

STATE OF PUNJAB & ORS.

v.

S. DHARAM SINGH (DEAD) BY
SUCCESSOR DESA SINGH & ANR.

AUGUST 29, 1985

[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Punjab Land Revenue Act, section 67(b), scope of - Arrest and detention of the borrowers' person to realise the loan amount when can be resorted to under clause (b) of section 67 of Punjab Land Revenue Act - Whether could be resorted to by-passing the contractual remedy open under the loan Agreement.

Respondent No.2 a registered House Building Society with 32 members entered into an agreement with the Government of Punjab whereunder the Government agreed to advance a loan of Rs. 1,02,000 to its members under the lower income group housing scheme for the purpose of constructing residential houses in Dera Baba Nanak. As per the written agreement the loan advance was payable in three instalments. The first instalment of Rs. 20400 was to be paid by the Govt. on the execution of the deed of agreement, the second instalment of Rs. 51000 to be paid on the completion of the houses to the plinth level and the last instalment of Rs. 30,600 on the completion of the house to the roof level. The society on the other hand had to mortgage the sites together with the houses erected or to be erected thereon to the govt. as security for the repayment of loan and the amount of loan was to be paid back in several instalments. Pursuant to the agreement the Government issued a cheque for Rs.71,400 towards the first and second instalments. The third instalment was not paid for failure to furnish the required certificate that the houses had reached the roof level. The members of the society also failed to repay the loan. In the situation, a notice was issued by the Collector of the District to the members of the society to deposit the overdue instalments of loan and to appear before the Deputy commissioner, Gurdaspur on August 24, 1964 to show cause why the entire amount should not be recovered from them by means of arrest and detention. The society challenged the notice by filing a writ petition in the High Court. Its stand was that in the absence of any such stipulation in the loan agreement the amount could not be recovered by arrest of the members of the

A society in the first instance. The writ petition remained pending for more than six years but no instalments had been paid by the members of the society to the government during that period.

B The Writ Petition was allowed by the learned Single Judge by his judgment dated 17th March, 1971 holding that the government must resort to the contractual remedy which it reserved to itself while entering into the loan agreement. The State preferred a letters patent appeal which was summarily dismissed. Hence the appeal by special leave.

Dismissing the appeal, the Court,

C **Held:** A bare reading of clause 4 of the agreement makes it evidently clear that the Government has first to proceed against the property mortgaged and sell the property. Only in case the entire amount could not be realised that the Government could proceed against the borrower personally. The government is as much bound by the agreement as the borrower and, therefore, the government has first to proceed against the mortgaged property. D In other words, the government must resort to the contractual remedy which it reserved to itself when entering into the loan agreement before resorting to clause (b) of section 67 of the Punjab Land Revenue Act. [709 B-C, 706 H, 710]

E **Ram Narayan Agarwal etc. v. State of U.P. & Ors. [1983]** 3 S.C.R 684 explained and distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 625 of 1972.

From the Judgment and Order dated 13.9.1971 of the Punjab & Haryana High Court in L.P.A. No. 254 of 1971.

F S.K. Bagga, for the Appellants.

The Judgment of the Court was delivered by

G **MISRA, J.** The present appeal by special leave is directed against the judgment of a Division Bench of the High Court of Punjab and Haryana dated 13th September, 1971 dismissing the letters patent appeal against the judgment of a learned Single Judge dated 17th March, 1971 allowing the writ petition filed by the respondents.

H The short question that falls for consideration in the present appeal is whether the amount of loan in question can be

recovered as arrears of land revenue by arrest and detention in view of cl. 4 of the loan agreement.

Dera Baba Nanak Co-operative House Building Society Ltd., respondent No. 2, was a registered society. It had 32 members to start with. The society entered into an agreement with the Government of Punjab whereunder the Government agreed to advance a loan of Rs. 1,02,000 to its members under the lower income group housing scheme for the purpose of constructing residential houses on the site measuring 35, 100 sq.ft. in Dera Baba Nanak. The agreement was evidenced by a written document. Under the terms of the agreement the Govt. was to advance the loan in three instalments - the first instalment of Rs. 20,400 was to be paid by the government on the execution of the deed of agreement, the second instalment of Rs. 51,000 was to be paid on the completion of the house to the plinth level and the last instalment of Rs. 30,600 on the completion of the house to the roof level. The members of the society on the other hand had to repay the loan advanced with interest in thirty annual instalments, the first instalment was to become due twelve months after the date of sanctioning the first instalment of loan. It was further stipulated that the society would mortgage the said sites together with houses erected or to be erected thereon thereafter to the government as security for the repayment of the said loan and interest. The loan agreement further contemplated that the government would recover the amount of loan first from the property mortgaged and if there was a shortfall then the government shall be entitled to recover the same personally from the borrowers as well as from the movable or other immovable property belonging to the borrowers.

The society pursuant to the terms of the agreement executed the mortgage. The government in their turn issued a cheque for Rs. 71,400 as payment towards the first two instalments on 24th of March, 1956. The third instalment of Rs. 30,600 was, however, not paid by the government to the society on the ground that it had not furnished the required certificate that the houses had reached the roof level. The members of the society also failed to repay the loan as stipulated. In the situation a notice was issued by the Collector of the District to the members of the society to deposit the overdue instalments of loan and to appear before the Deputy Commissioner, Gurdaspur on August 24, 1964 to show cause why the entire amount should not be recovered from them by means of arrest and detention. The society challenged the notice by filing a writ petition in the High Court. Its stand was

A that in the absence of any such stipulation in the loan agreement the amount could not be recovered by arrest of the members of the society in the first instance. The writ petition remained pending for more than six years but no instalments had been paid by the members of the society to the government during that period.

B The claim was resisted by the government. The writ petition was, however, allowed by the learned Single Judge by his judgment dated 17th March, 1971 holding that the government must resort to the contractual remedy which it reserved to itself when entering into the loan agreement. The State preferred a letters patent appeal which was summarily dismissed. The state has now approached this court by special leave.

C The learned counsel appearing for the State relied upon cl. (b) of s. 67 of the Punjab Land Revenue Act. This section provides the process for the recovery of arrears of land revenue and one of the modes prescribed by cl. (b) of s. 67 is by arrest and detention of the borrower's person. Reliance was also placed on s. 98 of the said Act which enumerates what sums are recoverable as arrears of land revenue and cl. (dd) of s. 98 includes a loan advanced by the State Government towards the cost of the house or site under the government sponsored housing scheme together with interest chargeable thereon and costs, if any, in making or recovering the same as land revenue. The counsel for the respondents on the other hand strenuously relies upon cl. 4 of the agreement of loan and contends that in view of the agreement between the parties the government has to proceed first against the property mortgaged and in case of a shortfall other methods could be resorted to. It will be pertinent at this stage to refer to cl. 4 of the loan agreement which reads:

F "4. For the consideration aforesaid and as security for the repayment to the Government of the said loan and interest, the borrower hereby transfers to the Government the said sites together with houses now erected or hereafter to be erected thereon, to the intent that the same shall remain and be charged by way of mortgage in the manner following, namely, that for the purpose of recovering the said loan and interest, and any other sum as may become due by the borrower to the Government by virtue of these presents, the Government may, at its option, either sell the said sites and the houses erected or hereafter to be erected thereon or any part thereof

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without the intervention of any Court or enforce against the said property all or any of the remedies of simple mortgage and in case the realisation from the property mentioned above falls short of the amount due to the Government under these presents, the Government shall be entitled to recover the same personally from the borrower as well as from the movable or other immovable property belonging to the borrower."

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A bare reading of c. 4 of the agreement makes it evidently clear that the Government has first to proceed against the property mortgaged and sell the property. Only in case the entire amount could not be realised that the Government could proceed against the borrower personally. The government is as much bound by the agreement as the borrower and, therefore, the government has first to proceed against the mortgaged property.

During the course of argument reliance was placed upon **Ram Narayan Agarwal etc. v. State of U.P. & Ors.** [1983] 3 S.C.R. 684. In that case the petitioners had committed default in payment of the tax payable by them under the U.P. Sales Tax Act, 1948. The amount due was sought to be recovered as arrears of land revenue. The procedure for such a recovery was provided by ss. 279 and 281 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 read with rr. 246, 247A, 247B and 251 of the U.P.Z.A. and L.R. Rules, 1952. Clause (b) of sub s. (1) of s. 279 of the U.P.Z.A. and L.R. Act contemplates of recovery of the amount due by resort to arrest and detention of the person concerned. The procedure contained in U.P.Z.A. and L.R. Act and the rules made thereunder was challenged on the ground that they are violative of Arts. 14, 19(1) (g) and 21 of the Constitution but this contention was overruled and it was definitely held that the impugned procedure contained in the U.P.Z.A. and L.R. Act and the rules made thereunder were not violative of Arts. 14, 19 (1) (d) and 21 of the Constitution. The writ petitions were, however, allowed in the case on the ground that there was non-compliance with Rule 251 of the Rules which obligates an enquiry to be made by the officer who issued the warrant into the question whether the detention of the defaulter would compel him to pay the arrear or a substantial portion thereof and admittedly no such enquiry was held in any of those cases and in these circumstances it was held that the petitioners could not be detained pursuant to any warrants already issued. Such is not the position in this case and, therefore, that case is not of much assistance.

A For the reasons given above we do not find any fault with
the judgment of the learned Single Judge as confirmed by the High
Court in letters patent appeal. The appeal, is, therefore,
B dismissed. There is, however, no order as to costs.

S.R.

Appeal dismissed.