Jogilal Mulchand read as follows :

> "I, the Defendant No. 2 therefore stand as a surety and declare that if the Hon'ble Court decides the suit against the Defendants, he will abide by every order passed by the Court and if he fails to do so, then I. defendant No. 2 stand as surety to the extent of Rs. 20,000/- (Rupees Twenty thousand) in O.S. coins and declare that I shall pay the amount of security into Court and for fulfilling the same I create a charge on my one pucca two storied house possessed by me known as 'Chandi Posh' bearing No. 167 situate at Kasba and Taluka Vijapur, District Aurangabad of the value of Rs. 25,000/..... If I fail to pay the amount of the security, the Court will then be entitled to recover the amount of the security from the property hereby charged.....

On April 30, 1955 the Subordinate Judge granted a decree against the 2nd respondent for a sum of Rs. 14,541/- and odd. The 1st respondent filed an application for execution of the decree Linder s. 145 of the Civil Procedure Code. In the execution of the decree the house which was charged under the security bond was sold and one Girdhardas purchased it in auction sale which was confirmed by the Court on August 14, 1958 and the sale proceeds thereof were deposited by the said Girdhardas in the executing Court. On August 17, 1958 the Sales Tax Officer, Aurangabad Circle wrote a letter to the District Judge, Aurangabad pointing out that a sum of Rs. 9,672/- and odd was due to the Government from the second respondent on account of arrears of sales-tax for the years 1950-51 to 1955-56. On September 23, 1958 the District Judge sent a letter to the Subordinate Judge asking him not to pay the sale proceeds of the house to the decree bolder i.e., the first respondent. Subsequently, the Collector of Aurangabad made an order on November 20, 1958, distraining the amount of Rs. 9,672/- out of the sale proceeds under s. 119 of the Hyderabad Land Revenue Act (Hyd. Act VIII of 1317F.). The order of the Collector stated as follows :

> "Sanction is therefore accorded under Section 119 of Hyderabad Land Revenue Act to attach the amount of Rs. 9,672-1-0 out of the sale proceeds realised from the auction sale of the defaulter Shri Chandmal's property and deposited with the Court of Sub-Judge, Aurangabad, towards satisfaction of the Decree No. 28/1 of 1955 passed against Shri Chandmal Manmal. The amount should be remitted to the Sales Tax Officer, Aurangabad."

Thereupon the 1st respondent made an application to the trial court challenging the validity of the order of the Collector. The Subordinate Judge held that the Civil Court had no jurisdiction to set aside, revise or modify the order of the Collector and it could be done only by the Superior Revenue Authorities. From the order of the Subordinate Judge the 1st respondent preferred an appeal being First Appeal No. 341 of 1959 in the Bombay High Court.. The appeal was heard by Naik, J. who by his judgment dated' June 22, 1960 held that in view of the provisions contained in ss. 104 and It 9 of the Hyderabad Land Revenue Act the Gov- ernment was entitled to priority for the arrears of sales-tax due from the second respondent over the claim of the 1st respondent.. The learned Judge accordingly dismissed the First Appeal. From the judgment of Naik, J. the 1st respondent took the matter in appeal under the Letters Patent. A Division Bench consisting of Patel and K. K. Desai, JJ. allowed the appeal by their judgment dated December 17, 1962 holding that S. 119 of the Hyderabad Land Revenue Act applied only to property which was in the custody and possession of the judgment-debtor and not in the custody or possession of a Court. It was observed by the Division Bench that the provisions of the Hyderabad Land Revenue Act contained in ss. 104, 116, 117 and 144 made it abundantly clear that the priority applied only in respect of land revenue and not in respect of other taxes. It was further held that the 1st respondent as a decree-holder had a prior charge as the quality of his debt was not the same as that of the debt due to the Government and therefore in respect of the sales-fax, the State bad no priority. The first question to be considered in this appeal is whether the order of distraint dated November 20, 1958 made by the Collector of Aurangabad is legally valid. The order of the Collector was made under S. 13(2) of the Hyderabad General Sales Tax Act read with ss. 116 and 119 of the Hyderabad Land Revenue Act. Section 13 of the Hyderabad General Sales Tax Act (Hyd. Act No. XIV of 1950) provides as follows :

> "13. (1) The tax assessed under this Act shall be paid in such manner, in such instalments, if any, and within such time, not being less than fifteen days from the date of service of the noticed of assessment, as may be specified in such notice.
>
> (2)In default of such payment, a penalty not exceeding the tax remaining unpaid may be imposed and the total amount due, including the penalty, if any, may be recovered as if it were an arrear of land revenue."

Section 116 of the Hyderabad Land Revenue Act (Hyderabad Act VIII of 1317 F) states :

> "An arrear of land revenue may be recovered by the following measures and as far as possible, the measures shall be employed in the order mentioned below :-
>
> (a) by issuing a notice to the defaulter under section 11.8;
>
> (b) by distraint and sale of the defaulter's movable property under section 119;
>
> (c) by distraint and sale of the defaulter's immovable property under section 120;
>
> (d) by arrest and detention of the defaulter under section 122;

(e) by forfeiture of the right of occupancy in respect of which the arrear is due under section 124;

(f) by temporary attachment of a non-khalsa village or part of such village in respect of which the arrear is due under section 125."

Section 119 of the same Act is to the following effect "The Tahsildar may distrain and sell the defaulter's movable property. Such distraint shall be made by officers or clerks appointed by him for this work."

The High Court has taken the view that s. 119 can only apply to property which is in the custody and possession of the judgmentdebtor and not in the custody and possession of a Court. In our opinion, the construction put by the High Court on the language of s. 119 of the Hyderabad Land Revenue Act is not correct and is not warranted by the language of the section or the context in which it is placed. The section empowers the Tahsildar to "distrain and sell the defaulter's movable property" and such distraint shall be made by officers or clerks appointed by him for this work. The language of the section is general and there is no reason why any restriction should be put on the power of distraint conferred upon the Tahsildar with regard to the defaulter's movable property. In the present case, the Collector of Aurangabad sent the order of distraint to the Subordinate Judge requesting him to remit to the Sales Tax Officer the amount of Rs. 9,672/- out of the amount of sale proceeds deposited in his Court. We are of the opinion that the procedure followed by the Collector is justified by the provision of s. 119 and there is nothing in the language or context of the section which prohibits tile Collector from making an order of distraint with regard to tile movable property in the custody and possession of a Court. We accordingly reject the argument of respondent No. 1 on this aspect of the case.

We proceed to consider the next question arising in this appeal, viz., whether the debt due to the Government in respect of arrears of sales-tax has priority over the dues of respondent No. 1. It appears that the sales-tax was due for the years 1950 - 51 to 1955-56, i.e., for a period of six years. It was submitted on behalf of the appellants that since s. 13(2) of the Hyderabad General Sales Tax Act makes a provision for recovery of the sales-tax due as "arrears of land revenue" and since priority as to the land revenue is provided under the Hyderabad Land Revenue Act, the arrears of sales-tax also must be granted priority over other demands whether in respect of debts or mortgage or based on a decree or attachment of a Court. The argument of the appellants is based upon ss. 104, 116, 119 and 144 of the Hyderabad Land Revenue Act. Section 104 provides as follows :

.lm15 "The demand on any land, for its land revenue shall have priority over other demands whether in respect of debts or mortgage or based on a decree of or attachment by a Court, and if the title to any land on which such Government demand is due is transferred, such land or its transferer shall not be discharged from such demand. If the demand for land revenue which cannot be recovered from the title to or existing produce of that land is due from a person, the liability for the payment of the land revenue shall have precedence over debt or decree of a Court also on his property other than the land on which the demand is due; provided that such property before it is forfeited for recovery of the said demand, is not sold or mortgaged or given as a gift or otherwise -transferred or

hypothecated or attached." Section 144 is to the following effect : "All the Government sums under the following heads may be recovered under the provisions of this Chapter (1) Land revenue.

(2) Quit-rent.

(3) Nazrana.

(4) Peshkesh.

(5) Taxes.

(6) Local cess.

(7) Fine and penalties.

(8) Income from lands.

(9) Rusum.

(10) Fees.

(11) Charges.

(12) Penal interest.

(13) Lease money.

(14) Moneys recoverable from sureties. (15) Taccavi loans.

(16) All sums in respects of which provision has been made in this Act or in any other Act that they be recovered as arrears of land revenue."

Section 144 enumerates the nature of taxes in respect of which the provision under the Land Revenue Act could be adopted for recovery. But the language of s. 104 makes it clear that the priority specified in that section applies only in respect of land evenue and not in respect of other taxes. In respect of other Axes, we consider that only the procedure for recovery under s. 16 applies and not the substantive, law of

-priority under s. 104 of he Land Revenue, Act. In our opinion, Counsel for the appelants has not been able to make good his argument on this aspect of the case. We pass on to consider the next question arising in this case, lamely, whether the appellants are entitled to claim priority towards payment of sales-tax according to the Common Law doctrine of 'Priority of Crown debts' quite apart from the provisions of the Hyderabad Land Revenue Act. The Common Law doctrine was evolved in the English Law as part of the Crown prerogative. which is described by Halsbury as follows :-

> "The royal prerogative may be defined as being that pre-eminence which the Sovereign enjoys over and above all other persons by virtue of the common law, but out of its ordinary course, in right of her regal dignity, and comprehends all the special dignities, liberties, privileges, powers and royalties allowed by the common law to the Crown of England."

The question about the applicability of the priority of Crown debts was considered by the Bombay High Court in 1868 in Secretary of State in Council for India v. Bombay Landing & Shipping Co. Limited(1), in which it was held that a judgment debt due to the Crown was in Bombay entitled to the same precedence in execution as a like judgment debt in England, if there is no special legislative provision affecting that right in the particular case. The same view has been taken by the Bombay High Court in a later case-Bank of India v. John Bowman (2)-in which Chagla, C.J., pointed out that the priority given to the Crown was not on the basis of its debt being a judgment-debt or a debt arising out of statute, but the principle was that if the debts were of equal degree and the Crown and the subject were equal, the Crown's right would prevail over that of the subject. The same view has been adopted by a Full Bench of the Madras High Court in Manickam Chettiar v. Income-tax Officer, Madura(3), in which it was held that the income-tax debt had priority over private debts and the court had inherent power to make an order for payment of moneys due to the Crown. A similar view has been expressed by the High Court in Kaka Mohamed Ghouse Sahib & Co. v. United Commercial Syndicate (4) . All these authorities have been quoted with approval by this Court in (*) Halsbury's Laws of England, 3rd Edn., Vol. 7, page 221. (1) (1868-69) 5 Bom. H.C.R. 23 (3) (1938) 6 I.T.R. 180.

(2) A.I.R. 1955 Bom. 305.

(4) 49 I.T.R. 824.

Builders Supply Corporation v. Union of India(1), in which it was held that the Government of India was entitled to claim priority for arrears of income-tax due to it from a citizen over debts from him to unsecured creditors and that the English common law doctrine of the priority of Crown debts has been given judicial recognition in the territory known as British India" prior to 1950 in regard to the recovery of tax dues in priority to other private debts of the tax-payer. It was pointed out therefore that the English Common Law doctrine having been incorporated into Indian law, was a 'law in force' in the territory of India, and, by virtue of Art. 372(1) of the Constitution of India, it continued to be in force in India until it was validly altered, repealed or amended. It was, however, argued for the respondents that the authority of the decision of this Court in Builders Supply Corporation v. Union of India(1) has been affected to some extent by the later decision of a larger Bench of this, Court in The Superintendent & Remembrancer of Legal Affairs, West Bengal v. The Corporation of Calcutta,(2) in which it was held that the rule of English Common law that the State was not bound by the provisions of a statute unless it was expressly named or brought in by necessary implication, was not accepted as a rule of construction throughout India and therefore it has not become law of the land. It was further held that even on the assumption that At was accepted as a rule of construction throughout India, it was only a rule of construction and not a rule of substantive law and therefore cannot be said to be "a law in force" within the meaning of Art. 372. Lastly, this Court

expressed the view that the rule of construction was incongruous in a democratic republic and it was inconsistent with the rule of law based on the doctrine of equality and therefore the said canon of construction should not be applied for construing statutes in India. In our opinion, there is nothing in this judgment which affects the authority of the previous decision of this Court in Builders Supply Corporation v. Union of India(l). On the other hand, the majority judgment of the learned Chief Justice has referred to the decision in ff. Snowden Marshall v. People of the State of New York(1) which lays down a similar doctrine, namely, that the State of New York has the common law prerogative right of priority over unsecured creditors, and distinguished the case on the ground that it had nothing to do with the rule of construction but was based upon the common law prerogative of the Crown.

We are, however, unable to apply the English Common Law doctrine of priority of Crown debts in this case, because there is no proof that the doctrine was given judicial recognition in the (1) 56 1. T. R. 91 (2) [19671 2 S.C.R. 170.] (3) (1920) 65 Law.Ed. 315.

territory of Hyderabad State prior to January 26, 1950 when the Constitution was brought into force. We granted time to Counsel for the appellants to ascertain whether there were any reported decisions recognising such a doctrine in the Hyderabad State, but Sufficient material has not been placed before us in this case to show that the doctrine was given judicial recognition in the Hyderabad State before its incorporation into the Indian Republic. For these reasons we hold that the judgment of the Bombay High Court dated December 17, 1962 in Letters Patent Appeal No. 29 of 1960 must be affirmed and this appeal must be dismissed with costs.

V.P.S.

Appeal dismissed.