PETITIONER:
PADRAUNA RAJKRISHNA SUGAR WORKS LTD. & ORS.

Vs.

RESPONDENT:
LAND REFORMS COMMISSIONER, U.P. & ORS.

DATE OF JUDGMENT:
31/01/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 897 1969 SCR (3) 468
1969 SCC (1) 485

ACT:
U.P. Zamindari Abolition & Land Reforms Act (U.P. 1 of 1951), ss. 279 and 286-Dues under other statutes recoverable as arrears of land revenue-Whether restrictions under ss. 279 and 286(1) applicable.

HEADNOTE:
The amount of dues under the Indian Income-tax Act, 1922 the U.P. Sugar Factories Control Act. 1938 and the Co-operative Societies Act, 1912 were recoverable as arrears of land revenue. Section 286(1) of the U.P. Zamindari Abolition & Land Reforms Act provides that if any arrears of land revenue could not be recovered by any of the processes mentioned in cls. (a) to (e) of s. 279, the Collector may realise the same by attachment and sale of the interests of the defaulter in any other immovable property of the defaulter, and s. 286(2) provided that money recoverable as arrears of I" revenue, may be recovered by process "under this section" from any immovable property of the defaulter. As the appellant company was unable to meet its liabilities in respect of income-tax dues, sugar cess and the amount due for cane supplied to it, the immovable property of the company were sold to meet the dues. The appelant challenged the sale contending that (i) the immovable prop" of the company would be attached and sold only after the processes prescribed in cls. (a) to (a) of a. 279 ie. by the age of movable properties were resorted to; (ii) the sale was illegal or irregular as the Collector ignored the intimation of the Income-tax Officer staying the sale for recovery of income-tax; and (iii) the appellant was prevented from raising funds for making the deposit as provided by r. 285H (of the rules framed under the Act) for setting aside the sale as the purchaser was appointed as the Authorised Controller and put in possession of all the properties of the appellant. Dismissing the appeal this Court,
HELD : (i) Power to recover arrears of land revenue from a defaulter is governed by the processes mentioned in cls. (a) to (e) of s. 279 of the Act and s. 286(1) places certain restrictions upon the power of the Collector to recover land revenue by attachment and sale of lands other than the

holding in respect of which the land revenue is due. But the restrictions on the power of the Collector operated only when land revenue is in arrears. Restrictions, if any, upon the p ower of the Collector to recover dues under statutes, as arrears of land revenue arise, from the statute which is the source of the liability and not from the U.P. Zamindari Abolition & Land Reforms Act, which merely sets out the processes for recovery of the dues. To hold that sub-s. (2) of s. 286 requires the Collector in the first instance to recover out of the movable property or by arrest and detention of the defaulter before immovable property of the defaulter is attached and sold is to amend the substantive provisions of the Acts under which the liability for money due is recoverable as land revenue. For instance, under a. 46 of the Income-tax Act, 1922, the powers exercisable by the Collector in recovering arrears of income-tax, which are recoverable as arrears of land revenue are not restricted to the Land Revenue Code; the Collector is entitled to exercise all the powers of' a Civil Court for the purpose of recovery of an amount due under a decree under the Code of Civil Procedure, an the Code, of Civil procedure im-

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poses no obligations to recover the dues by sale of movables or by arrest and detention of the defaulter before immovable property may be attached. The provisions of the Act, which authorise recovery of sums of money as arrears of land revenue, do not require the Collector to follow any sequence of the processes for recovery; it is competent to the Collector to resort to any process prescribed by s. 279 in aid of recovery of the dues which are recoverable as arrears of land revenue, [473 H-474 D; 475 H]

(ii) The sale was not illegal or irregular for the reason that the Collector ignored the intimation of the Income-tax Officer staying the sale for recovery of income-tax dues. The immovable property could have been put up for sale for recovery of sugar cane cess and the cane price which were many times more than the income-tax dues. [476 G]

(iii) There was no force in the contention that the appellant was unable to raise funds and make the deposit under r. 285H because the purchaser was appointed the Authorised Controller, who took possession of all the properties of the Company. The appellant could not comply with the provision of r. 285H for having the sale set aside as the movables were not sufficient to enable the appellant to raise the amount required for deposit under r. 285H. [476 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 130 of 1966.

Appeal from the judgment and decree dated December 13, 1961 of the Allahabad High Court in Special Appeal No. 217 of 1958.

C. K. Daphtary, B. Sen, J, P, Goyal and A. Banerjee, for the appellants.

C. B. Agarwala and O. P. Rana, for respondents Nos. 1, 2, 3 and 8.

T. A. Ramachandran and R. N. Sachthey, for respondent No. 4.

M. C. Chagla, G. D. Srivastava, B. Datta and J. B. Pada-chanji, for respondents Nos. 5 and 6.

The Judgment of the Court was delivered by

Shah, J. The Padrauna Rajkrishna Sugar Works Ltd.hereinafter called 'the Company carried on the business of manufacture

and sale of sugar and supply of electricity. The Company was in financial difficulties in 1954 and was unable to meet its obligations. The principal liabilities of the Company in July 1955 were Rs. 81,821-2-0 due as income-tax provisionally assessed for the assessment year 1952-53 in respect of which an order for recovery was made under s. 46(2) of the Income-tax Act, 1922; Rs. 5,64,301-14-9 due as sugarcane cess under s. 29 of the Sugar Factories Control Act, 1938, for the years 1952-53 to, 1954-55: and Rs. 1,92,053-12-3 due by the Company to the Co-operative Development Union Ltd. as arrears of cane price for the year 1954-55.

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By order dated July 14, 1954, issued under the Essential Supplies (Temporary Powers) Act, the Government of U.P. appointed the Collector, Deoria as the Authorised Controller of the Company. On August 8, 1955 the Land Reforms Commissioner sanctioned the proposal submitted by the Collector, Deoria, to sell the holdings and the property of the Company for realizing Rs. 8,38,176-13-0. Sardar Jagjit Singh, Chief Engineer, Indian Institute of Sugar Technology, Kanpur, valued the movables belonging to the Company i.e. tools and workshop plant, mill stores, spare parts and furniture at Rs. 7 , 64,817/-,and the lands and the factory at Rs. 23,75,000/-. Thereafter a sale proclamation was issued on October 4, 1955, for recovery of the total amount of Rs. 8,38,176-13-0. The sale was fixed for November 8, 1955. In the first instance only the movables were put up for sale by the Collector, Deoria, but the highest bid offered was Rs. 2,75,000/-. The Collector then put up for sale the immovable property for which a bid of Rs. 13,50,000/-was made and accepted. The movables were then put up for sale, and the highest bid for Rs. 2,75,000/- was accepted. The purchasers of both the lots were the Cawnpore Sugar Works Ltd., through their managing agent Tulsidas Mundra-respondent No. 7 in this appeal.

On December 6, 1955, the Company moved an application before the Commissioner, Gorakhpur Division, under r. 285-1 of the U.P. Zamindari Abolition and Land Reforms Rules praying that the sale be set aside. The Commissioner rejected the petition, observing that an application under r. 285-1 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, to set aside a sale on the ground of material irregularity or mistake in publishing or conducting a sale may be granted only if the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake, and that no material irregularity or mistake was proved to be committed in publishing or conducting the sale, far less, a mistake or irregularity which could have caused substantial injury to the applicant. The sale was confirmed by order dated July 2, 1956, by the Land Reforms Commissioner.

On, July 30, a petition was moved by the Company in the High Court of Allahabad for a writ in the nature of certiorari quashing the order dated June 25, 1956, of the Commissioner, Gorakhpur Division. The petition was dismissed by Oak, J. In appeal under the Letters Patent the order was confirmed by the High Court. Mukherji, J., was of the view that s. 286 of the U.P. Zamindari Abolition and Land Reforms Act did not oblige the Collector to exhaust the processes prescribed by, cls. (a) to (e) in s. 279 of that Act before resorting to the sale of immovable property of the Company and that it was not proved that

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there was any material irregularity or mistake_ in

publishing or conducting the sale or that any substantial injury had resulted to the Company., Jagadish Sahai, J., was of the view that s. 2861(2) of the U.P. Zamindari Abolition and Land Reforms Act provides that where an amount is recoverable as arrears of land revenue, the Collector has first to attempt under cls. (a) to (e) of s.279 to recover the amount due, and if he is unable to recover the amount,, he may proceed to sell the immovable property of the defaulter. But the learned Judge was of the opinion that the provision was merely directory and not. mandatory. He observed:

> "..... the provision relating to the exhaustion of the processes contemplated by clauses (a) to (e) of section 279 of the Act is merely directory. In view of the provisions of the various Acts which make the realization of sums becoming due under those Acts as arrears of land revenue and in view of the provisions of the Act the, Collector has got a duty and a statutory obligation to realise those sums. He has no discretion in the matter. Consequently I read the words "may realise the same from the interest of the defaulter in any immovable property" in sub-section (1) or "may be recovered from any immovable property of the defaulter" in sub-section (2) as meaning that if the Collector does not succeed in- recovering the amount by having recourse to the processes mentioned in clauses (a) to (e) of section 279 of the Act he shall sell immovable property of the defaulter."

The learned Judge also observed that the Collector acted inviolation of the statutory provision contained in s. 286(2) of the Act in selling the immovable property before selling the movable property, but the sale could not be set aside, because substantial injury was not shown to have been caused. The Company has appealed to this Court against the order passed by the 'High Court confirming the order passed by Oak, J.

In this appeal, it is urged in the first instance, that the Company possessed stocks of sugar of value exceeding the liability for payment of Rs. 8,38,000/- odd. But the stocks of sugar were not mentioned in the Collector's report to the Land Reforms Commissioner : they were not included in the sale proclamation as property put up for sale, nor were they valued in the report of Sardar Jagjit Singh. The Company asserted in the petition ,before the High Court that it possessed stocks of sugar worth Rs. 9 lakhs. which had not been, attached earlier, but no such. contention was advanced in support of the application for setting.

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aside the sale before the Commissioner, nor was any argument advanced before the High Court. It appears that the stocks of sugar were mortgaged separately and the amount for which they were mortgaged was not included in the claim, made for which the property of the Company was to be put up for sale. It was then urged that under S. 286(2) of Act 1 of 1951, the Collector, was bound in the first instance to exhaust, the processes for recovery of arrears prescribed by cls. (a) to (e) of S. 279 of the Act and he could not attach and sell immovable property of the Company until those processes were exhausted. It was urged that s. 286(2) of the Act was mandatory and the Collector not having sold the movables in the first instance, the sale must be declared void.

The amount for the recovery of which the sale of the assets of the Company was held, included income-tax dues, sugarcane cess and the amount due for cane supplied to the Company. This amount was recoverable as arrears of land revenue because of the provisions of the Indian Income-tax Act, 1922, the U.P. Sugar Factories Control Act, 1938, and the Co-operative Societies Act 1912. Section 286(2) of the U.P. Zamindari Abolition and Land Reforms Act provides:

> "Sums of money recoverable as arrears of land revenue, but not due in respect of any specific land, may be recovered by process under this section from any immovable property of the defaulter."

Though the amount for which the property was put up for sale was recoverable as arrears of land revenue, no part of it was due in respect of any specific land. The amount could prima facie be recovered from the immovable property of the defaulter. But relying upon the expression "under this section" in S. 286(2) of Act 1 of 1951 it was contended that the immovable property of the Company could be attached and sold only after the processes prescribed in s. 279 cls. (a) to (e) were resorted to and the Collector was unable to recover the dues. It was urged that this is the true effect of s. 286(1) and s. 279 of Act 1 of 1951. Section 286(1) provides :

> "It any arrears of land revenue cannot be recovered by any of the processes mentioned in clauses (a) to (e) of Section 279, the Collector may realize the same by attachment and sale of the interest of the defaulter in any other immovable property of the defaulter."

Section 279 of the Act set-, out the procedure for recovery of land revenue. The section as it stood at the. date of We provided

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> An arrear of land revenue may be recovered by any one or more of the following processes :
> (a) by serving a writ of demand or a citation to appear on any defaulter,
> (b) by arrest and detention of his person,.
> (c) by attachment and sale of his movable property including produce,
> (d) by attachment of the holding in respect of which the arrear is due,
> (e) by sale of the holding in respect of which the arrear is due.
> (f) by attachment and sale of other immovable property of the defaulter."

Section 280 deals with the mode of recovery prescribed by cl. (a) of s. 279; s. 281 with the mode prescribed by cl. (b) i.e. by arrest and detention; and s. 282 with the mode prescribed by cl. (c) i.e. by attachment and sale of the movable property including produce. Section 284 sets out the procedure for sale of the holding in respect of which the arrear was due and s. 286(1) deals with the power to proceed. against the interest of the defaulter in other immovable property.

For recovery of arrears of land revenue, the Collector is bound to resort to one or more of the processes mentioned in s. 279 read with ss. 280, 282, 284 & 285 of the Act, before he attaches and sells the immovable property of the defaulter, other than the holding in respect of which the land revenue is due. That clearly follows from the terms of sub-s. (1) of s. 286. Subsection (2) of s. 286 makes the

same process applicable for recovery of sums of money which are recoverable as arrears of land revenue. But the liability to pay the amount so recoverable arises by virtue of the provisions of other Acts and is not due in respect of any holding of the defaulter. It is only recoverable as arrears of, land revenue by virtue of the provisions of the Act under which the liability has arisen. Since U.P. Act 1 of 1951 provides by s. 286(2) that sums of money recoverable as arrears of land revenue may be recovered from any immovable property of the defaulter, the procedure prescribed by the Act applies to such recovery. Because of the use' of the expression "under this section" in sub-s. (2) of s. 286 it is not intended that the Collector must resort in the first instance to the processes prescribed by cls. (a) to (e) before he resorts to cl. (f), of s. 279. Cls. (d) & (e) of s. 279 have no application, where income-tax dues and sugarcane cess or cane price are recoverable from the defaulter : and cl. (b) is inapplicable where the defaulter is an artificial person like a Company. Power to recover arrears of land reve-

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nue from a defaulter is governed by the processes mentioned in S. 279 cls. (a) to (e), and s. 286(1) places certain restrictions upon the power of the Collector to recover land revenue by attachment and sale of lands other than the holding in respect of which the land revenue is due. But the restrictions-on the power of the Collector operate only when land revenue is in arrears. Restrictions if any upon the power of the Collector to recover dues under other statutes, as arrears of land revenue arise from the statute which is the source of the liability and not from Act 1 of 1951 which merely sets out the processes for recovery of the dues.

To hold that sub-s. (2) of s. 286 requires the Collector in the first instance to recover out of the movable property or by arrest and detention of the defaulter before immovable property of the defaulter is attached and sold is to amend the substantive provisions of the Acts under which the liability for money due is recoverable as land revenue. For instance , under s. 46 (2) of the Indian Income-tax Act, 1922, it is provided

> "The Income-tax Officer may forward /to the Collector a certificate' under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue. :
>
> Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908 (V of 1908), a Civil Court has for the purpose of the recovery of aim amount due under a decree.

The power exercisable, by the Collector in recovering arrears of income-tax which are recoverable as arrears of land revenue are, it is clear, not restricted to the Land Revenue Code: the Collector is entitled to exercise all the powers of a Civil Court for the purpose of recovery of an amount due under a decree under the Code of Civil Procedure, and the Code of Civil Procedure imposes no obligation to recover the dues by sale of movables or by arrest and detention of the defaulter before, immovable property may be

attached. Section 51 of the Code of Civil Procedure provides:

> "Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-
> (a) by delivery of any property specifically decreed;
> (b) by attachment and sale or by sale without attachment of any property;
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> (c) by arrest and detention in prison;
> (d) in such other manner as the nature of 'the relief granted may require
> Provided.....

By virtue of 0. 2 1 r. 30(e) of the Code of Civil Procedure simultaneous execution both against the property and person of the judgment-debtor is allowed. To hold, therefore, that in seeking to recover income-tax dues the Collector is in the first instance, by virtue of sub-s. (2) of s. 286, restricted to the recovery of arrears by attachment and sale of movables or by arrest and detention in prison of the defaulter and it he cannot recover the amount then and then only to have recourse to the immovable property of the judgment-debtor is to seek to amend both the, Income-tax Act, 1922, as well as the Code of Civil Procedure. The U . P. Legislature is competent to alter the provisions of the Income-tax Act.

We are, therefore, unable to agree with the opinion expressed by jagadish Sahai, S., that the use of the words "under this ,section" points to the applicability of the whole section i.e. subsection (1) in the recovery dues recoverable under sub-section (2) of section 286, and "that the two sub-sections have got to be read together and the effect of sub-section (2) is that even in connection with the recovery of miscellaneous dues as arrears of land revenue it is permissible to sell immovable property of the defaulter but subject to what is provided for in sub-section (1)". We are also unable to agree with the observations made by the learned Judge that

> "..... if sub-section (2) of section 286 of the Act were to be read in isolation and detached from subsection (1) it would become impossible to administer the same. Sub-section (2) only provides that the arrears of miscellaneous dues may be recovered from any immovable property of the defaulter without specifying the manner in which they are to be recovered, that is to say, without indicating whether it would be recovered from the usufruct of the property or by its sale or by mortgage or lease."

The provisions of the Act which authorise recovery of sums of money as arrears of land revenue do not require the Collector to follow any sequence of the processes for recovery: it is competent to the Collector to 'resort to any process prescribed by s. 279 in aid of recovery of the dues which are recoverable as arrears of land revenue. It is unnecessary in the circumstances to

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consider whether the provisions of s. 286(1) are mandatory or directory.

It was urged in the alternative that after selling the immovable property which realized more than Rs. 23,50,000/- the Collector should not have sold the movable property, for

the claim for which the properties of the Company were put up for sale, was only Rs. 8,38,176-13-0. At first blush there is force in this argument. Why the Collector thought it necessary to sell the movables after the immovable property was knocked down to the Cawnpore Sugar Works Ltd. for Rs. 23,50,000/- was never explained. After the immovable property belonging to the Company was knocked down to the purchasers for an amount of Rs. 23,50,000/- it was apparently not necessary to hold the auction for sale of movables valued at Rs. 7,64,817/- and to accept a bid of only Rs. 2,75,000/-. The argument that the movables were of no use to any person other than the purchaser of immovable property is without substance. The movables sold we're the tools and workshop plant, mill stores, spare parts and furniture, and it is difficult to accept the contention that these movables were of no value except to the purchaser. But the Company raised no contention in this behalf before the Commissioner, nor in the petition before the High Court. The question was also not argued before the High Court in that form. We cannot at this stage investigate the reasons why movables valued at Rs. 7,64,817/- were put up for sale and sold when it was not necessary to sell them to realise the dues.

It was then urged that the Income-tax Officer had, by intimation dated December 11, 1954, asked the Collector to stay the sale proceeding for recovery of income-tax dues amounting to Rs. 81,821-2-0. For some reason, which is not clear from the record, the Collector ignored the intimation given by the Income-tax Officer and proceeded to put the property to sale. He included the amount in the sale proclamation, overruling the protests of the Company, and sold the properties for recovery of a consolidated amount which included Rs. 81,821-2-0 due as income-tax. But on that account the sale is not illegal or irregular. An amount exceeding Rs. 7 lakhs was recoverable for the sugarcane cess and the cane price and the immovable property of the Company could have been put up for sale for recovery of those dues. The sale is not proved to be vitiated on the ground of any material irregularity or mistake in publishing or conducting it, and it is therefore not liable to be set aside.

It was finally con that the Company was prevented from exercising its right under r. 285-H of the rules framed under U.P. Act 1 of 1951, because the purchaser at the sale was appointed, by order of the Central Government, Authoriged Con-

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troller of the factory of the Company, and all the properties of the 'Company were put in +.he possession of the purchaser, and that the Company was unable to raise the requisite amount to be deposited under r. 285-H. Under r. 285-H any person whose holding or other immovable property has been sold under the Act may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office-

(a) for payment to the purchaser, a sum equal to 5 per cent. of the purchase money; and

(b) for payment on account of the arrear, the amount specified in the proclamation in Z.A. Form 74 as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been paid on that account; and

(c) the cost of the sale.

If the deposit is made, the Collector shall pass an order setting aside the sale. It was open to the Company under r. 285-H even after the bids were accepted to deposit 5 per cent. of the sum realised by sale of the immovable property and to pay the amount due for the recovery of which the sale was ordered and the cost of the sale. But no attempt was made to deposit the amounts mentioned in cls. (a), (b) & (c) of r. 285-H. The contention that the Company was unable to make the deposit under Rule 285-H because the purchaser was appointed Authorised Controller was also not raised before the Commissioner and the High Court. The argument that if the movable property had not been sold, the Company may have raised the amount liable to be deposited under cls. (a), (b) & (c), but by sale of those properties and purchase of the same by a person who was shortly after the purchase appointed the Authorised Controller prevented the Company from exercising the right under r. 285-H is hypothetical. Again even that argument was not raised before the Commissioner, nor in the petition, nor in the arguments before the High Court. Evidently, the Company was required to comply with the provisions of r. 285-H for having the sale set aside to deposit an amount of Rs. 9,50,000/- besides the cost of the sale. Even if the movables had not been sold, and assuming that they were of the value of Rs. 7,64,817/- the movables were not sufficient to enable the Company to raise the amount required for deposit under r. 285-H.

The contentions raised by the Company fail and the appeal is dismissed. We are, however, of the view, especially because of the action of the Collector in putting the movables to sale even

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after the immovable property realised an amount very much in excess of the dues, and ignoring the intimation sent by the Income-tax Officer to stay the sale proceeding, which has involved the Company in loss of property of substantial value, that the parties should bear their own costs throughout.

Y.P. Appeal dismissed.

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