

Fauja Singh
and others
v.
The Director
Consolidation of
Holdings,
Jullundur
and others

Grover, J.

any evidence but was contrary to evidence it amounted to an error of law apparent on the face of the proceedings and the order could be quashed by a certiorari. The observations made in that case are quite apposite here.

The repartition as agreed by all the right-holders had become final under the provisions of subsection (4) of section 21 and it was not open to the Director to make an order contrary to the scheme which he admittedly did by giving four plots to the petitioners in violation of the terms of the scheme. The position taken up in paragraph 7(ii) of the written statement of respondent No. 1 is not tenable inasmuch as it is stated that the scheme provisions could not stand in the way of an order under section 42 of the Consolidation Act. The scheme had never been amended as such or modified under any separate order made under section 42 of the Act and it seems to me very doubtful that in an individual case it is open to the Director to make an order in violation of the scheme which had been accepted by all the right-holders and on the basis of which complete repartition had taken place.

For all the reasons given above, the petition will be allowed and the order of the Director, Consolidation of Holdings, Punjab, dated 15th December, 1956, will be quashed and it is ordered accordingly.

The petitioners will be entitled to their costs in this Court.

REVISIONAL CIVIL

Before Falshaw, J.

UNION OF INDIA,—Petitioner

versus

AMAR NATH, etc.,—Respondents

Civil Revision No. 19-D/56.

*Constitution of India (1950)—Articles 14 and 372—
Debts due to the State—Whether entitled to priority over*

other unsecured creditors—Common law rule as to priority of State debts—Whether applicable to India—Whether offends Article 14 of the Constitution.

Held, that according to common law doctrine, if the debts due to the Crown are of equal degree to the debts due to a private citizen, then the Crown must have priority against the private citizen. The priority given to the Crown is not on the basis of its debts being a Judgment debt or a debt arising out of Statute, but the principle is that if the debts are of equal degree and the Crown and the subject are equal, the Crown's right will prevail over that of the subjects. The Indian Courts have taken the same position.

Held, that the Constitution of India sets up a democratic socialist republic and effect will not be given to any principle of law which was inconsistent with the democratic or socialistic principles which have been accepted in the Constitution, but even in a democracy and even under socialism, the State must have certain rights and privileges. The State has to govern, the State has to find money to be used for socialistic principles and the Courts have always given every facility to the State to realise moneys which are not collected for any private purpose but are intended for the public need. This principle which has been enunciated in the English Courts and which has been accepted by Courts in India is not a principle which is peculiar to British Jurisprudence.

Held, that this principle of Common Law formed part of the law in force in India immediately before the commencement of the Constitution and it has been preserved under Article 372(1) of the Constitution and it must continue in force until altered or repealed or amended by a competent legislature or other competent authority.

Held further, that this Common Law rule with regard to priority of debts due to the State is not in any way violative of the fundamental rights under Article 14 of the Constitution as the State does not claim its debts in the capacity of a creditor but in its capacity as a State and, therefore, there is, no discrimination.

Bank of India v. Johan Brown and others (1), and *Messrs. Builders Supply Corporation v. Union of India* (2), relied upon.

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

(2) A.I.R. 1956 Cal. 26.

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Petition under section 44 of Act IX of 1919, Punjab Courts Act for the revision of the order of Shri J. M. Tandon, Sub-Judge, 1st Class, Delhi, dated the 17th December, 1955, ordering that the money be not paid to the decree-holder for one month from to day during which time the Delhi Improvement Trust can file appeal against his order.

BISHAMBER DAYAL, for Petitioner.

Nemo, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—This is a revision petition filed by the Union of India in the following circumstances:

Amar Nath, respondent, had obtained a simple money decree against certain persons as legal representatives of one Devi Chand who had been a contractor and in execution of the decree he got attached and remitted to the executing Court the sum of Rs. 2,312 which was lying with the Deputy Accountant-General, Industries and Supplies, in the name of one of the judgment-debtors. This sum was received by the Court on the 6th of April, 1955, and on the 15th of April, a letter was received from Mr. J. D. Sharma, Assistant Collector, 1st Grade, stating that the Union of India laid claim to a sum of Rs. 914-6-0 which was due to the Delhi Improvement Trust and was apparently recoverable as arrears of land revenue. It was accordingly requested that this sum should not be paid to the decree-holder.

The matter was ultimately argued before the learned Sub-Judge, who held in the order now challenged that after the coming into force of the Constitution of India in January, 1950, the old Crown claim to priority over unsecured creditors had ceased to exist. However, while ordering

that the money should be paid to Amar Nath, decree-holder, the learned Sub-Judge suspended the operation of the order for a month in order to give the Government time to file an appeal. This order has been challenged by a revision since no appeal under section 47, C.P.C., lay as the Union of India was not a party in the ordinary sense of the suit or execution proceedings.

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In arguing that the old Crown priority over unsecured creditors, which was recognised in India before the Republic came into existence still remains in force, and is not contrary to any provisions of the Constitution, the learned counsel for the Government has relied on the decisions in *Messrs Builders Supply Corporation v. Union of India* (1), *Bank of India v. Johan Brown and others* (2).

In the latter case there was a dispute between the Government and a Bank both of which had advanced loans to a certain company. The loans obtained from the Bank were guaranteed by one of the Directors, and the loans from the Government were guaranteed by the Directors as a whole including the Director who had guaranteed the Bank's loan, one of the terms of the Directors' guarantee being that the loan was recoverable as arrears of land revenue. Proceedings were taken by the Government to recover this sum by attachment and sale through the Collector of Bombay of certain immovable property belonging to those Directors.

In the meantime the Bank filed a suit and a consent decree was passed in its favour and a struggle then began between the Government and the Bank. The matter was considered by Chagla, C. J., and Dixit, J., whose views are set out in the

(1) A.I.R. 1956 Cal. 26.

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

Union of India following passages taken from the judgment delivered by Chagla, C. J. :—
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“The claim of the State would have been justified if the claim had been put forward under section 11, Bombay City Land Revenue Act, but as we have already pointed out, the Advocate-General has conceded that its claim does not come within the ambit of that section, and therefore, we had to ask the Advocate-General to point out to us any provisions of the law by which the claim of the State must be preferred to the decree passed by a competent Court and the execution taken out by a competent Court, and again the Advocate-General fairly conceded that there was no provision in any law, but what he relied on was the Common law doctrine that if the debts due to the Crown are of equal degree to the debts due to a private citizen, then the Crown must have priority in recovering those debts as against the private citizen, and this takes us to the very interesting question that has been debated at the Bar as to what are the rights of the State after the Indian Constitution was enacted.”

According to the Common law doctrine if the debts due to the Crown are of equal degree to the debts due to a private citizen, then the Crown must have priority in recovering those debts against the private citizen. The priority given to the Crown is not on the basis of its debt being a judgment-debt or a

debt arising out of statute, but the principle is that if the debts are of equal degree and the Crown and the subject are equal, the Crown's right will prevail over that of the subject. The Indian Courts have also accepted the same position here. Whatever may have been the historical origin of the principle which gives priority to the debts due to the Crown when the English Courts came to consider this question the principle had become a part of the Common Law of England. It is not so much because the Crown has any special privileges in England that this principle has been upheld, but it is because the State in England has taken the place of the Crown and the English Courts have continued the privilege which was once the privilege of the King and have afforded the same privilege to the State because they have realised that the State has certain rights and privileges which cannot be overlooked."

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"It is true that our Constitution sets up a democratic socialist republic and we would be loath to give effect to any principle of law which was inconsistent with the democratic or socialistic principles which we have accepted in our Constitution. But it would be an exaggeration even to suggest that the England

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of today is not democratic or socialistic, and if the English Courts have upheld this principle they could not have done so if they had realised that it was no longer consistent with the modern trends of constitutional theory prevailing in England today. Even in a democracy and even under socialism the State must have certain rights and privileges. The State has to govern, the State has to find money to be used for socialistic principles and the Courts have always given every facility to the State to realise moneys which are not collected for any private purpose but are intended, for the public need. This principle which has been enunciated in the English Courts and which has been accepted by our Courts is not a principle which is peculiar to British jurisprudence."

"If this principle formed part of the Common Law of England, then that law has been preserved under Article 372(1) of the Constitution. This was the law in force in India immediately before the commencement of the Constitution and it must continue in force until altered or repealed or amended by a competent legislature or other competent authority."

"It is not true to say that the State is denying equality before the law to any person by claiming this special privilege. Article 14 of

the Constitution would only be
 offended against if the State made
 a discrimination between one
 creditor and another or between
 one class of creditors and another.
 The principle of Common Law is
 that the State has priority over all
 competing creditors if the debts
 are of the same quality. The State
 here is not claiming as a creditor.
 It may be a creditor, but the right
 which it claims is in its capacity
 as the State and its contention is
 that as it is the custodian of public
 welfare, as moneys which it is
 claiming belong to the coffers of
 the State and are to be used in
 public interest, it should be given
 precedence over private creditors
 who have not to discharge the du-
 ties or responsibilities of the State.
 Therefore, the Common Law with
 regard to priority of debts due to
 the State is not in any way incon-
 sistent with the fundamental rights
 embodied in Part III of the Con-
 stitution.”

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More or less the same view has been taken by
 Chakravarti, C. J., and Lahiri, J., in the Calcutta
 case, which related to a struggle between a decree-
 holder and the Income Tax authorities for certain
 moneys belonging to a judgment-debtor which
 had been attached and received in the executing
 Court. In this case also it was held that Article
 372(1) of the Constitution kept alive the principle
 of law by which the State claimed priority over
 other unsecured creditors and the case for State
 priority in matters of this kind was justified even

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under a Republican form of Government on the same grounds as in the Bombay case. I am in respectful agreement with the pronouncements on the law in this matter and I accordingly hold that the learned Sub-Judge wrongly held that the old crown priority over other unsecured creditors had disappeared with the inauguration of the Republic of India, and that the Government is entitled to claim the sum in dispute on behalf of the Delhi Improvement Trust. Since nobody appeared on behalf of the respondents there is no order as to costs.

K.S.K.

CIVIL WRIT

Before Chopra, J.

THAKAR JAISHI RAM AND OTHERS,—*Petitioners.*

versus

THE CHIEF SETTLEMENT COMMISSIONER,
JAISALMER HOUSE, NEW DELHI, AND OTHERS,—

Respondents

Civil Writ No. 450 of 1956.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954) Sections 19, 24 and 33—Chief Settlement Commissioner—Whether competent to cancel allotments made under the Administration of Evacuee Property Act (XXXI of 1950), in exercise of appellate or revisional powers—Extent and scope of such powers—Powers of the Central Government under section 33—Whether exercisable by the Chief Settlement Commissioner—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 72—Inquiry under—Scope of.

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Held, that having regard to the provisions of section 28 of the Administration of Evacuee Property Act, 1950, the Chief Settlement Commissioner cannot entertain any appeal against the order of allotment or exercise his appellate powers under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to set aside the order of allotment made more than four years before.