

A.F.R.

Neutral Citation No. - 2024:AHC:185932-DB

Court No. - 29

Case :- WRIT - C No. - 35981 of 2024

Petitioner :- Zuber Qureshi

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Amit Singh, Syed Shhail Husain

Counsel for Respondent :- C.S.C., Suredra Prasad Shukla

Hon'ble Vivek Kumar Birla, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Amit Singh, learned counsel for the petitioner, Sri Mohan Srivastava, learned Standing Counsel appearing for the State-respondents and Sri Surendra Prasad Shukla, learned counsel appearing for the respondent No. 4, the Executive Officer (Apar Mukhya Adhikari), Zila Panchayat, Lalitpur, District - Lalitpur.

2. The instant petition has been filed with a prayer to quash the Recovery Citation dated 05.09.2024, whereby recovery of a sum of Rs.2,00,000/- including certain other sums has been issued against the petitioner by the respondent No. 3, the Nayab Tehsildar, Tehsil sadar, Jhansi, District - Jhansi, so far as it relates to recovery of arrears of licence fees of Zila Panchayat, Lalitpur. Further, the petitioner, by way of the present petition has sought for a direction to respondent authorities restraining them from taking any coercive action against the petitioner in pursuance of the aforesaid recovery citation.

3. The facts as pleaded in the writ petition are that the

petitioner participated in an auction proceeding of the Zila Panchayat, Lalitpur for settling of right to remove and dispose off the bones and hides of the dead animals within the limit of Block - Birdha, District Lalitpur in Zila Panchayat, Lalitpur for the year 2023-24, in pursuance of E-tender/auction advertisement dated 02.03.2023.

4. In the auction proceeding, the tender of the petitioner having been found to be the highest his bid was accepted and the work order was issued in his favour on 05.04.2023. The petitioner thereafter deposited the licence fee.

5. It is sought to be asserted that the work of the petitioner as per the terms of the construct, was obstructed by certain private persons and in spite of complaints to the respondent authorities there was inaction on their part. Resultantly the petitioner was unable to carry on the work of collection of bones and hides of the dead animals and as consequence suffered huge losses.

6. A recovery certificate dated 12.08.2024 issued by the respondent No. 4, in respect of an amount stated to be due under the contract, was forwarded to the respondent No. 2, the District Magistrate, Jhansi for recovery of an amount of Rs.2,00,000/- and consequent to the same Recovery Citation dated 05.09.2024 has been issued.

7. A representation dated 09.09.2024 is stated to have been submitted by the petitioner before the respondent No. 4, the Executive Officer, Zila Panchayat, Lalitpur, District Lalitpur and also the Additional District Magistrate (Finance & Revenue) Jhansi on 09.09.2024 seeking withdrawal of the recovery

certificate by pointing out that the amount due towards balance of Licence Fee could not be recovered as arrears of land revenue.

8. Aggrieved by the recovery proceeding and inaction on the part of the respondent authorities in according consideration to the representation thereagainst, the present petition has been filed.

9. The writ petition raises a pure legal question, and therefore, with the consent of parties the same is being disposed of at the stage of admission itself without calling for affidavits.

10. The principal ground which has been urged in support of the petition is that the authorities of the Zila Panchayat have no legal right to issue a recovery certificate in respect of any arrears of Licence Fee, and that the State authorities also do not have any jurisdiction in law to issue a recovery citation for the purpose. It is submitted that the only method for recovery of any such amount is to approach the court of competent jurisdiction under Section 158(1) of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (the Adhiniyam 1961).

11. Counsel for the State respondents and the counsel for the respondent-Zila Panchayat have not been able to point out anything to the contrary which may indicate that recovery of a contractual amount in regard to Licence Fee stated to be due under the provisions of the Adhiniyam 1961, can be recovered as arrears of land revenue.

12. We have perused the record of the case and considered the submissions made by the counsel for the parties.

13. The provisions relating to recovery of taxes and certain other claims under the Adhiniyam 1961, are contained in Sections 147, 148, 158, 159, 160 and 161. For the sake of convenience these provisions are reproduced hereinbelow:

“147. Mode of recovery of taxes and other dues.—Unless otherwise provided by this Act, taxes and other dues, referred to in Section 148 may be recovered by the Zila Panchayat by distraint, and sale of a defaulter's movable property in the manner hereinafter provided.

148. Presentation of bill.—(1) As soon as a person becomes liable for the payment of:

(a) any sum on account of a tax imposed by the Zila Panchayat; or

(b) any other sum declared by or under this Act or by any rule or bye-law made under the Northern India Ferries Act, 1878, (Act XVII of 1878), to be recoverable in the manner provided by this Chapter.

The Zila Panchayat shall, with all convenient speed, cause a bill to be presented to the person so liable.

(2) Unless otherwise provide by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable.

158. Alternative power of bringing suit or recovering as arrears of land revenue.—(1) Instead of proceeding by distress and sale or in case of failure to realize thereby the whole or any part of the demand, the Zila Panchayat may sue the person liable to pay the same in any Court of competent jurisdiction.

(2) In the case of an arrear of tax on Circumstances and Property a Zila Panchayat may in addition to the power to take recourse to the provisions of Section 148 or sub-section (1) of this Section, but subject to and in accordance with rules made in this behalf recover them as arrears of the land revenue.

159. Recovery of rent on land.—Where any sum is due on account of rent from a person to a Zila Panchayat in respect of the land vested in or entrusted to the management of the Zila Panchayat, the Zila Panchayat subject to and accordance with rules made in this behalf may recover any such arrear as arrear of land revenue.

160. Recovery of rent for other immovable property.—Any arrears due on account of rent from a person to the Zila Panchayat in respect of immovable property, other than land

vested in or entrusted to the management of the Zila Panchayat, shall be recovered in the manner provided in Section 148.

161. Recovery of dues of Kshetra Panchayats.—Any sum due to a Kshetra Panchayat under this Act or under any rule or bye-law made thereunder and declared by this Act or such rule or bye-law to be recoverable in the manner provided by this Chapter shall, mutatis mutandis, be recovered as provided in this chapter.”

14. The question as to whether any contractual amount due against a Contractor could be recovered as arrears of land revenue by the Zila Panchayat was considered in the case of **Subhash Chand Vs. Collector, Etawah and Others**¹, wherein upon examining the provisions contained under Sections 159 and 161 of the Adhiniyam 1961, it was held that any such contractual amount could not be recovered as arrears of land revenue. The relevant observations made in this regard in the aforesaid judgment, are as follows:

“22. In our view the Theka money due is on account of Tehbazari fee payable to the Zila Parishad. The Zila Parishad in order to managing itself realisation of the Tehbazari fee has given it on Theka of the petitioner. It has passed its headache or burden to the Thekedar. The loss and profits are his responsibility. The Theka money flows from Tehbazari fee therefore how could it be taken away from the scope and ambit of the Act. In our view it has a direct nexus with the Tehbazari fee. We have to consider the substance and not the form while interpreting the document.

23. The Legislature has used the phraseology "any sum due" in Section 161 of U. P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961. Similarly, the Legislature has used the phraseology "any sum due" in Section 159 also of the said Act. Thus, a combined reading of both these statutory provisions, i.e. Sections 159 and 161 of the said Act makes it crystal clear that the phraseology "any sum due" has been used by the Legislature in such a comprehensive sense that it covers in its widest amplitude any sum due under the Act or under any rule/bye-law framed thereunder and therefore, any such sum would be recoverable as arrears of land revenue, i.e. in the manner as provided under Chapter VIII of the said Act. Accordingly we are

1 1999 (1) AWC 582

of the considered view that the term 'any sum due' in the facts and circumstances of present case, would include the Theka money, i.e. the amount due from the Thekedar towards the Tehbazari fee or licence fee. This is the harmonious construction of the two provisions. The Legislature has used the term 'mutatis mutandis' in Section 161 of the Act which means in the given context that the provisions of Chapter VIII would apply to deal the recovery of taxes and certain other claims. The Legislature has purposely used the terms 'certain other claims' which includes any sum due. The mode of recovery provided by the Legislature is to recover as arrears of land revenue is a speedy and expeditious mode of recovery and we cannot question the wisdom of the Legislature in providing such a speedy and effective mode of recovery.

...

25. We have considered the aforementioned judgments referred by the learned counsel for the petitioner first in Surendra Kumar Rai (supra)--the question of Section 161 was never discussed in this case. Similarly in Raj Bahadur Singh (supra)--it deals with U. P. Town Area Act. Bhagwati Prasad (supra)--it also deals with U. P. Town Area Act (Sections 20 and 21} Angad Pandey (supra)--it also deals with U. P. Town Area Committee and money dues which cannot be recovered as arrears of land revenue and it was held that any amount due to the Thekedar in view of the contractual term cannot be recovered as arrears of tax. Similarly in Umesh Chandra (supra)--it was observed that amount of Rs. 5,500 can be recovered under Section 158 of the Act as it is due to a Contractor and cannot be recovered under U. P. Moneys Recoveries of Dues Act as it is not tax or rent.

26. In other words the consistent view was that it is a contractual amount between the Contractor and Zila Panchayat and has no link with the fee. On the aforesaid facts we do not accept the rationale as Section 161 did not fall for consideration in those judgments.

27. We are of the considered view that the plea raised by the petitioner that the money due cannot be recovered as arrears of land revenue and should not be ordinarily entertained in writ proceedings. We refuse to exercise, in the facts and circumstances, our discretion under Article 226 of the Constitution of India.”

15. A similar view was taken in a subsequent decision in Titu Singh Mathura Vs. District Magistrate/Collector, Mathura and Others², in the context of a question relating to recovery

² 2003 (5) AWC 3479

sought to be made as a result of default in payment of 'Theka money' between the parties. Referring to the provisions of the Municipalities Act and Town Areas Act, it was held that only taxes imposed under the Municipalities Act and Town Areas Act can be recovered as arrears of land revenue and any amount in respect of payment of 'Theka money' could not be recovered as arrears of land revenue. The observations made in the aforesaid decision are being extracted below:

“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 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 Ors. 2001 (4) AWC 2556 All. and *Rakesh Shukla v. District Magistrate/Sub-Divisional Magistrate, Phoolpur, Allahabad* and Anr. 2002 (3) AWC 2397 All. 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.

7. Therefore, in view of the decisions of the Division Benches, clearly holding that only taxes imposed under the Municipalities Act, and Town Area Act can be recovered as arrears of land revenue, we are of the opinion that the amount in question cannot be recovered as arrears of land revenue and the recovery certificate as well as the citation are liable to be quashed.”

16. The aforesaid view was reiterated in the case of **Iliyas Vs.**

State of U.P. and Others³, and it was observed that only taxes which are due to the municipalities, can be recovered as arrears of land revenue, and no other sum could be recovered in the said manner. It was stated thus:

“4. In view of the aforesaid provisions the learned counsel for the petitioner submits that it is clear that only taxes, which are due to the municipalities can be recovered as arrears of land revenue and no other sum can be recovered as arrears of land revenue.

5. The petitioner has placed reliance upon a Division Bench judgment of this Court reported in 2006(3) UPLBEC, 2643 Mohammad Umar Vs. Collector/District Magistrate, Moradabad and others and reliance has been placed upon paras 10, 12 to 14 and paras 15 and 17 of the said judgment and has submitted that the Division Bench of this Court has held that amount due towards the contract for realization of Tehbazari cannot be recovered as arrears of land revenue and there is no provision under the Municipalities Act or U.P. Town Area Act authorizing the respondents to realize theka money as arrears of land revenue, as such, the said amount cannot be recovered in the said manner and has held that in view of the aforesaid fact, the respondents have no authority to recover the amount due to the petitioner as arrears of land revenue.

6. We have considered the submission made on behalf of the petitioner and the respondents. We are in full agreement with the judgment relied upon by the counsel for the petitioner. As there is no factual dispute in the present writ petition, the only question was to be decided whether the amount due against the petitioner can be recovered as arrears of land revenue or not. As in view of the Division Bench judgment of this Court, which is fully applicable to the present case, the Tehbazari amount due against the petitioner cannot be recovered as arrears of land revenue, as such, without inviting the counter affidavit, with the consent of the parties, the writ petition is being disposed of.

7. In view of the aforesaid fact, the recovery certificate dated 10.5.2004 (Annexure 5 to the writ petition issued by the respondents is hereby quashed. The writ petition is allowed. It is, however, open to the respondents to recover the amount from the petitioner in accordance with law.”

17. The issue with regard to recovery of unpaid amount of auction sale held by the Zila Panchayat came up for

³ 2007 (2) ADJ 143 (DB)

consideration in the case of **Mohd. Umar Vs. Collector/D.M. Moradabad and Others**⁴, and this Court again took a view that any amount relating to a contract could not be recovered as arrears of land revenue. It was observed as follows:

“65. The first question which poses consideration is whether in the absence of execution of agreement an enforceable contract between the parties came into existence. The petitioners participated in the public auction for the collection of Tehbazari dues and were highest bidders. In a public auction the bidders offer their bids and the moment of fall of hammer on highest bid, that highest bid is taken to be accepted. In a public auction the fall of hammer concludes the contract. The auction proceedings, the list of bidders is the only evidence of the contract indicating that out of various offers the highest bid was accepted. Section 97 of the U.P. Municipalities Act relates to the execution of the contracts and provides that every contract made by or on behalf of a Municipality whereof the value or the amount exceeding to Rs.250/- shall be in writing provided that unless the contract has been duly executed in writing, no work including collection of materials in connection with the said contract shall be commenced or undertaken. Every such contract shall be signed by the President or the Vice President or by Executive Officer or Secretary or by any person or persons empowered under sub section (2) of sub-section (3) of previous section to sanction the contract if further and in the like manner empowered in this behalf by the Municipality. The auctions of Tehbazari contract were held in which the petitioners offered highest bids and made part payment of auction money. The petitioners having accepted the conditions of auction sale and having made payment in part performance of the contract a binding contract came into existence between the petitioners and the respondents. In a public auction on the acceptance of the highest bid of the tenderer a concluded contract between the parties enforceable at law came into existence. The highest bids of the petitioners at various auctions were in the nature of an offer which were accepted by the petitioners who were highest bidders and the petitioners deposited the amount in part a performance of the conditions of auction sales, therefore, a valid and legally enforceable contract came into being. Reliance in this regard may be placed on the decision in B.C. Mohendra Versus Municipal Board, Saharanpur AIR 1970 SC 729. Section 10 of the Indian Contract Act provides that all agreements are contracts if they are made by free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void.

4 2006 (9) ADJ 66 (All) (DB)

In all these cases the petitioners participated in an auction sale and being highest bidder made part payment under the terms and conditions of auction sales and carried out the work of collection of Tehbazari dues. The petitioners cannot wriggle out of the contract on the ground of non-execution of agreements. A concluded contract at auction sales came into being between the parties on the fall of hammer and acceptance of higher bid.

....

69. The decisions in the cases of Mahesh Chand (supra) and Surendra Kumar Rai (supra) have been distinguished and held to be per incuriam in the case of Subhash Chand Versus Collector Etawah and others 1999 (1) AWC 582 as the provisions of section 161 of the Adhiniyam 1961 did not fall for consideration in those judgments. Section 161 of the Adhiniyam 1961 provides that any sum due to Kshetra Panchayat under this Act or under any rule or under any bye-law made therein and declared by this Act or such rule or bye-law to be recovered in the manner provided by this Chapter shall mutatis mutandis be recoverable as provided in this Chapter. Section 161 deals with the recovery of dues of Kshetra Panchayat which is a distinct and separate body from a Zila Panchayat. The provisions exclusively relating to Kshetra Panchayat are not applicable to Zila Panchayats. Moreover, for the applicability of the provisions of section 161 any sum must be due to a Kshetra Panchayat and it must have been declared to be recoverable in the manner provided in Chapter VIII. In these writ petitions the Theka money is not due to Kshetra Panchayat under this Act or under any rule or any bye-laws made thereunder. The auction money is due to Zila Panchayats which are distinct and separate body. The amount being due to Zila Panchayats, the facts of the case of Subhash Chandra (supra) are distinguishable. In view of these facts, the unpaid amount of auction sale held by the Zila Panchayat cannot be recovered as arrears of land revenue.”

18. The aforesaid question again came up for consideration in the case of **Sanjay Kumar Gupta Vs. State of U.P. and Others**⁵, in the context of realization of Entry Fee/Parking Fee from vehicles which were entering the territory of the Nagar Palika Parishad, and after examining the provisions under Section 173(A) of the U.P. Municipalities Act, 1916, it was held that the Municipal Board can only recover a sum due on account of tax, as arrears of land revenue, and that it has no power to recover

5 2013 (5) ADJ 506 (DB)

octroi or toll in the said manner. The observations made in the aforesaid judgment are being reproduced hereinbelow:

“9. Admittedly, the contract between the petitioner and Nagar Palika Parishad, Mawana was for realisation of entry fees/parking fees from the vehicles which enter the territory of Nagar Palika Parishad, Mawana, Meerut. It is thus in the nature of 'toll' and not 'tax'. Under Section 173(A) of the Municipalities Act, 1916, the Municipal Board can only recover a sum due on account of tax as arrears of land revenue. The section itself carves out an exception, by laying down that the Board will have no power to recover arrears of octroi or toll as arrears of land revenue. Interpreting the aforesaid provision of law, a Division Bench of this Court in *Titu Singh v. District Magistrate/Collector, Mathura*, 2003 (5) AWC 3479, has held that the arrears of theka money (parking fees) cannot be realised as arrears of land revenue. The said decision has been followed in *Iliyas v. State of U.P. and others*.

10. We are in respectful agreement with the view taken in the aforesaid decisions. Accordingly, it is held that the impugned citation for recovery of balance theka money, as arrears of land revenue is without jurisdiction.

11. Before parting, it may be stated that the contention of the respondents that since it is public money and therefore, the petitioner may be directed to pay the said amount, does not desist us from granting aforesaid relief to the petitioner as even in case it is public money, it has to be recovered only in accordance with the procedure prescribed by law.”

19. The aforesaid view has again been reiterated in the decision rendered in the case of **Paras Nath Singh Vs. State of U.P. and 4 Others**⁶, wherein the recovery certificate issued in respect of amount due towards '*Parivahan Shulk*' was held to be not recoverable as arrears of land revenue.

20. The legal position, as discussed hereinabove, indicates that the law in regard to contractual amount being not recoverable as arrears of land revenue is fairly well settled.

21. The provisions of Sections 158, 159, 160 of the Adhiniyam

6 2020 (3) ADJ 390

1961 would go to show that it is only in respect of the arrears of tax on circumstances and property, and any sum due on account of rent in respect of land vested in or entrusted to the management of the Zila Panchayat, that the amount can be recovered as arrears of land revenue.

22. The impugned Recovery Citation dated 05.09.2024, is essentially a writ of demand in R.C. Form-36 issued as per Rule 141 of the U.P. Revenue Code Rules, 2016⁷, consequent to the Recovery Certificate dated 12.08.2024 sent by the concerned authority of the Zila Panchayat.

23. The aforesaid recovery certificate which has been forwarded to the Collector, Jhansi is for recovery of 'Licence Fee' as arrears of land revenue, and is stated to have been issued by referring to the powers under Section 159 of the Adhiniyam 1961.

24. As we have noted above, Section 159 of the Adhiniyam 1961, relates to recovery of rent on land, and as per its terms where any sum is due on account of a rent from a person to a Zila Panchayat in respect of land vested or entrusted to the management of the Zila Panchayat, the same may be recovered as arrears of land revenue. The dues against the petitioner are stated to be in respect of 'Licence Fee', and the same are not on account of a rent due to the Zila Panchayat. In view thereof the invocation of Section 159 for the purpose of issuance of recovery certificate to the Collector for recovering the amount as arrears of land revenue, cannot be legally supported.

25. The amount in respect of which recovery is sought to be

⁷ the Rules 2016

made as arrears of land revenue, in the present case, is neither a tax under Section 158(2) nor rent on land under Section 159. In the said circumstances, the Adhinyam 1961 does not authorize the recovery of any such amount as arrears of land revenue in the manner prescribed under Section 148 to 156.

26. The assessment and collection of land revenue, in the State of Uttar Pradesh is presently governed as per the terms of the U.P. Revenue Code, 2006⁸, which is in force with effect from 11.02.2016. Chapter XII of the Revenue Code, relates to collection of land revenue and the procedure for recovery of land revenue or any other sum recoverable as arrears of land revenue has been prescribed under the provisions contained in the said Chapter.

27. The recovery of land revenue or any other sum recoverable as arrears of land revenue is thus statutorily prescribed. Any dues that fall under the head of either 'land revenue' or 'any other sum recoverable as arrears of land revenue', may be recovered as per relevant statutory provisions under the Revenue Code, by issuing a writ of demand under Section 169 read with Rule 141 of the Rules 2016, and by following the procedure prescribed under the Code.

28. The recovery of land revenue is to be made by the concerned revenue authority as per the provisions of the Revenue Code. The revenue authorities have also been empowered to recover any other sum that may be recoverable as arrears of land revenue under the provisions of any other statute. It would therefore follow that unless the recovery is

⁸ the Revenue Code

sought to be made in terms of the powers conferred under some statutory provision, the revenue authorities would have no powers to proceed to recover any dues as arrears of land revenue by invoking the procedure prescribed under the Revenue Code and the rules made thereunder.

29. The mode of recovery permissible in respect of dues to the Zila Panchayat is to be in the manner as prescribed under the Adhiniyam 1961, and only in a case where the dues have been specified to be recoverable as arrears of land revenue the provision for recovery for the purpose under the Revenue Code, can be invoked. The dues in respect of 'Licence Fee' cannot be described as rent due from a person to the Zila Panchayat and accordingly the same would not be statutorily recoverable under Section 159 of the Adhiniyam 1961.

30. The recovery certificate which has been forwarded by the concerned authority of the Zila Panchayat to the Collector seeks to draw power from Section 159, which is not applicable to recovery of dues in respect of 'Licence Fee'. The proceedings initiated for recovery of the dues as arrears of land revenue, in terms of the procedure prescribed under the Revenue Code, therefore cannot be held to be legally sustainable.

31. The Recovery Citation dated 05.09.2024, is therefore held to be legally unsustainable and is quashed.

32. The writ petition therefore succeeds and stands **allowed**.

33. It would however be open to the respondent-Zila Panchayat to initiate appropriate proceedings for recovery of dues, which are being claimed against the petitioner, by approaching the

court of competent jurisdiction, as provided under Section 158(1), or taking recourse to any other legal remedy, which it may deem appropriate.

Order Date :- 27.11.2024

Arun K. Singh