
(1996) 12 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25332 of 1995

Dubey Constructions Company and Another

APPELLANT

Vs

Collector, Hardwar and Others

RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

Arbitration Act, 1940 — Section 20

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 287A

Citation : (1996) 12 AHC CK 0067

Hon'ble Judges : Palok Basu, J and R.K. Mahajan, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—The judgment prepared by my esteemed Brother Hon"ble R.R. Mahajan, J. has been read. While agreeing with the conclusion that the writ petition should be dismissed it is desirable to mention law reasons for the same.

2. Facts and the questions involved as to the recovery proceedings have already been narrated in the judgment of Hon"ble R.K. Mahajan, J. and are thus not repeated here.

3. Admittedly the petitioner has filed arbitration proceedings, after that, the citation has been issued for recovering the amount allegedly outstanding. Therefore," the petitioner is taking both the remedies. While it is true that Section 287A of the U.P.Z.A. & L.R. Act calls upon an objector to deposit the entire money sought to be recovered as arrears of land revenue, whether in each and every case that provisions shall have to be resorted to need not be decided in this petition.

4. In the counteraffidavit two relevant paragraphs are very important from the point of view of going into the question as to whether the petitioners' writ petition should be adjudicated upon. Paragraph 3(A), (B), (C) and (D) are quoted here for ready reference.

3. That before giving para wise reply of the writ petition, it is necessary to bring certain facts of the case before this Hon''ble Court which are as under:

(A) That for executing the contract for the construction of Ravasan Super Passage Tender was invited by the Irrigation Department. The petitioner also submitted his tender which was accepted by the Irrigation Department and for executing the said construction work agreement was executed between the Irrigation Department and the petitioner on 2051983 for a cost of Rs. 2,29,37,990. The time for completion of said project was only 24 months from 2051983 to 1951985.

(B) That as per the agreement for the said construction several materials such as Cement, Iron Steel etc. were required to be supplied by the department to the petitioner's construction company and the cost of said building materials were to be adjusted/deducted from the intermediate payments. Apart from building materials several machinery such as Concrete Mixer, Pumping Sets etc. were also required to be given to the petitioner's company on hire and their hire costs were to be adjusted from the intermediate payments.

(C) That the petitioner's company could not complete the construction work of the said project within the stipulated time of 24 months as such he was defaulter, but on his request the department has extended the time for completion of the construction upto 3061987 i.e. for further 2 years, but the petitioner's company could not complete the construction work and he left the work incomplete with ulterior motive and with mala fide intention to defraud the department.

(D) That it is relevant to mention here that during these periods the petitioner's company has taken a large quantities of Cement bags, Iron Steel and other construction materials from the department and several machineries were also supplied to him by the department. While leaving the construction work incomplete the petitioner has taken away the remaining building materials and several machineries of the department."

In reply put forward by the petitioner in the rejoinder affidavit all that has been stated in reply to the aforesaid paragraphs is, if read together, "that the respondent No. 3 has not annexed any document to substantiate the allegations of alleged default on the part of the petitioner (1). As such the allegation cannot be taken note of. In fact the noncooperation on the part of the department was with ulterior motive....."The inaction in not lodging the F.I.R. or complaint to higher authorities is sufficient to make the version of the Respondent No. 3 unbelievable....."Merely because the respondent No. 3 says that a calculation was done and an amount of Rs. 52,42,749.47 paisa has been found to be due against the petitioner cannot be accepted."

5. As is, therefore, obvious the petitioner did not complete the work contracted and has been prima facie justifiably charged with removal of machinery, materials and other articles of the department. The recovery proceedings therefore, are valid on facts.

6. The last argument advanced by Shri Ajit Kumar was that since the petitioner is a company its assets may be proceeded with in the recovery of the amount but the personal property of the petitioners cannot be attached or proceeded with in recovery proceedings.

7. This argument is amusing inasmuch as the array of the parties as indicated in the body of the petition, in so far as it describes the two petitioners, may be usefully quoted here to indicate that the allegations of the petitioner being a company does not appear to be correct:

1. M/s. Dubey Construction Company, Registered Engineer and Government Contractor, Devpura, Haridwar, District Haridwar, through Sri Dhananjay Kumar Dubey, son of Shri Upendra Dubey, Resident of Devpura, Haridwar Partner of the aforesaid firm.

2. M/s Surprise Hotel Private Limited, Jwalapur Road, Haridwar through its Partner Sri Dhananjay, resident of Devpura, District Haridwar.

This is now the petitioners have described themselves. If M/s Dubey Construction was really a company it could not have partners. Moreover when the name of Dhananjay Kumar Dubey is mentioned he has been described as a partner of the aforesaid firm. Therefore, the said argument is a camouflage of the facts, advanced perhaps only to detract the Court from the reality. Consequently, this argument is also rejected.

8. The writ petition therefore has to be dismissed as rightly observed by my esteemed Brother Hon"ble R.K. Mahajan, J. but for the reasons mentioned, above.

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Sd./Palok Basu

R.K. Mahajan, J. This writ petition has been filed with the following reliefs:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned citation dated 1221995 (Annexure No. 6 to the writ petition), issued by the respondent No. 2 and further pending recovery proceedings pursuant thereto;

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents not to recover the aforesaid amount;

(iii) issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case; and

(iv) award cost of this petition to the petitioner.

2. The brief facts from which the writ petition arises are as follows:

The petitioner is a construction company and took contract of construction of

Super Passage at Kilometre 1.9.500 of Eastern Ganga Canal vide agreement No. 07/SE/8384. The petitioner is a registered firm and Shri Jai Prakash Dubey was Managing Director and Shri Dhananjay Dubey is another partner. Shri Jai Prakash Dubey has died on 28121993 and in his place Smt. Laxmi Dubey, his wife, has become the partner. The department was to supply him material by way of diesel oil, cement and other machineries and the contract was to be completed within two years starting from 2151983. According to the petitioners' allegation instead of referring the matter by way of arbitration clause regarding the sum claimed by the petitioners by way of damages i.e. Rs. 94 lakhs regarding the loss, which the petitioners should not suffer for noncompliance of the terms of the contract. The respondent No. 3 got issued citation dated 1221995 claiming Rs. 44,05,162.47 paise from Collector, Haridwar for realising of that amount. This amount has been challenged as illegal and the petitioners are not liable to pay the same. Since the petitioners claimed Rs. 94 lakhs as damages. So as a counter blast the citation was got issued.

3. In counteraffidavit it is alleged that the petitioners moved to the Civil Court all of sudden and also filed writ petition in the High Court. It is the case of the respondent also that under Clause 39 of the Irrigation Department Form No. III attached with the agreement (All money found recoverable from the contractor in connection with contract may without prejudice to any other remedy by law be recovered as arrears of land revenue).

4. Learned counsel for the petitioner Shri Ajeet Kumar submitted that the money can be recovered from the assets of the Company and not from personal property. Learned counsel for the respondents submitted that the citation has been issued correctly.

5. We are of the view that it is admitted in counteraffidavit at page 3 para (J) that citation certificate was issued on 1721995 and immediately the petitioners filed application under Section 20 of the Arbitration Act before the Civil Judge, Haridwar and later on filed writ petition in this Court i.e. on 1991995 praying for staying recovery proceedings. There is provision under Section 287A of U.P. Zamindari Abolition and Land Reforms Act that the payment can be stopped. Language of Section 287A is quoted below :

"287A Payment under protest and suit for recovery(1) Whenever proceedings are taken under this Chapter against any person for the recover) of any arrears of land revenue, or for the recovery of any sum of money recoverable as arrears of land revenue 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 sue the State Government in the Civil Court for the amount so paid, and in such suit the plaintiff may, notwithstanding anything contained in Section 278, give evidence of the amount, if any, which he alleges to be due from him.

(2) No protest under this section shall enable the person making the same to sue

in the Civil Court., unless it is made at the time of payment in writing and signed by such person or by an agent duly authorised in this behalf."

So under this Act if a defaulter wants to get the proceedings stayed he ^iad to deposit all the amount under protest and civil suit can be filed. There cannot be hide and seek at all. The petitioners moved application under Section 20 of the Arbitration Act and parallel proceedings i.e. by way of writ petition is not maintainable. Kindly see Bombay Metropolitan Region Development Authority v. Gokak Patel Volkart Limited and others, JT 1995 (1) SC 155. So we are of the view that the writ petition is not maintainable and is dismissed with cost. Cost assessed is Rs. 3,000 payable to the State by the petitioner.

Sd/R.K.Mahajan,J.