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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.72 of 2015

Chhabilal Sahu, S/o Shri Late Lakhanlal Sahu, aged about 28 years, R/o Ward No.15, Navapara, Tehsil Abhanpur, District Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Additional Tehsildar, Navapara, Tehsil Abhanpur, District Raipur, Chhattisgarh

2. Commissioner for Workmen's Compensation Labour Court, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner: Ms. Rajni Soren, Advocate.

For Respondent No. 1/State:-

Mr. Dilman Rati Minj, Deputy Govt. Advocate.

For Respondent No.2: None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

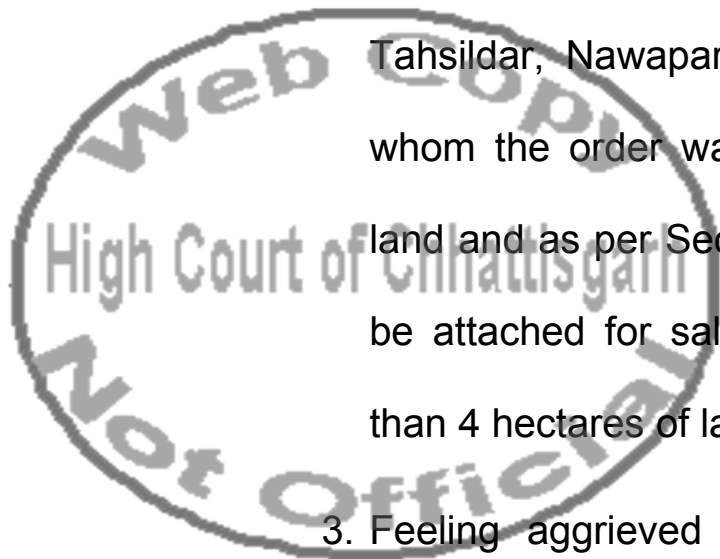
15/12/2015

1. Outstanding issue which emanates for consideration is distinction between "arrears of land revenue" recoverable under Section 139 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code') and "dues recoverable as arrears of land revenue" under Section 155 (c) of the Code.

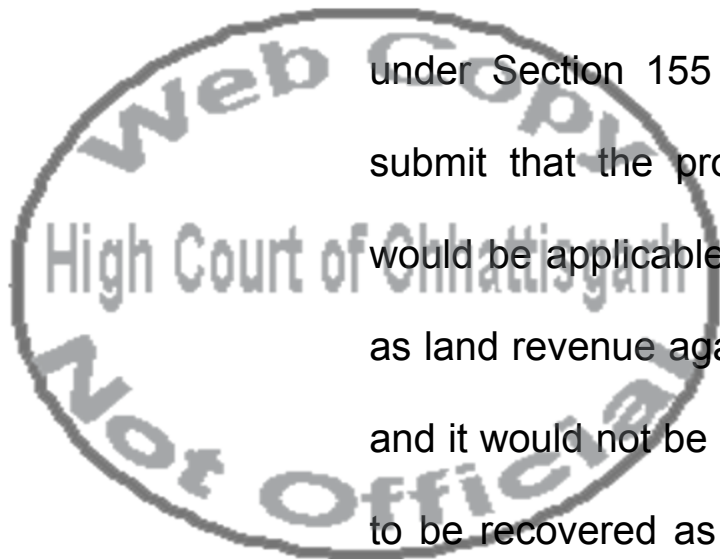
2. The Commissioner for Employee's Compensation, Raipur

passed an award in favour of the petitioner on 19-1-2007 and appeal filed against the said award by the employer was dismissed by this Court on 16-12-2008 in M.A.(C) No.1474/2008. On application for execution of the said award, the Commissioner for Employee's Compensation issued recovery certificate and forwarded to the Naib Tahsildar, Nawapara, Distt. Raipur for execution and ultimately, by the impugned order, the Additional Tahsildar, Nawapara has held that the persons against whom the order was passed own only 2.78 hectares of land and as per Section 147 of the Code, the land cannot be attached for sale if the concerned person owns less than 4 hectares of land.

3. Feeling aggrieved against the order of the Additional Tahsildar, the petitioner herein has filed this writ petition stating inter alia that the order passed by the Additional Tahsildar is illegal and bad in law as Section 147 of the Code would not be applicable in case the amount of compensation is "dues recoverable as arrears of land revenue" under Section 31 of the Employee's Compensation Act, 1923 (for short 'the Act of 1923') and, therefore, the order passed by the Additional Tahsildar deserves to be set aside.



4. The State / respondent No.1 although has not filed return, but has opposed the writ petition.
5. Ms. Rajni Soren, learned counsel appearing for the petitioner, would submit that the learned Additional Tahsildar has failed to maintain distinction between the “arrears of land revenue” payable to the Government by Bhumi Swami under Section 138 of the Code and the “amount due and recoverable as arrears of land revenue” under Section 155 (c) of the Code. She would further submit that the provisions of Section 147 of the Code would be applicable where the amount is to be recovered as land revenue against any land owned by Bhumi Swami and it would not be applicable where the amount is sought to be recovered as arrears of land revenue in respect of any amount payable by any person under the Act of 1923, as that amount would be “dues recoverable as arrears of land revenue” under Section 155 (c) of the Code and, therefore, the order passed by the learned Additional Tahsildar holding Section 147 of the Code to be applicable in the case in hand, which is a dues recoverable as arrears of land revenue under Section 155 (c) of the Code, is without jurisdiction and without authority of law, and deserves to be quashed.



6. Mr. Dilman Rati Minj, learned Deputy Government Advocate appearing for the State/respondent No.1, would oppose the petition and support the impugned order.

7. I have heard learned counsel for the parties and given thoughtful consideration to the submissions made therein and also gone through the record with utmost circumspection.

8. It is not in dispute that in the application for compensation filed by the petitioner, the Commissioner for Employee's Compensation by its award dated 19-1-2007, granted compensation to the tune of Rs.2,92,828/- in favour of the petitioner and appeal filed against the said award has already been dismissed by this Court. Revenue recovery certificate has been issued by the Commissioner which has been sent for execution to the Collector / Tahsildar. This order has been passed holding that since the petitioner's employer holds less than 4 hectares, therefore, in view of the second proviso to Section 147 of the Code, such a land cannot be attached for sale.

9. In order to resolve the controversy, it would be appropriate to notice the provisions contained in Chapter XI of the Code which relates to Realisation of Land Revenue. Section 137 of the Code provides that the land revenue



assessed on any land shall be first charged on that land and on the rents and profits thereof. Section 138 fixes responsibility for payment of land revenue by providing as under: -

“138. Responsibility for payment of land revenue.—(1) The following person shall be primarily liable for the payment of the land revenue assessed on a holding—

(a) in a Bhumiswami's holding the Bhumiswami;

(b) in a holding consisting of land leased by the State Government the lessee thereof.

(2) When there are more than one Bhumiswami or lessee in a holding, all such Bhumiswamis or lessees, as the case may be, shall be jointly and severally liable to the payment of the land revenue on such holding.”

10. Section 139 of the Code provides for land revenue recoverable from any person, in possession. Section 140 provides for Dates on which land revenue falls due and is payable. Section 141 defines “arrear” and “defaulter”. Section 144 speaks of remission or suspension of land revenue on failure of crops. Section 146 provides for notice of demand. Clauses (a) and (b) of Section 147 provide as under: -

“147. Process for recovery of arrear.—An arrear of land revenue payable to Government may be recovered by a Tahsildar by any one or more of the following processes: -

(a) by attachment and sale of movable property;

(b) by attachment and sale of the holding on which arrear is due and where such holding consist of more than one survey number or plot number by sale of one or more of such survey numbers, or plot numbers as may be considered necessary to recover the arrears:

Provided that no holding shall be sold for the recovery of any dues of a co-operative society without first exhausting the procedure prescribed in section 154-A.

(bb)

(bbb)

(c) by attachment and sale of any other immovable property belonging to the defaulter.”

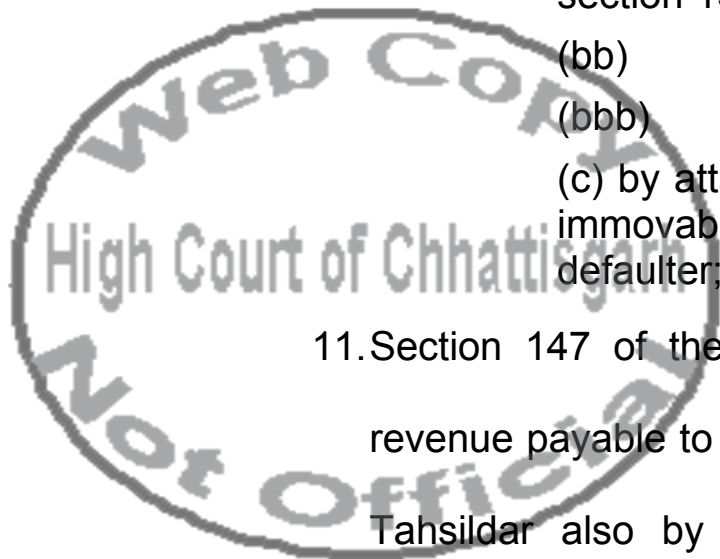
11. Section 147 of the Code provides that arrears of land revenue payable to the Government may be recovered by Tahsildar also by attachment and sale of immovable property. Second proviso to Section 147 provides as under: -

“Provided further that the process specified in clause (b) shall not permit attachment and sale of holding where the defaulter holds.-

(i) six hectares or less than six hectares of land in the Scheduled Area; or

(ii) four hectares or less than four hectares of land in other areas.

Explanation.- For the purpose of this proviso, “Scheduled Area” means any area declared to be Scheduled Area within the State of Chhattisgarh under paragraph 6 of the Fifth Schedule to the Constitution of India.”



12. Section 155 of the Code provides for “moneys recoverable as an arrear of land revenue”. It would be appropriate to notice clause (c) of Section 155 of the Code which provides as under: -

“155. Moneys recoverable as an arrear of land revenue.—The following moneys may be recovered, as far as may be, under the provisions of this Chapter in the same manner as an arrear of land revenue: -

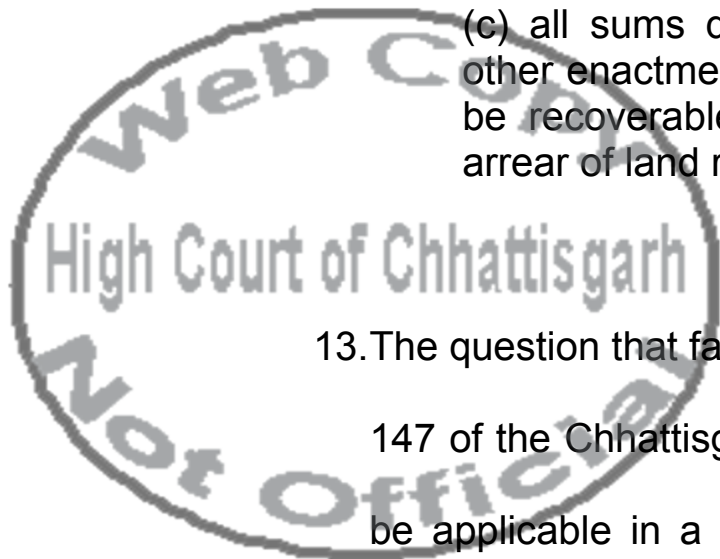
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(c) all sums declared by this Code, or any other enactment for the time being in force to be recoverable in the same manner as an arrear of land revenue; and

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13. The question that falls for consideration is whether Section 147 of the Chhattisgarh Land Revenue Code, 1959 would be applicable in a case where money is recoverable as arrears of land revenue under Section 155 (c) of the said Code, as in the instant case money / compensation is recoverable under Section 32 of the Employee's Compensation Act, 1923.

14. Section 147 of the Code provides process for recovery of arrear of land revenue payable to the Government meaning thereby, recovery of land revenue assessed on any land which is the responsibility of Bhumi Swami to make payment of land revenue whereas, Section 155 (c)



provides that all sum declared under any other enactment for the time being in force to be recoverable in the same manner as arrear of land revenue. Present is a case where the amount of compensation is recoverable under Section 31 of the Act of 1923. The following two judgments of the M.P. High Court in this regard may be noticed herein usefully and fruitfully as well.

15. As back as on 22-2-1946, the Full Bench of Nagpur High Court in the matter of Maulabax v. Sardarmal and another¹ held with reference to Section 138 of the C.P. Land Revenue Act, 1917 analogous to Section 138 of the Code that Section 138 of the Central Provinces Land Revenue Act, 1917 applies only to those cases in which land revenue due is itself to be recovered and pointed out the distinction as under: -

(1) No distinction is made in the two expressions. There is thus really no distinction between the phraseology adopted in Sections 157, 197 and 225. Under the rules framed under Section 211 of the Act, if a purchaser of a survey number from Government makes a default in payment of the full price, the land is put to auction; and deficit, if any, is recovered from him "as an arrear of land revenue". These phrases "as arrears of land revenue", "as if it were an arrear of land revenue" and "in the same manner as an arrear of land revenue", whether they are used in connection with

1 AIR 1952 Nagpur 341(1)

recovery of revenue or debts due to the State or debts due to local bodies or other persons, appear to have the same meaning. They indicate the mode of recovery and do not clothe the persons entitled to recover with any of the attributes or privileges of Government conferred by Section 138(1) of the Central Provinces Land Revenue Act or the corresponding provisions in the Revenue Recovery Acts of other provides'.

(2) To attract Section 138(1) a clear provision was necessary as is found in Section 7(1)(c) of the Land Improvement Loans Act, 1883. In my view, the expression "proceed to recover as if it were an arrear of land revenue" in Section 157(3) imports that a private debt due by a co-sharer to a lambardar is land revenue merely for the limited purpose of recovery. The debt is not in reality a land revenue. The fiction cannot be extended to clothe the lambardar with all the rights and privileges of Government in recovery of land revenue in the absence of an expression "due in respect of that land" or similar expression in Section 157(3). Such an expression cannot be implied."

16. Thereafter, in the matter of **Manoharlal Awal v. The State**

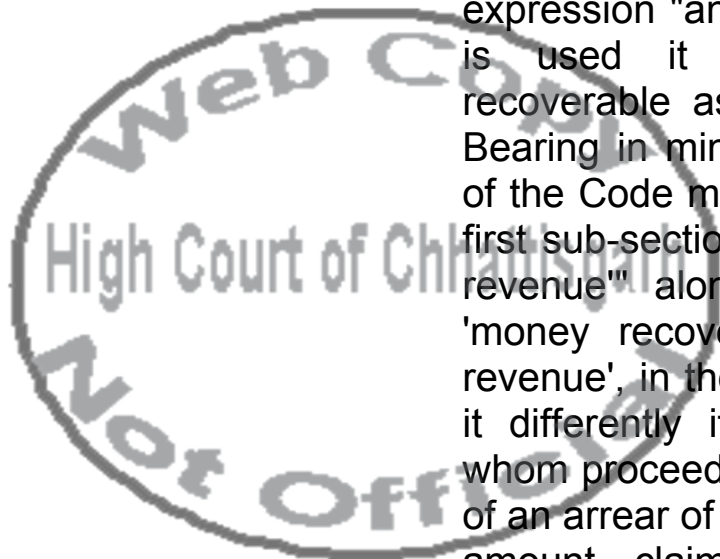
of M.P. and others², distinction between arrears of land revenue and dues recoverable as arrears of land revenue came to be considered before a Full Bench of the High Court of Madhya Pradesh in which the Full Bench has held clearly that arrears of land revenue is distinct and separate from money recoverable as arrears of land revenue and further held that where money is recoverable as arrears of land revenue, the provisions relating to

² AIR 1978 MP 152

recovery particularly, Section 150 of the Code would not be applicable. The Full Bench has observed as under: -

“10. From the above analysis, it can be clearly seen that (i) "an arrear of land revenue" is distinct and separate from (ii) "money recoverable as an arrear of land revenue"; and this distinction has been studiously maintained through out the chapter. The intention of the Legislature becomes obvious enough. In every section only that expression has been used to which it was meant to apply. There does not appear to be any confusion. Where the expression "an arrear of land revenue" alone is used it does not include "money recoverable as an arrear of land revenue". Bearing in mind this distinction, Section 150 of the Code may now be read carefully. The first sub-section speaks of "an arrear of land revenue" alone. There is no mention of 'money recoverable as an arrear of land revenue', in the whole of the section. To put it differently it is only the person against whom proceedings are taken for the recovery of an arrear of land revenue, who can pay the amount claimed before the property is knocked down and deliver a protest. As soon as this is done, the proceedings shall be stayed. On an application by that person, the Sub-Divisional Officer shall determine whether anything at all was due from him or any amount was due from him less than the amount for the recovery of which proceedings were taken. The decision of the Sub-Divisional Officer is not appealable but the person concerned may institute a civil suit for the recovery of the amount which he paid under protest or any part thereof.

11. The whole of [Section 150](#) is applicable only to a proceeding for the recovery of an arrear of land revenue but not to a proceeding for the recovery of money recoverable as an arrear of land revenue. Although it is not necessary to enter into



wisdom of the law makers, it is apparent enough that the levy and assessment of land revenue is a subject-matter within the exclusive jurisdiction of revenue authorities. The Sub-Divisional Officer can give a decision on the objection raised by the defaulter about his non-liability for the entire arrears of land revenue claimed from him or part thereof. The Legislature did not intend to empower the Sub-Divisional Officer to give a decision on an objection in respect of any dues other than land revenue, the jurisdiction regarding levy and assessment of which vests in other authorities exercising powers under other enactments. For instance, the [Excise Act](#), the [Sales Tax Act](#), etc. Having provided for a deposit and protest and having conferred jurisdiction on the Sub-Divisional Officer to decide the objection the section provides for the remedy of a civil suit as well. But such a suit can be instituted only after the amount has been deposited and decision has been obtained from the Sub-Divisional Officer. This position would not obtain in case of any dues other than land revenue simpliciter, although they have been made recoverable as an arrear of land revenue. Adverting now to Section 257 of the Code itself clause (h) bars a civil suit on questions which can be determined by Revenue Authorities under the Land Revenue Code. It follows that the question whether the whole or any part of the land revenue claimed as arrears is really due or not, being within the jurisdiction of the Sub-Divisional Officer a civil suit will not lie. Opening words of [Section 257](#) override clause (h) with the result that a civil suit will be competent under sub-section (3) provided it satisfies the condition precedent i.e. the compliance of sub-section (1) and sub-section (2).”

Their Lordships finally answered the reference holding that Section 150 of the Code is not applicable to

proceedings for the recovery of any sum of money which is “recoverable as an arrear of land revenue” within the meaning of Section 155 of the Code, and held as under: -

“(1) Section 150 of the M.P. Land Revenue Code applies to recovery of “an arrear of land revenue” but not to proceedings for the recovery of any sum of money which is “recoverable as an arrear of land revenue” within the meaning of Section 155 of that Code.

(2)

(3) In a proceeding for the recovery of a sum of money “recoverable as an arrear of land revenue”, the provisions of Section 150 of the Land Revenue Code are inapplicable. Neither the proceeding under sub-section (2), nor a civil suit under sub-section (3) is available to a defaulter. Thus, in such a case, a civil suit contemplated under Section 150 (3) of the Code is not an alternative remedy.

(4)”

17. Likewise, in the matter of **State Bank of Indore v.**

Regional Provident Fund Commissioner, Indore and

others³, a Division Bench of the High Court of Madhya

Pradesh has held that amount recoverable under the

provisions of the Employees' Provident Funds Act, 1952 is

the amount recoverable as arrears of land revenue and as

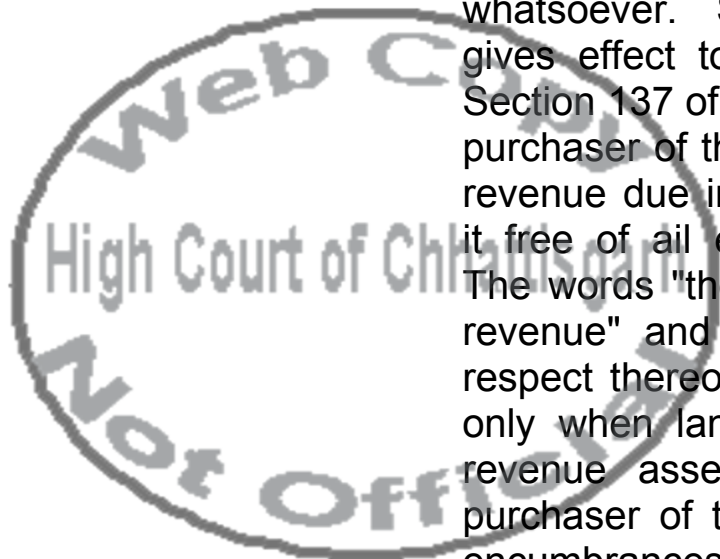
such, Sections 137 and 152 of the Code would not be

applicable. Relying upon the matter of **Maulabax** (supra),

it has been held as under: -

³ AIR 1965 MP 40

“6. Section 155(c) of the Code only rays down that if under any enactment any sum is declared to be recoverable in the same manner as an arrear of land revenue, then it may be recovered, as far as may be, under the provision of Chapter XI of the Code in the same manner as an arrear of land revenue. Section 137 of the Code is not attracted in the present case as that only makes the land revenue assessed on any land the first charge on that land and on the rents and profits thereof. The amount due from an employer under [Section 8](#) of the Act is clearly not any land revenue on any land and, therefore, [Section 137](#) has no applicability whatsoever. Section 152 of the Code only gives effect to the provisions; contained in Section 137 of the Code when it says that the purchaser of the land sold for arrears of land revenue due in respect thereof shall acquire it free of all encumbrances imposed on it. The words "the land sold for arrears of land revenue" and the qualifying words "due in respect thereof" unmistakably show that it is only when land is sold for arrears of land revenue assessed on that land that the purchaser of the land acquires it free of all encumbrances imposed on it. This provision has also no applicability here for the simple reason that the property that is intended to be sold is not any land and the arrears of the employer's contribution is not any amount of arrears of land revenues. Both the Naib Tahsildar and the Sub-Divisional Officer, therefore, erred in holding that the Chawl mortgaged with the petitioner-Bank by the Company could be sold free of file mortgage encumbrance for the recovery of the amount due from the Company tinder under [Section 8](#) of the Act. The matter is really concluded by the Full Bench decision in ILR (1952) Nag 211 : (AIR 1952 Nag 341) (FB) (supra) where it has been held with reference to Section 138 of the C. P. Land Revenue Act, 1917- analogous to Section 152 of the Code – that the words "due in respect thereof" in [Section](#)



138 qualify the words "arrears of land revenue" in the section; that that section applies only to those cases in which land revenue due is itself recovered; and that it does not come into play if the land revenue is not being recovered."

18. In sum and substance, Section 147 of the Code can be pressed into service only when the amount is to be recovered as arrears of land revenue from the Bhumi Swami against the land revenue assessed to him which he is liable to make payment by the provisions contained in Section 138 of the Code and it does not come into play if the land revenue is not being recovered when the amount is recoverable by virtue of the provisions contained in Section 155 (c) of the Code, as the amount recoverable under the provisions of the Act of 1923, and provisions relating to recovery of actual land revenue, including Section 147 of the Code would be inapplicable in that case.

19. This determination would bring me to the finding recorded by the Additional Tahsildar holding that since the petitioner's employer holds less than 4 hectares of land, property cannot be attached by application of Section 147 of the Code. Aforesaid finding recorded by the learned Additional Tahsildar is contrary to well settled law in this regard, as Section 147 of the Code is inapplicable

because the amount to be recovered from that person is the amount due recoverable as arrears of land revenue under Section 155 (c) of the Code and not as arrears of land revenue under Section 138 of the Code.

20. Consequently, the order of the Additional Tahsildar, Nawapara, dated 4-1-2014 deserves to be and is accordingly, quashed. The Additional Tahsildar is directed to conclude the entire execution proceeding within 45 days from the date of receipt / communication of the order passed by this Court, treating the recovery as the one under Section 155 (c) of the Code.

21. The writ petition is allowed to the extent indicated herein above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.72 of 2015

Chhabilal Sahu

- Versus -

State of Chhattisgarh and another

HEAD NOTE

Distinction between “arrears of land revenue” recoverable under Section 139 of the Chhattisgarh Land Revenue Code, 1959 and “dues recoverable as arrears of land revenue” under Section 155(c) of the said Code, pointed out.

भू राजस्व संहिता, 1959 की धारा 139 के अंतर्गत “भू राजस्व का बकाया” और उक्त संहिता की धारा 155(ग) के अंतर्गत “भू राजस्व की रीति में वसूली योग्य बकाया राशियों” के बीच विभेद, सुस्पष्ट किया गया।