

CIVIL REVISION.

Before S. K. Ghose and Nasim Ali J.J.

HARISH CHANDRA PAL

v.

CHANDRA NATH SHAHA.*

1938

Jan. 14, 17.

Agricultural Debt—Debt settlement Board—Exclusive jurisdiction of Board to determine certain matters—Power of civil Court to challenge its findings—Bengal Agricultural Debtors Act (Ben. VII of 1936), ss. 2 (9), 8 (4), 13, 29, 31.

The civil Court has no jurisdiction to challenge or override the findings of the Debt Settlement Board established under the Bengal Agricultural Debtors Act in matters which the Board is empowered to decide and on which it has given an express finding, e.g., the amount of the debt, whether a particular person is a debtor within the meaning of the Act and whether he ordinarily resides within the jurisdiction of the Board.

Jaga Bandhu Shaha v. Rash Mani Dasee (1); Nrisingha Charan Nandi Chaudhuri v. Kedar Nath Chaudhuri (2); Manindra Mohan Ray Talukdar v. Bipin Bihari Talukdar (3); Jagabandhu Roy Choudhury firm v. Blusai Bepari (4); Ramendra Nath Mandal v. Dhananjoy Mondal (5); Bhagawan Dayal Shahu v. Chandu Lal Agarwala (6); Satyendra Mohan Ghosh v. Nibaran Chandra Basu (7); Shib Dulal Sukul v. Kishoreganj Loan Office, Ltd., Co. (8) and Halemuddin Sircar v. Musajama Sircar (9) referred to.

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Application by the judgment-debtor.

The facts of the case and the arguments in the Rule are sufficiently stated in the judgment.

Ramaprasad Mukhopadhyaya, Assistant Government Pleader, and *Ajit Kumar Dutt* for the petitioner.

*Civil Revision, No. 1539 of 1937, against the order of Manmatha Kumar Ray, Third Subordinate Judge of Comilla, dated Sep. 10, 1937.

(1) I. L. R. [1937] 2 Cal. 625.

(5) (1937) 42 C. W. N. 218.

(2) I. L. R. [1938] 1 Cal. 345.

(6) I. L. R. [1938] 1 Cal. 256.

(3) I. L. R. [1938] 1 Cal. 597.

(7) I. L. R. [1937] 2 Cal. 478.

(4) (1937) 42 C. W. N. 217.

(8) (1937) 42 C. W. N. 173.

(9) (1937) 42 C. W. N. 280.

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Girija Prasanna Sanyal and Bhupendra Nath Das
Gupta for the opposite party.

S. K. GHOSE J. The petitioner in this Rule filed an application as a debtor under s. 8(2) of the Bengal Agricultural Debtors Act, 1935, before the Chandina Settlement Board in the district of Tipperah. Thereupon the Board sent a notice under s. 34 of the Act to the Third Court of the Subordinate Judge at Comilla asking him to stay proceedings in the Money Execution Case No. 261 of 1936, in which the opposite party to this Rule was the decree-holder. The Subordinate Judge, accordingly, stayed further proceedings. But on September 6, 1937, he received a letter from the Chairman of the Settlement Board to the effect that the application made by the petitioner had been dismissed and the stay notice was withdrawn. The petitioner states that the aforesaid order was made by the Settlement Board on the representation of the decree-holder opposite party and the reason assigned by the Chairman in his letter was that the Board thought that the amount of debt due to the petitioner was more than Rs. 1,000 and so the permission of the Subdivisional Officer was necessary before a notice under s. 34 could be issued. The petitioner, thereafter, moved the Board on the 7th September. The Board then held an enquiry at a special meeting and, cancelling the previous decision, held that the debt was Rs. 343-10-6 as alleged by the petitioner and that the judgment-debtors ordinarily resided within the jurisdiction of the Board and further their primary means of livelihood was agriculture. The Board, thereupon, sent another notice under s. 34 of the Act to the Subordinate Judge and at the same time communicated to him the reason for their decision. The petitioner also, it appears, filed an application before the Subordinate Judge stating that the petitioner was prepared to prove by evidence that the facts found by the Debt Settlement Board in his favour were correct. The Subordinate Judge, however, by his order dated September 10, 1937, refused to stay the proceedings in his Court in

accordance with the notice of 7th September. His order goes to show that he considered that the Board's order of 5th and 7th September were inconsistent and, relying on an affidavit and a counter-affidavit filed before him, he held, overriding the decision of the Board, that the debtors were not debtors within s. 2(9) of the Act and that they did not ordinarily reside within the jurisdiction of that Board. He, accordingly, held that the notices issued by the Board under s. 34 were illegal, invalid and without jurisdiction. Against that order the present Rule has been obtained.

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It is contended for the petitioner that the Subordinate Judge acted beyond his powers in holding that the civil Court can refuse to accept the findings of the Board as to the amount of the debt and as to whether the judgment-debtors are agriculturists and that he overlooked the provisions of the Act which give to the Board and to the appellate officer constituted under the Act the sole jurisdiction to decide those questions. It is quite clear that in this case the Debt Settlement Board had come to express findings as to the amount of the debt and as to whether the judgment-debtors are debtors within the meaning of the Act. Apparently it did so in course of proceedings under s. 13 of the Act. The Act has been brought into operation quite recently, but it has already come under the consideration of this Court on many occasions. There is a number of cases in which it has been held that, after the sale has taken place and the decree has been satisfied, there is no debt existing and so a notice to stay proceedings under s. 34 of the Act cannot be complied with. *Jaga Bandhu Shaha v. Rash Mani Dasee* (1); *Nrishingha Charan Nandi Chaudhuri v. Kedar Nath Chaudhuri* (2); *Manindra Mohan Ray Talukdar v. Bipin Bihari Talukdar* (3); *Jagabandhu Roy Choudhury firm v. Bhusai Bepari* (4); *Ramendra Nath Mandal v.*

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Dhananjoy Mondal (1). In the last mentioned cases it is said that it may be that where the entire sale-proceeds are not exhausted by way of satisfying the decree, the Court must stay the proceedings with regard to the balance remaining by reason of the notice under s. 34. In the case of *Bhagawan Dayal Shahu v. Chandu Lal Agarwala* (2), it was held that the notice was not valid as being addressed to a Court constituted in an area to which the Act did not apply. Then there is a class of cases in which the Courts have not questioned the validity of the notice. In the case of *Satyendra Mohan Ghosh v. Nibaran Chandra Basu* (3) it was held that it is not for the civil Court to decide whether the Board is specially empowered under s. 7 of the Act. In the case of *Shib Dulal Sukul v. Kishoreganj Loan Office Ltd., Co.* (4) it was held that an insolvency Court has no jurisdiction to decide whether a person is a debtor within the meaning of the Act, more specially without taking any evidence. In the case of *Hatemuddin Sircar v. Musajjama Sircar* (5) it was held that the civil Court has no jurisdiction to decide whether a debtor resides or the property is situated within the jurisdiction of the Court. It has been contended that since the Act disturbs the existing law and sets up a special tribunal in derogation of the ordinary jurisdiction of the Courts, its provisions must be construed liberally in favour of such ordinary jurisdiction. With regard to s. 34, it may be said that the Court receiving the notice must see that there is a debt in respect of which proceedings before it are pending and, where the debt does not exist, for instance, by reason of the execution-sale having taken place, there is nothing to stay, the notice cannot be given effect to. Also it may be said that the Court has jurisdiction to decide whether the notice is in the prescribed manner as provided for by the Act. But where the Board has given an express decision on a

(1) (1937) 42 C. W. N. 218.

(3) I. L. R. [1937] 2 Cal. 478.

(2) I. L. R. [1938] 1 Cal. 256.

(4) (1937) 42 C. W. N. 173.

(5) (1937) 42 C. W. N. 280.

question of fact or on a question of mixed law and fact within its jurisdiction, as provided for by the Act, there seems to be no warrant for the proposition that the Court can sit in judgment over such decision and override it and then refuse to stay the proceedings in accordance with the notice. It seems to me that the learned Judge below, in taking the view that he did, overlooked the fact that the Act itself provides for final decision by the Board or by an appellate officer. It seems, therefore, that the Court below acted in the exercise of its jurisdiction illegally in refusing to stay the proceedings in accordance with the notice under s. 34 of the Act. The order complained of must, therefore, be set aside and the Rule must be made absolute. There will be no order as to costs.

NASIM ALI J. I agree that this Rule should be made absolute. By s. 34 of the Bengal Agricultural Debtors Act, a Board constituted under that Act is bound to give a notice under that section to the civil Court as soon as it finds that a particular debt in respect of which a suit or other proceeding is pending before a civil Court has been included in an application under s. 8 or in a statement under sub-s. (1) of s. 13 of the Act. When such a notice has been given by the Board, the civil or revenue Court is bound to stay the suit or proceeding in respect of the debt which is mentioned in the notice as having been included in the application under s. 8 or in the statement under sub-s. (1) of s. 13. If, however, the proceeding in respect of such a debt has come to an end by reason of the fact that the debt has been satisfied or discharged, as for example, by the sale of the judgment-debtor's properties, then there is nothing to stay and consequently the civil Court is not required to exercise its jurisdiction under s. 34. Where, however, a suit or proceeding is pending in a civil Court in respect of the debt mentioned in the notice as being included in the application under s. 8 or in the statement under sub-s. (1) of s. 13, the

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Board is required under s. 34 to give notice to the civil Court and the Court is bound to stay the suit or proceeding. The learned advocate, appearing on behalf of the opposite party, however, contended that the debt, in respect of which the notice was given by the Board in the present case, was not included in an application contemplated by the Act. It was argued that, in order to give jurisdiction to the Board to issue a notice under s. 34, there must be a valid application under the Act before the Board. The requirements of a valid application under the Act are to be found, so far as they are relevant for the purpose of the present Rule, in s. 8 of the Act. That section lays down that a debtor (which must mean a debtor within the meaning of the Act) may make an application for settlement of his debts to a Board established for the local area within which he ordinarily resides. The contention of the learned advocate for the opposite party is that in the present case there was no valid application before the Board under the Act as : (i) the debtor was not a debtor within the meaning of the Act, and (ii) he was not ordinarily residing within the local area for which the Board has been constituted. An examination of the provisions of the Act, however, shows that this question can be raised before the Board and the Board is empowered to decide these matters. Section 20 of the Act lays down that if any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not, the Board shall decide the matter. Section 8, cl. (4), by implication, indicates that the question about territorial jurisdiction is to be raised at the earliest possible opportunity, that if such an objection is raised, the Board has got to decide it and if the Board wrongly decides, the matter can be again agitated before the appellate officer, provided there has been a failure of justice. This clause, therefore, by implication, gives power to the Board to decide the question of local jurisdiction. By s. 40 of the Act an appeal lies to an appellate officer

from any decision or order of the Board under the Act. By s. 38 of the Act no appeal or application for revision shall lie against any decision or order of or award by a Court except, as provided in this Act. There cannot be any doubt, therefore, that the grounds on which the application in which the debt in question is included is sought to be attacked as invalid are grounds which can be taken by way of objection before the Board. On such objection being raised, the Board is to give its decision and such a decision is liable to be challenged by appeal in accordance with the provisions of the Act. If that is not done it cannot be questioned in any other manner. Under these circumstances, I hold that the subordinate Judge in the execution proceedings had no jurisdiction to go into the question as to whether the debtor was a debtor within the meaning of the Act or whether he ordinarily resided within the local area for which the Board had been established.

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Rule absolute.

A. A.