2026:AHC:157057-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 61926 of 2009

Rayeesh Ahmad …..Petitioner(s)

Versus

State of U.P. and others …..Respondent(s)

Counsel for Petitioner(s)	:	
Counsel for Respondent(s)	:	Mr. Sharad Sharma, Advocate for respondent no. 5 Mr. Sanjay Kumar Ray, Standing Counsel for the State-respondents

RESERVED

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(DELIVERED BY : J.J. MUNIR, J.)

The petitioner impugns the recovery certificate dated 14.09.2009 issued by the Tahsildar, Tahsil Swar, Rampur for recovery of a sum of ₹1,10,000 with interest and recovery charges.

2. The facts leading to the petition, according to the petitioner, are that there is a shop situated in the premises of the Nagar Palika Parishad, Tahsil Swar, Rampur[1] and the owner of the shop is the Nagar Palika. The

1 'Nagar Palika' for short

said shop had been rented out to the petitioner by the Nagar Palika in the year 1998 for a period of fifteen years. Possession of the shop was not given to the petitioner until the year 2006. On 30.12.2006, in a meeting of the Nagar Palika, it was resolved that rent would be paid by the petitioner from the month of November, 2006. It was also resolved that the petitioner shall deposit rent due by the 5th day of each succeeding month. The petitioner entered an agreement regarding the aforesaid terms and conditions with the Nagar Palika, represented by its Executive Officer. The agreement was drawn up in the form of an affidavit dated 30.12.2006, that was filed by the petitioner before the Executive Officer, Nagar Palika Parishad. The petitioner, after entering into the said agreement, commenced depositing rent with the Executive Officer regularly, month by month, and until date the petition was instituted, the deposit of rent has regularly been made. The Executive Officer sent a notice dated 18.01.2008 to the petitioner for recovery of the rent before the month of November, 2006.

3. A perusal of the notice shows that the Executive Officer has sent a notice dated 18.01.2008 in compliance with an order of the District Magistrate dated 08.01.2008, demanding a sum of ₹1,07,800, which the said officer demanded unilaterally. The deposit of this arrears of rent was directed to be made within seven days by the Nagar Palika. After receipt of the last mentioned notice, the petitioner contacted the Executive Officer personally on a number of occasions and requested him not to demand rent for the period when possession of the shop was not given to him, but the respondents did not relent. The request went unheeded. To the petitioner's dismay, he was suddenly confronted with the impugned citation dated 14.09.2009 issued by the Tahsildar for a sum of ₹1,07,800.

4. The petitioner agitates the point that without giving possession of the shop allotted to him till November, 2006, the respondents took the palpably unfair stand of demanding rent for a period of time prior to delivery of possession of the demised shop. It is asserted that the Tahsildar, Tahsil Swar, Rampur, under the directions of the District Magistrate, Rampur, has issued the impugned recovery citation against the petitioner, directing recovery of a sum of ₹1,07,800 together with interest and recovery charges. The impugned citation is assailed as manifestly illegal.

5. A counter affidavit has been filed by the Executive Officer, Nagar Palika Parishad, Swar, Rampur. It is averred in paragraph no. 5 that the impugned citation dated 14.09.2009 was issued against the petitioner in pursuance of the demand note issued by the Executive Officer. He says, therefore, that the citation is a consequential step and the demand note has not been challenged by the petitioner. Therefore, the petition is not maintainable.

6. In paragraph no. 6 of the counter affidavit filed on behalf of the Nagar Palika, it is said that the contents in paragraphs nos. 4 to 12 of the

writ petition are related to the renting out of the shop to the petitioner by the Nagar Palika, which somehow has been described as the Corporation, and their board resolution, which was rejected by the State Government. It is said that these matters do not require any reply. It is then said that the petitioner was given possession of the shop in the month of November, 2006, and therefore, the Nagar Palika resolved not to recover any rent before November, 2006. But on the directions dated 18.01.2008 issued by the District Magistrate, Rampur, a demand note was sent to the Tahsildar, Swar, Rampur to recover rent from July, 1999 to November, 2006 from the petitioner as arrears of land revenue. The petitioner did not pay rent from July, 1999 to November, 2006, and therefore, a demand note was sent to respondent no. 4, leading to the impugned citation. We note that there is a persistent plea raised that since the demand note is not under challenge, the citation cannot be questioned, it being only a process to enforce the demand note.

7. The moot question is whether arrears of rent due to the Nagar Palika can be recovered as arrears of land revenue.

8. In paragraph no. 8 of the counter affidavit filed by the Nagar Palika, it is averred that the recovery citation was properly issued against the petitioner as money was due against him to the Nagar Palika. It is specifically pleaded that under Section 3 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972[2], the petitioner, who is a party to

2 'Act of 1972' for short

the agreement relating to advance, is liable to pay the amount as arreas of land revenue.

9. When the petition was called on for hearing, no one appeared on behalf of the petitioner. The writ petition, being an old matter of the year 2009, and a short question being involved, if rent due to the Nagar Palika could be recovered as arrears of land revenue under the Uttar Pradesh Municipalities Act, 1916[3], we heard this matter with the assistance of Mr. Sharad Sharma, learned Counsel appearing for the Nagar Palika Parishad, Swar, Rampur (respondent no. 5) and Mr. Sanjay Kumar Ray, learned Standing Counsel, appearing on behalf of the State.

10. We notice that the recovery of dues of a Nagar Palika Parishad as arrears of land revenue are dealt with under Section 173A of the Act of 1916. Section 173A of the Act of 1916 reads :

> **173-A. Recovery of taxes as arrears of land revenue.-**(1) Where any sum is due on account of a tax, other than any tax payable upon immediate demand, from a person to a board, the Municipality may without prejudice to any other mode of recovery apply to the Collector to recover such sum together with costs of the proceedings as if it were an arrears of land revenue.
>
> (2) The Collector on being satisfied that the sum is due shall proceed to recover it as an arrear of land revenue.

11. A perusal of the aforesaid provision spares little doubt that what is made recoverable as arrears of land revenue is any sum of money due to a Nagar Palika Parishad on account of tax other than a tax payable upon immediate demand to a Board. It is only in cases where tax due to them, other than a tax payable on immediate demand, that the Board may,

3 'Act of 1916' for short

without prejudice to the other modes of recovery, apply to the Collector to recover such sum, together with costs of the proceedings, as if it were arrears of land revenue. The Collector, on his satisfaction that the sum is due, can proceed to recover as arrears of land revenue.

12. Here, the amount due is not on account of any tax. It is due on account of rent for a shop that was let out to the petitioner in the manner that it was allotted in the year 2009, but possession was delivered in November, 2006. What the Nagar Palika is demanding of the petitioner is rent for the period since the shop was allotted and until possession was delivered. We do not pronounce upon the point whether the Nagar Palika Parishad could, at all, have demanded rent for the period that possession of the shop was not delivered to the petitioner. We confine our holding in this case to the point that assuming that the rent in question was due to the Nagar Palika from the petitioner, it cannot be recovered as arrears of land revenue, in view of the clear provision under Section 173-A of the Act of 1916.

13. We may refer with profit the Bench decision of this Court in **Ram Bilas Tibrewal v. Chairman, Municipal Corporation Board, Titri Bazar and others**[4]. This was a case where a sum of ₹37,296 was sought to be recovered from the petitioner as arrears of land revenue. The money claimed against the petitioner in **Ram Bilas Tibrewal** *(supra)* was in respect of a contract for realization of *Tahbazari*, settled in his favor by

4 1998 ALL. L.J. 2496

the Chairman of the Town Area, Titri Bazar. It was in the context of the aforesaid facts that their Lordships of the Division Bench, upon considering the provision of Section 173-A of the Act of 1916 as well as Section 21 of the Uttar Pradesh Town Areas Act, 1914, held :

> **6.** A bare perusal of the two provisions, extracted above, reveals that the contention of the learned counsel of the petitioner is well founded. The aforesaid two provisions make recoverable as arrears of land revenue only such sum which is due on account of a tax. Admittedly, the amount alleged to be due from the petitioner is not due on account of a tax. Indeed, it is due on account of the contract of realisation of Tahbazari settled in favour of the petitioner. Therefore, for recovery of this due, the provisions of Section 173-A of Municipalities Act and Section 21 of Town Area Act cannot be resorted to. Under the provisions of U.P. Zamindari Abolition and Land Reforms Act 1950 only such sum can be recovered which is due as arrears of land revenue. It cannot be gainsaid that the amount in question is not due on account of a land revenue. Under the Provisions of U.P. Zamindari Abolition and Land Reforms Act, an amount other than land revenue can be realised as arrears of land revenue only if it is made recoverable as arrears of land revenue under any statutory provision or any agreement in that regard. If the money due is not a land revenue or is not made recoverable as arrears of land revenue in the manner aforesaid, it can be recovered only by filing a Civil Suit. The respondent No. 1 may, if so advised, institute a Civil Suit against the petitioner for recovery of the alleged dues but the amount can-not be realised through the impugned recovery proceeding. The impugned proceeding is totally without jurisdiction and deserves to be quashed.

14. A similar question arose again before a Division Bench in **Titu Singh v. District Magistrate/Collector, Mathura and others**[5]. The question in **Titu Singh** *(supra)* was if any dues on account of shortfall in the *theka* money for collecting parking fee, that had to be re-auctioned, on account of the petitioner's default, resulting in the shortfall, could be recovered as arrears of land revenue. In **Titu Singh**, it was held by the Division Bench :

> **6.** From perusal of the aforesaid provisions of the Municipalities Act and Town Area Act, it is clear that the contention of the learned Counsel for the petitioner is

5 (2003) 2 UPLBEC 1283

> well founded. Under Section 173-A of the Municipalities Act, it is provided that any sum due on account of tax, other than octroi or toll or any similar tax payable upon immediate demand, from a person to a board, the board may, recover as arrears of land revenue. In the instance case the amount in question became due from the petitioner as a result of default in payment of Theka money between the parties. Similarly Section 21 of the Town Areas Act provides that arrears of any tax imposed under this Act may be recovered and no other amount. Therefore, the provisions of Section 173-A of the Municipalities Act, and Section 21 of the Town Areas Act are not attracted. The amount in question is not a tax imposed under the aforesaid two Act and as such the amount due from the petitioner could not be recovered as arrears of land revenue. Besides the aforesaid decisions, there are two recent decisions also in *Bisheshwar Singh @ Kalloo v. District Magistrate/Collector, Shahjahanpur and others,* 2001 (4) AWC 2556 *and Rakesh Shukla v. District Magistrate/Sub-Divisional Magistrate, Phoolpur, Allahabad and another.* 2002 (3) AWC 2397. In these decisions also, the Division Bench found that the Theka money could not be recovered as arrears of land revenue. However, the Bench did not interfere on the ground that the equity was not in favour of the petitioner.

15. We must now answer the question which the learned Counsel for the Nagar Palika has raised before us. He submits that even if the rent to the Nagar Palika on account of the shop in question, due against the petitioner is not recoverable as arrears of land revenue under Section 173-A of the Act of 1916, it is certainly recoverable under Section 3 of the Act of 1972. Section 3 of the Act of 1972 reads :

> 3. (1) Where any person is party—
>
> (a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire purchase of, goods sold to him by the State Government or the Corporation, by way of financial assistance ; or
>
> (b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of, goods sold to him, by a banking company or a Government company, as the case may be, under a State-sponsored scheme; or
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> (c) to any agreement relating to a gurantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or
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> (d) to any agreement providing that any money payable thereunder to the State Government 1[or the Corporation] shall be recoverable as arrears of land revenue; and such person-

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof ; or

(iii) otherwise fails to comply with the terms of the agreement,-

then, in the case of State Government, such officer as may be authorized in that behalf by the State Government by notification in the official Gazette, and in the case of the Corporation or a Government company the Managing Director or where there is no Managing Director then the Chairman of the Corporation, by whatever name called or such owner of the Corporation or Government Company as may be authorized in that behalf by the Managing Director or the Chairman thereof, and in the case of a banking company, the local agent thereof, by whatever name called may send a certificate to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) No suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1).

(4) In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or the Corporation, no arbitration proceedings shall lie at the instance of either party for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim :

Provided that whatever proceedings are taken against any person for the recovery of any such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in respect of the amount so paid, and the provisions of section 183 of the Uttar Pradesh Land Revenue Act, 1901, or section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as the case may be, shall mutatis mutandis apply in relation to such reference or enforcement as they apply in relation to any suit in the civil court.

(5) Save as otherwise expressly provided in the provisions to sub-section (4) of this section or in section 183 of the U.P. Land Revenue Act, 1901 or section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 every certificate sent to the collector under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any

> application under the Arbitration Act, 1940) or in any reference to arbitration, and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act.

16. A perusal of sub-clauses (a) to (d) of sub-section (1) of Section 3 of the Act of 1972 shows that in order to render any person liable to be proceeded with against for recovery of dues payable to the State Government or the U.P. Financial Corporation, or any other corporation notified by the State Government etc., certain conditions mentioned in the various clauses of sub-section (1) of Section 3 have to be satisfied. Under Section 2(a) of the Act of 1972, a Corporation has been defined as follows:

> **2.** In this Act unless the context otherwise requires,—
>
> (a) ''Corporation'' means the Uttar Pradesh Financial Corporation established under the State Financial Corporation Act, 1951, and includes any other Corporation owned or controlled by the Central Government or the State Government and specified in a notification issued in that behalf by the State Government in the official *Gazette* ;

17. Likewise, a banking company has been defined under section 2(f) thus :

> (f) "banking company" means the State Bank of India, constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or a banking company as defined in the Banking Regulation Act, 1949 ; or a financing bank or Central Bank as defined in the Uttar Pradesh Co-operative Societies Act, 1965 not being a land development bank. ;

18. Under clause (a) of sub-section (1) of Section 3, money may be recovered as arrears of land revenue under the Act of 1972, where any person is a party to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire purchase of goods sold to him by the State Government or the Corporation by way of financial assistance, to borrow the phraseology of the statute. Under clause (b), if a man is party to any agreement relating to a loan, advance or grant given to him by a banking company or a Government company, under a State-sponsored scheme; or if he is party to any agreement relating relating to a guarantee given by the State Government or a Corporation in respect of a loan raised by an industrial concern, or to any agreement providing that any money payable under such agreement to the State Government or Corporation shall be recoverable as arrears of rent revenue, and the person proceeded with it against commits default, or otherwise fails to comply with the terms of the agreement etc. The Nagar Palika is, by no means, the State Government or the Corporation, so as to attract clause (d) of sub-section 3(1) of the Act of 1972. The petitioner has not taken any loan, advance or credit either from the State Government or the Corporation, or a loan from a banking company or a Government company, under a State-sponsored scheme. He is not party to agreement relating to a guarantee given by the State Government or the Corporation in respect of the loan raised by an industrial concern.

19. Given the character of the Nagar Palika as a body corporate, recovery of its contractual dues are beyond the contemplation of public money recoverable under the Act of 1972. By no stretch of logic can the said Act apply to dues of money on account of rent that is payable to Nagar Palika by a tenant. These are absolutely contractual dues.

20. The question which we now have to deal with, on being raised by learned Counsel for the Nagar Palika too has been considered by a Bench decision of this Court in **Nand Kishor v. Collector/District Magistrate, Rampur and others**[6]. In **Nand Kishor** *(supra)*, the question precisely was one regarding recovery of dues of rent of a shop due to the Nagar Palika Parishad, Swar Rampur, that is to say, the respondents here, for the period July 1999 to 16.11.2006. The Court was of opinion that on facts, the petitioners could not escape liability to pay the rent for the period July, 1999 to 06.11.2006. However, regarding recovery of such rent as arrears of land revenue by resort to the provisions of the Act of 1972 or Sections 279 and 280 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950[7], it was, nevertheless held that the Nagar Palika could not realise arrears of rent by methods prescribed under Sections 166 to 173 of the Act of 1916, that is to say, the mode permissible under Chapter VI of the Act of 1916, which does not authorise recovery as arrears of land revenue. The impugned citation here has been issued under the provisions of the Sections 279 and 280 UP ZA & LR Act, which is not permissible. Of course, it can be recovered by a suit, subject to the bar of limitation.

6 2011 (2) ALJ 50
7 'UP ZA & LR Act' for short

21. In the result, this petition **succeeds** and stands **allowed**. The impugned citation dated 14.09.2009 issued by the Tahsildar, Tahsil Swar, Rampur (Annexure No. 1 to the writ petition) is hereby **quashed**.

22. It will be open to the Nagar Palika Parishad, Swar Rampur, to recover its dues by any other mode permissible in law.

23. There shall be no order as to costs.

24. The Registrar (Compliance) is directed to communicate this order to the Tahsildar, Swar, Rampur through the learned Chief Judicial Magistrate, Rampur.

(J.J. MUNIR, J.)

(INDRAJEET SHUKLA, J.)

Allahabad
July 29, 2026
I. Batabyal

Whether the order is speaking : Yes
Whether the order is reportable : Yes