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STATE OF TAMIL NADU

v.

G.N. VENKATASWAMY & ORS. ETC. ETC.

JULY 11, 1994

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[KULDIP SINGH AND DR. A.S. ANAND, JJ.]

Tamilnadu Revenue Recovery Act. 1864—Section 52-A (as inserted by Tamil Nadu Revenue Recovery (Amendment) Act 1972).

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Constitution of India 1950—Schedule VIII List II Entry 30—Section 52-A is constitutionally valid inasmuch as State Legislature can confer additional jurisdiction on existing revenue courts to recover any public dues as arrears of land revenue.

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Collector constitutes revenue court within the meaning of Entry 11A of Schedule VII List III. The Tamil Nadu Revenue Recovery Act, 1864 was amended and a new section namely 52-A was inserted in it in 1972. The validity of Section 52-A was challenged before the High Court on two grounds.

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1. State Legislature had no legislative competence to enact Section 52-A.

2. It was violative of Article 14 of the Constitution.

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The Act provides for distress sale of distraint property, attachment of land, sale of land and the arrest of defaulter for non-payment of the arrears of land revenue. Collector is the authority competent to take such actions. Detailed procedure in that behalf has been provided under the Act. The act provides a salutary procedure which is drastic and has been enacted for speedy recovery of the land revenue. Entry III (Administration of Justice) etc. and Entry 43 (Public Debt of the State), Entry 45 (land revenue) etc. of List II and Entry 43 recovery of State claims of List III were relied upon by the State Counsel, and decision of Collector, High Court in *Mukherjee and Co. v. Union of India*, AIR (1964) Calcutta 165, were relied upon by the State Government.

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But a Division Bench of the High Court declared S. 52-A of the Act *ultra vires* the powers of the State Legislature. It did not deal with the

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ground under Article 14.

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On appeal to the Supreme Court, this Court after considering the relevant decisions and allowing the appeal, this Court

HELD : 1.1. Under Entry 11-A of List III of the 7th Schedule of the Constitution, the State Legislature has the powers to make laws thereby enlarging or reducing the powers of the courts. The State Legislature can create new courts, reorganise the existing courts, provide jurisdiction to the said courts and also take away the existing jurisdiction if it so desires. There is no reason why a State Legislature cannot confer additional jurisdiction on existing revenue courts to recover any public dues as arrears of land revenue. [330-G-H, 331-A]

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State of Bombay v. Narothamdas Jethabai, [1951] SCR 51 = AIR (1951) SC 69, followed.

C. Mukherjee and Co. v. Union of India, AIR (1964) Cal 1165 = (1962) Cal LJ 210 = (1964) 51 ITR 366, referred to.

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1.2. The collector exercises powers under the Revenue Recovery Act which is an Act of the State Legislature. He is invested with the power to decide the controversy between the State and the defaulter. There is in existence a lis between the State and the defaulter. There is assertion and denial. The dispute involves the rights and obligations of the parties which are decided by the Collector. The Collector has the power to sell movable and immovable property of the defaulter. He can even arrest and detain the person up to a period of two years. All these powers of the Collector are the judicial powers of the State. The only conclusion which can be drawn is that the Collector under the Act is a revenue court. [332-F-G]

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1.3. Once it is held that the Collector is a revenue court then there is no difficulty in holding that Section 52-A of the Act was enacted by the Tamil Nadu Legislature under Entry 11-A List III Schedule 7 Constitution of India. [332-H]

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Associated Cement Companies Ltd. v. P.N. Sharma, [1965] 2 SCR 366 = AIR (1965) SC 1595 = (1965) 1 LLJ 433 and *Dev Singh v. Registrar, Punjab and Haryana High Court*, [1987] 3 SCC 169 = [1987] SCC (L&S) 190 = (1987) 3 ATAC 794 = [1987] 2 SCR 1005, relied on.

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A 1.4. Section 52-A of the Act is passed with the object of providing a speedier remedy to the State-owned corporations to realize the loan advanced by them. While advancing loans the Corporations do not act as ordinary bankers with a view to earn interest. [333-C]

B *U.P. Financial Corpn. v. Gem Cap (India) Pvt., Ltd.*, [1993] 2 SCC 299 = JT (1993) 2 SC 226 and *S.P. Chengalvaraya Naidu v. Jagannath*, [1994] 1 SCC 1 = JT (1993) 6 SC 331, relied upon.

C 1.5. There is no doubt that Section 52-A of the Act has been brought on the Statute Book with a view to expedite recovery of the loans advanced by the Corporations. The Legislation is directly related to Entry 30 List II. Thus Section 52-A of the Act is constitutionally valid and the Tamil Nadu Legislature and legislative competence to enact the same. [334-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2620 to 2664 of 1981 etc. etc.

D From the Judgment and Order dated 7.10.80 of the Madras High Court in W.P. No. 3427 of 1977 & etc. etc.

P.R. Seetharaman, for the Appellant S.K. Dholakia, M.N. Shroff and Ms. Remma Bhandari for the Appellant in T.C. Nos. 40-41/89.

E Ms. Seita Vaidyalingam, R. Mohan and V. Balachandran, for the Respondent.

S. Balakrishnan and S. Prasad for the Respondent No. 5.

F H.N. Salve, R.P. Kapur and Sanjay Kapur for the Respondent No. 2 in T.C. No. 40-51/89.

H.L. Agarwal and Anil K. Jha for the Respondent in T.C. Nos. 47 & 48/89.

G Judgment/Order

The Judgment of the Court was delivered by

H **KULDIP SINGH; J.** The Tamil Nadu Revenue Recovery Act, 1864, (the Act) was amended by the Tamil Nadu Revenue Recovery (Amendment) Act, 1972 and Section 52-A was inserted in the Act. The validity of

Section 52-A of the Act was challenged before the Madras High Court by way of a batch of writ petitions on the ground the the Tamil Nadu legislature has no legislative competence to enact the said section. A Division Bench of the High Court by its judgment dated October, 7, 1980 allowed the writ petitions and declared Section 52-A of the Act *ultra vires* the powers of the State Legislature. These appeals by the State of Tamil Nadu are against the judgment of the Madras High Court.

Section 52-A of the Act reads as under :—

"52-A. Recovery of sums due to the Tamil Nadu Agro- Industries Corporation and other Corporations, etc. - Without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person—

(i) by the Tamil Nadu Agro-Industries Corporation Limited, Madras, or

(ii) by such other Corporation (the shares of which have been contributed, underwritten or guaranteed by the State Government) as may be notified in this behalf by the State Government in the Tamil Nadu Government Gazette, or

(iii) from out of the Amalgamated Tamil Nadu Shares of the Post War Services Reconstruction Fund and the Special Fund for Reconstruction and Rehabilitation of Ex- servicemen,

together with interest on such loans and advances, and all sums due to the Corporations mentioned in clauses (i) and (ii) may be recovered in the same manner as arrears of land revenue under the provisions of this Act."

In exercise of the powers under Section 52-A(ii) the Tamil Nadu Government have from time to time notified various Corporations such as the State Industries Promotion Corporation Ltd., the Tamil Nadu Small Industries Development Corporation Ltd., the Tamil Nadu Industrial Investment Corporation Ltd., the Tamil Nadu Small Industries Corporation Ltd., etc. etc.

The respondents—writ petitioners before the High Court—borrowed various sums of money from one or the other corporation notified under

A Section 52-A of the Act. With a view to recover the sums due, from the respondents, to the said corporations, proceedings were initiated under the Act. The Tehsildars concerned issued notices calling upon the respondents to pay the amounts mentioned in the respective notices to the concerned corporations. In some of the cases distrained orders had also been issued.

B Apart from the challenge on the ground of legislative competence the validity of Section 52-A of the Act was also questioned on the ground that it was violative of Article 14 of the Constitution of India. Since the High Court struck down the section on the ground of legislative competence it did not deal with the challenge on the ground of Article 14 of the Constitution of India. Before us the parties confined their arguments only to the question of legislative competence.

D The Act provides for distress, sale of distrained property, attachment of land, sale of land and the arrest of the defaulter for non payment of the arrears of land revenue. The Collector is the authority competent to take any of the actions under the Act. Detailed procedure has been provided under the Act for distress, sale and arrest. Section 48 provides that when the arrears of revenue with penalty and other charges cannot be liquidated by the sale of the property of the defaulter, or of his surety, and the Collector has reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter or his surety, not being a female. No person can be imprisoned for a period longer than two years depending upon the amount of arrears. It cannot be disputed that the Act provides a summary procedure which is drastic and has been enacted for speedy recovery of the land revenue payable to the Government.

G The Advocate-General appearing for the State of Tamil Nadu before the High Court relied upon the following Entries in List II and III, Seventh Schedule, Constitution of India in support of his contention that the Tamil Nadu Legislature was competent to enact Section 52-A of the Act :—

"Entry 3 List II (As it was before Constitution (Forty-second Amendment) Act, 1976).

H Administration of justice; constitution and organisation of all

Courts, except the Supreme Court and the High Court; Officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all Courts except the Supreme Court. A

Entry 43 List II : Public debt of the state.

Entry 45 List II: B

Land revenue, including the assessment and collection of revenue, the maintenance of land records survey for revenue purposes and records of rights, and alienation of revenues.

Entry 43 List III : C

Recovery in State of Claims in respect of land-revenue and sums recoverable as such arrears, arising outside that State."

So far as Entry 3 List II is concerned the Advocate-General relied upon the judgment of the Calcutta High Court in *Mukherjee and Co. v. Union of India*, AIR (1964) Calcutta 165. The question of competence of the State Legislature to enact the Bengal Public Demands Recovery Act, 1913 was raised before the Calcutta High Court. Bachawat, J. who spoke for the court examined various provisions and the scheme of the Bengal Act and came to the conclusion that the exercise of the power under the said Act truly represented the judicial power of the State. On the finding the learned Judge held as under :- D

"In my opinion the Bengal Public Demands Recovery Act, 1913 may fairly be said to be a law with respect to administration of justice, constitution and organisation of revenue Courts and procedure of revenue Courts and with respect to land revenue including the collection of land revenue and is well covered by the Entries 3 and 45 of the State List. The State Legislature is competent to make such a law. It follows that the West Bengal Act XI of 1961 is also a law with respect to the matters enumerated in Entries 3 and 45 of the State List and consequently the State Legislature has power to make this law." E F G

The High Court distinguished the judgment in *Mukherjee and Co.*'s case on the short ground that the provisions in the Bengal Act were different from the provisions under the Act. H

A We are of the view that the High Court was not justified in summarily rejecting the contention of the learned Advocate- General based on Entry 3 of List II. Part of Entry 3 List II has been omitted by the Constitution (Forty-second Amendment) Act, 1976 and new Entry 11-A was inserted in List III. The said Entry reads as under :

B "11-A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and High Courts."

C The plain language of Entry 11-A gives very wide powers to the State Legislature to enact laws relating to "administration of justice" and "constitution and organisation of all courts". A Constitution Bench of this Court in *State of Bombay v. Narothamdas Jethabhai and another*, [1951] SCR 51 authoritatively interpreted Entries 1 and 2 List II of the Government of India Act, 1935. The said Entries were in the following terms :-

D "1..... the administration of justice; constitution and organisation of all courts except the Federal Court...."

"2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this List....."

E The question before this Court in *Narothamdas's* case (*supra*) was whether the Legislature of the State of Bombay had jurisdiction to create an additional civil court for Greater Bombay having jurisdiction to try, receive and dispose of all suits and other proceedings of a civil nature not exceeding a certain value. The precise contention raised was that the Act was *ultra vires* the Legislature of the State of Bombay because it conferred jurisdiction on the new court not only in respect of the matters which the Provincial Legislature was competent to legislate upon, but also in regard to matters in respect of which only the Central or the Federal Legislature could legislate. Mehr Chand Mahajan, J. interpreted the expression "administration of justice and constitution and organisation of all courts" in the following words:-

G "It seems to me that the legislative powers conferred on the Provincial Legislature by Item of List II has been conferred by use of language which is of the widest amplitude (administration of justice and constitution and organisation of all courts). It was not denied that the phrase employed would include within its ambit

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legislative power in respect to jurisdiction and power of courts A
 established for the purpose of administration of justice. Moreover,
 the words appear to be sufficient to confer upon the Provincial
 Legislature the right to regulate and provide for the whole
 machinery connected with the administration of justice in the
 Provincial. Legislation on the subject of administration of justice B
 and constitution of courts of justice would be ineffective and
 incomplete unless and until the courts establish under it were
 clothed with the jurisdiction and power to hear and decide causes.
 It is difficult to visualise a statute dealing with administration of
 justice and the subject of constitution and organisation of courts C
 without a definition of the jurisdiction and powers of those courts,
 as without such definition such a statute would be like a body
 without a soul.A court without powers and jurisdic-
 tion would be an anomaly as it would not be able to discharge the
 function of administration of justice and the statute establishing D
 such a court could not be said to be a law on the subject of
 administration of justice. It is a fundamental principle of the
 construction of a constitution that everything necessary for the
 exercise of powers is included in the grant of power. Everything
 necessary for the effective execution of power of legislation must E
 therefore be taken to be conferred by the constitution with that
 power.....The three lists of subjects contained in Schedule 7
 have not been drawn up with any scientific precision and the
 various items in them overlap. The point kept in view in drawing
 up the lists was to see that all possible power of legislation was F
 included within their ambit. By making administration of justice a
 provincial subject and by conferring on the Provincial Legislature
 power to legislate on this subject and also on the subject of
 constitution and organisation of courts, Parliament conferred on
 that Legislature an effective power which included within its ambit
 the law making power on the subject of jurisdiction of courts." G

Fazl Ali, J. in a separate concurring judgment observed as under:—

"For the purpose of correctly deciding the question raised, we must
 first try to understand the meaning of the following items in Entry H

A 1 of List II, "administration of justice, constitution and organisation of all courts except the Federal Court." A reference to the three Legislative Lists shows that "administration of justice" is entirely a provincial subject on which only the Provincial Legislature can legislate. The same remark applies to "constitution and organisation of all courts except the Federal Court." The expression "administration of justice" has a wide meaning, and includes administration of civil as well as criminal justice, and in my opinion entry 1 in List II, which I have quoted, is a complete and self contained entry. In this entry, no reference is made to the jurisdiction and powers of courts, because the expressions "administration of justice" and "constitution and organisation of courts", which have been used therein without any qualification or limitation, are wide enough to include the power and jurisdiction of courts, for how can justice be administered if courts have no power and jurisdiction to administer it, and how can courts function without any power or jurisdiction. Once this fact is clearly grasped, it follows that, by virtue of the words used in entry 1 of List II, the Provincial Legislature can invest the courts constituted by it with power and jurisdiction to try every cause or matter that can be dealt with by a court of civil or criminal jurisdiction, and that the expression "administration of justice" must necessarily include the power to try suits and proceedings of a civil as well as criminal nature, irrespective of who the parties to the suit or proceedings or what its subject-matter may be. This power must necessarily include the power of defining, enlarging, altering, amending and diminishing the jurisdiction of the courts and defining their jurisdiction territorially and pecuniarily."

F It is no doubt correct that with the coming into force of Entry 11-A List III it is no more the exclusive power of the State Legislature to legislate under the said Entry but "administration of justice" and "constitution and organisation of all courts" are the subjects on which the State Legislature can legislate. These expressions have been authoritatively interpreted by this Court in *Narothamdas's case* (supra). It is, therefore, settled that under Entry 11-A the State Legislature has the power to make laws thereby enlarging or reducing the powers of the courts. The State Legislature can create new courts, reorganise the existing courts, provide jurisdiction to the said courts and also take away the existing jurisdiction if it so desires. We, therefore, see no reason why a State Legislature cannot confer additional

jurisdiction on existing revenue courts to recover any public dues as arrears of land revenue. A

The High Court did not go into the question whether the Collector under the Act is a revenue court. As mentioned above, the provisions of the Act are rather drastic. The Collector has very wide powers under the Act to order distress, sale of distrained property, attachment and sale of land and even arrest and detention of the defaulter. The Collector exercises what we call the judicial powers of the State. This Court in *Associated Cement Companies Ltd. v. P.N. Sharma & Anr.*, [1965] 2 SCR 366 dealt with the question whether the authority exercising powers under the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 was a court or tribunal under Article 136(1) of the Constitution of India. Gajendragadkar, C.J., who spoke for the court observed as under :— B C

"The expression "court" in the context denotes a tribunal constituted by the State as a part of the ordinary hierarchy of courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The constitution recognised a hierarchy of courts and to their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these courts exercise, are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions.....The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises D E F G H

- A under R.6(5) and R.6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it.
- B The order which the State Government ultimately passes is described as its decision and it is made final and binding."

- C Khalid, J. speaking for this Court in *Dev Singh & Ors. v. Registrar, Punjab and Haryana High Court & Ors.* [1987] 2 SCR 1005 reiterated the law laid down in *Associated Cement* case (supra) in the following words:—

- D "What follows from this case and the authorities referred therein is this: The State is invested in some cases with a power to decide controversies between parties. This power is undoubtedly one of the attributes of the State and that is called the judicial power of the State. What has to be remembered is that this power is exercised to resolve controversies between parties. In *Associated Cement's* case also this Court took notice of the fact that a dispute existed between the management and its welfare officer. It was held that there existed a lis the decision of which lis was rendered by the State in exercise of its judicial power. This was the test that has to be applied to find out whether an order is a judicial order or not."

- F The Collector exercises powers under the Act which is an Act of the State Legislature. He is invested with the power to decide the controversy between the State and the defaulter. There is in existence a lis between the State and the defaulter. There is assertion and denial. The dispute involves the rights and obligations of the parties which are decided by the Collector. The Collector has the power to sell movable and immovable property of the defaulter. He can even arrest and detain the person up to a period of two years. All these powers of the Collector are the judicial powers of the State. The only conclusion which can be drawn is that the Collector under the Act is a revenue court. Once it is held, as we have, that the Collector is a revenue court then there is no difficulty in holding that Section 52-A of the Act was enacted by the Tamil Nadu Legislature under Entry 11-A
- H List III Schedule 7 Constitution of India.

We may examine the question from another angle. Section 52-A of the Act specifically provides for the recovery of "all loans granted and all advances made to any person" by the corporations covered under the Act. The proceedings initiated under the Act are only for recovery of loans granted to the respondents by various corporations. Section 52-A of the Act, therefore, is a legislation on the subject "money lending" and "money lenders" under Entry 30 of the State List which is in the following terms:-

"Money-lending and money-lenders; relief of agricultural indebtedness."

Section 52-A of the Act is passed with the object of providing a speedier remedy to the State-owned corporations to realise the loan advanced by them. While advancing loans the corporations do not act as ordinary bankers with a view to earn interest. The loans are advanced as a financial assistance to establish an industry, develop agriculture or any other purpose which would advance the well being of the people. Ordinarily the amounts so advanced are repayable in easy instalments and carry comparatively lesser rate of interest as compared to the loans advanced by the banks. The loans are advanced out of the funds of the State which is a public money. Money has to be recovered expeditiously so that fresh advances be made to others who have not yet received financial assistance from the State agencies. If the corporations are left to a remedy of a suit the recovery is bound to be delayed considerably. It is with the object of avoiding the unusual delay which normally takes place in the civil courts the expeditious remedy by enacting Section 52-A has been provided. It is often seen that a person who has taken loan from a corporation tries to delay the payment by taking shelter behind cumbersome procedure of the civil courts. This Court in *U.P. Financial Corporation v. M/s. Gem Cap (India) Pvt. Ltd. and Ors.*, JT (1993) 2 S.C. 226 observed as under:-

"The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another circumstance. These Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered -

A nay, determined, in the light of all these circumstances."

In *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors.*, JT (1993) 6 S.C. 331, this Court observed as under:-

B "We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely."

C There is no doubt that Section 52-A of the Act has been brought on the Statute Book with a view to expedite recovery of the loans advanced by the corporations. The legislation is directly related to Entry 30 List II. We, therefore, hold that Section 52-A of the Act is constitutionally valid and the Tamil Nadu Legislature had legislative competence to enact the same. We, therefore, allow the appeals, set aside the impugned judgment of the High Court and dismiss the writ petitions filed by the respondents before the High Court. The appellant shall be entitled to costs which we quantify as Rs. 5,000 to be paid by each of the respondents- petitioners in the writ petitions before the High Court.

ORDER

E Special leave granted.

F We have, today, pronounced judgment in C.A. Nos. 2620-64 of 1981. Since we have allowed those appeals this appeal has to be allowed. For the reasons recorded and the conclusions reached in C.A. Nos. 2620-64 of 1981 we allow this appeal, set aside the impugned judgment of the learned single Judge and of the Division Bench of the High Court and dismiss the writ petition filed by the respondent-petitioner before the High Court with costs. We quantify the costs as Rs.5,000.

G We have pronounced judgment today in C.A. Nos. 2620-64 of 1981. For the reasons recorded therein these transferred cases have to be dismissed. We may, however, briefly deal with the controversy involved in these cases.

H Bihar and Orissa Public Demands Recovery Act, 1914 (the Bihar Act) was amended by Act IV of 1974 thereby incorporating "any money

payable to the State Bank of India" within the list of Public Demands set out in Schedule 1 to the Bihar Act. In these transferred cases the only point argued before us was that the Bihar Legislature had no legislative competence to enact law providing for recovery of bank dues as arrears of land revenue. A

We may refer to the facts relating to Transferred Case No. 40 of 1989. Harish Tara Refractories (P) Ltd., had entered into several agreements with the State Bank of India, Main Branch, Ranchi. The case of the bank is that there were various dealings and transactions between the parties and large sums of money became due and payable by the company. According to the bank the admitted liability of the company as on October 1, 1979 was Rs.31,18,993.55. Since the repayment of the loan was not made despite repeated demands the Manager of the bank sent a requisition for a certificate under the Bihar Act for recovery of the outstanding loan amount together with interest. The Certificate Officer issued a certificate under Sections 4 and 6 of the Bihar Act. The Certificate was challenged by the company by way of writ petition before the Calcutta High Court, *inter alia*, on the ground that the Bihar Legislature had no legislative competence to enact the law permitting recovery of the bank dues as arrears of land revenue. It was argued that the Bihar Act was a legislation relating to "banking" in respect of which only the Parliament can make law under Entry 45 List I Seventh Schedule Constitution of India. Suhas Chandra Sen, J. dealt with the points raised before him in a lucid manner with utmost clarity. The learned Judge referred to the judgment of a Division Bench of the Calcutta High Court in *Mukherjee and Co. v. Union of India*, AIR (1964) Calcutta 165 and came to the conclusion that the provisions of the Bihar Act and of the Bengal Public Demands Recovery Act, 1913 were almost identical and as such the Certificate Officer under the Bihar Act was exercising the judicial powers of the State. The learned Judge followed the judgment of this Court in *State of Bombay v. Narothamdas Jethabai and Anr.*, [1951] SCR 51 and held as under:- B
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"Administration of justice; constitution and organisation of all Courts, except the Supreme Court and the High Court" has now been brought under Entry 11A of the Concurrent List. It is no more the exclusive power of the State Legislature to legislate on these matters. But "Administration of justice" is certainly a subject on which the State Legislature can legislate. In view of the inter- G
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- A pretation given to this phrase by the Supreme Court, this power must necessarily include the power of enlarging or diminishing the jurisdiction of the Courts. The Bihar Legislature by the Amending Act IV of 1974 has merely enlarged the jurisdiction of the Certificate Officer so as to enable the State Bank of India and other
- B Banks specified in the Schedule to take recourse to the speedier remedy provided under the Bihar and Orissa Public Demands Recovery Act. Possibly, this was done to enable the Banks to avoid the proverbial law's delay and to realise their claims speedily by the expeditious remedy provided by that Act. Whatever may be the reason for passing this legislation there cannot be any doubt
- C that the amendment clearly comes under the Entry 11-A of the Concurrent List. The Amending Act 4 of 1974 has merely brought a dispute relating to money payable to the State Bank of India within the jurisdiction of the Certificate Officer. In effect, what has been done is to enlarge the jurisdiction of the Revenue Court.
- D The learned Judge dealt with the argument that the impugned provision of the Bihar Act was in relation to banking and, therefore, the Bihar Legislature has encroached upon the field reserved for the Parliament and rejected the same on the following reasoning:—
- E "Banking" has been kept in the Union List in the Seventh Schedule under Entry 45. The banking laws have not set up any special Court or laid down any procedure for resolving disputes arising between a Bank and its customers. These disputes to the established Civil Court and also by following the procedure that have been laid
- F down. As has been noted earlier in the judgment that establishment of Courts and laying down of the procedure to be followed in those Courts come within the ambit of the legislative competence of the State Legislatures. In pith and substance, the State Legislature has merely enlarged the jurisdiction of an existing Courts to entertain and try certain types of cases relating to banks. Before this amendment was made, a Bank had to file a suit in a Civil Court in the ordinary way for realisation of money due to it. The amendment enable the Bank to approach the Certificate Officer and avail of the speedier remedy of that Court. The purpose of the amendment is quite clear. The law has been passed only to make the speedy remedy of the Certificate proceedings available to the Banks. As
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I have held earlier that it is competent for the State Legislature to enlarge the jurisdiction of a Court and also to legislate on matters of procedure. It is true that "Banking" comes under the Union List; but that does not mean any legislation which affect the Banks in any way must be passed by the Parliament. I have held earlier in the judgment that the impugned legislation comes squarely within entries 11-A and 13 of the Concurrent List. Even if the legislation incidentally trenches upon the field reserved for the Central Legislature, it will not be bad on that account. This principle of law has been emphasised by the Supreme Court in a number of cases.".....

"It is well settled that Entries in the three Lists should be construed liberally. It is possible, and it is very often the case, that in passing a legislation which is within its competence, a Legislature may incidentally encroach upon the field which has been earmarked in another List exclusively for the Parliament. But that by itself will not make the legislation void, the test is to find out whether the legislation comes within any specific Entry of the State List or the Concurrent List. If in pith and substance, it is a legislation in respect of a matter which comes within the ambit of the power of the State Legislature, then even though, it incidentally trenches upon a field reserved for the Parliament, the legislation will not be bad. In the instant case, there is an additional fact that the Act was reserved and has received the assent of the President"..... "In my opinion, the legislation comes squarely within Entries 11-A and 13 of the Concurrent List. In pith and substance, the Amending Act 4 of 1974 passed by the Bihar Legislature had the effect of merely enlarging the jurisdiction of the Certificate Officer. By this amendment, the Bihar Legislature made an already existing speedy procedure of a Court established by it available to the State Bank of India and some other Banks. This legislation was within the competence of the Bihar Legislature and will not be bad even if it incidentally trenches upon the field reserved for the Parliament under List I of the Seventh Schedule."

We agree with the above quoted reasoning and the conclusions reached by the learned Judge of the Calcutta High Court and approve the same.

- A In *Sawar Mal Choudhary and Ors. v. State Bank of India and Ors.*, AIR (1988) Patna 185 the Patna High Court had an occasion to deal with the same point. S.S. Sandhawalia, CJ. who spoke for the Bench posed the question before the Bench in the following terms: —
- B "Whether Article 15 (inserted by Bihar Act of 1974) of Schedule 1 of the Bihar and Orissa Public Demands Recovery Act, is beyond the competence of the State Legislature, is the significant common question in this set of 6 writ petitions, placed for an authoritative decision by a Division Bench."
- C Primarily relying on Entry 43 List III Schedule 7 Constitution of India the Bench answered the question in the negative. The Bench, however, noticed the judgment of the Calcutta High Court in *Harish Tara Refractories's* case and observed as under: —
- D "In repelling the aforesaid contention of Mr. Bharuka, the firm stand of Mr. K.P. Verma, learned counsel appearing for the respondent State Bank of India was that the recoveries of monies due to the State owned Banks was primarily and purely a matter of procedure and inevitably these matters could, therefore, be left to the State Governments and their civil and revenue Courts. It was highlighted that it remains undisputed that the Certificate Officer, who authorises the recoveries of public demands is a Court, and, in any case, would undoubtedly come within the ambit of revenue Court. Consequently, the State Government would have undoubtedly the legislative power to govern the procedure and matters before the Certificate Officer. Both Entry 11-A and Entry 13 of List III may, therefore, also come in play because they govern civil procedure as well. Further, because Court of the Certificate Officer is a Court created by the State Government under its statute, the State Legislature under Entry 11-A or Entry 13 would not be barred from either legislating about the same or adding to the list of recoveries through such a Certificate Officer. Mr. Verma, in the alternative, therefore, canvassed for the acceptance of the view in *Harish Tara Refractories (P) Ltd. v. Certificate Officer*, AIR (1985) Cal 56 (supra), holding that Entry 11-A and Entry 13 of List II also sanctified the enactment of Art.15 of Schedule 1 to the
- H Act.

As is manifest from the gravamen of the discussions in this judgment, the primary contest herein was between Entry 45 of the Union List I as against Entry 43 of the Concurrent List III. I have already held that monies due to the State owned banks would come well within the ambit of public demands and equally their recovery both within and outside the State, by virtue of Entry 43 of the Concurrent List III. However, no serious challenge would be laid before us to the detailed reasoning in *Harish Tara Refractories (P) Ltd. v. Certificate Officer*, (supra) deriving the sanction for Article 15 of Schedule 1 from Entries 11-A and 13 of the Concurrent List III. In the alternative, therefore, I find no reason to differ from the said judgment either, and, the stand of the respondents based thereon may also be well accepted as an additional ground for sustaining the competency of the State legislature to enact Art. 15 of Schedule 1 to the Act. The contention of Mr. Bharuka, therefore, must be rejected.

We do not express any opinion of the interpretation given by the Division Bench of the Patna High Court to Entry 43 of List III. We, however, uphold the judgment of the Division Bench on the reasoning quoted above based on Entries 11-A and 13 of List III.

For the reasons given above we uphold the judgment of the Calcutta High Court in *Harish Tara Refractories (P) Ltd. v. The Certificate Officer and Ors.*, (supra) and of the Patna High Court in *Sawar Mal Choudhary and Ors. v. State Bank of India and Ors.*, (supra) and as such dismiss the transferred cases. The writ petitions/appeals filed by the petitioners in the transferred cases in the High Court shall stand dismissed with costs. We quantify the costs as Rs.5,000 to be paid by each of the petitioners in these transferred cases.

A.G.

Appeals allowed.
T.P. dismissed.