
(2011) 05 AHC CK 0252
In the Allahabad High Court
Case No : Writ C. No. 9872 of 1993

Kadri Gramya Vikas

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 2

Citation : (2011) 5 AWC 5148 : (2011) 113 RD 757

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. The order which was passed in this writ petition on the date on which arguments were heard and the judgment was reserved is quoted below:

Heard learned Counsel for the parties. judgment reserved. Sri. Mukhtar Alam, learned Counsel for the Respondent No. 2 states that Respondent No. 2 is a government company and further states that Commissioner is ex-officio Managing Director of the Respondent No. 2. He further states that from February, 1989 till July, 1991 Sri. K.M. Panth was the Commissioner of the region and Managing Director Respondent No. 2. If during the said period, i.e. from February, 1989 till July, 1991, someone else was also the Commissioner, then his name shall also be intimated to the Court through written argument. Parties are at liberty to file written argument. Learned Counsel for the Respondent has supplied Memorandum and Articles of Association of Respondent No. 2 and General Service Rules. Learned Counsel also states that Respondent No. 2 is now virtually closed and at present there is only one employee.

3. Petitioner No. 1 is registered society (para 1 of the writ petition) and Petitioner No. 2 Majid Khan is its Secretary (para 2 of the writ petition). Petitioner No. 1

entered into some dealings with Respondent No. 2 Bareilly Mandal Vikas Nigam Ltd. (which was previously known as U.P. Pashchimi Kshetriya Vikas Nigam Ltd). Respondent No. 2 is a Government Company of which Commissioner of the region is ex-officio Managing Director. A recovery certificate was issued by Respondent No. 2 against the Petitioner No. 1 seeking recovery of Rs. 23,64,186.84. The case of the Respondent No. 2 was that a portion of the said amount was in the form of advance made for boring work (tube well boring) and some portion was due in respect of supply of agricultural Dunlop Bullock cart to Bisalpur Chini Mill. Petitioner denied that any amount was due against him and asserted in counter that an amount of more than Rs. 10 lakh was due to it against Respondent No.2.

4. The Court wonders how without actual verification and without actual supply so much amount could be advanced by Respondent No. 2 to Petitioner No. 1. If the amount was advanced as asserted by the Respondent No. 2 then it was pure loot of Government property in connivance with the managing director of Respondent No. 2/Commissioner.

5. Through interim order dated 07.04.1993 recovery was stayed for a limited period. Thereafter stay order was extended on 04.05.1993 upto 31.08.1993.

6. Thereafter matter was not listed for 9 years i.e. upto 13.03.2002. However, learned Counsel for the parties stated that recovery was not made.

7. Through written argument learned Counsel for Respondent No. 2 stated that there was slight inadvertent error in the statement given on 31.01.2011 and the correct position is that the Commissioner Bareilly, Division Bareilly is ex officio Chairman of the Respondent No. 2 and Additional Commissioner of Bareilly Division Vikas Nigam is ex officio Managing Director. In the supplementary counter affidavit filed on behalf of Respondent No. 2 details of the amounts given by Respondent No. 2 to the Petitioner through cheques have been given. Total amount of Rs. 28,10,689 on 19 dates starting from 20.02.1989 to 05.08.1991 was given to the Petitioner. In para 4 of the supplementary counter affidavit it is mentioned that agreement was entered into on 14.02.1991 and the copy of the agreement is Annexure S.C.A-1. After 14.02.1991 only three amounts were paid by Respondent No. 2 to the Petitioner on 15.02.1991 Rs. one lakh on 19.02.1991 Rs. one lakh and on 05.08.1991 Rs. 73089/-. There is absolutely no explanation that how a huge amount of about Rs. 25 lakh had been paid to the Petitioner even before entering into agreement. There is absolutely no allegation that any survey of the work was made before advancing further loan or any verification of the goods supplied was made. In the opinion of the Court it is pure loot of the Government money. In the agreement Petitioner No. 1 is shown to be proprietorship of Petitioner No. 2. In para 4 of the supplementary rejoinder affidavit the fact of execution of any agreement has been denied and the agreement copy of which was annexed along with the supplementary counter affidavit has been described as fake and forged. In para 5 of the supplementary rejoinder affidavit receipt of some amounts mentioned in para 5 of the

supplementary counter affidavit has been admitted and receipt of rest of the amounts has been denied. However, under what agreement amounts were advanced has not been stated even by the Petitioner.

8. The Supreme Court in Seth Banarsi Dass (Dead) by LRs Vs. District Magistrate and Collector, Meerut and others, has held that if recovery has to be made like arrears of land revenue and recovery certificate from some institution is received by the Collector then Collector can decide as to whether the amount is due or not and in this regard powers of Collector are same as that of Executing Court u/s 47 Code of Civil Procedure.

9. Annexure SCA-2 is order of the Governor dated 19.06.1991 including Respondent No. 2 under U.P. Public Money (Recovery of Dues) Act 1972 in exercise of powers of Section 2(a) of the same. The G.O. contains 8 corporations and at serial No. 7 is Respondent No. 2.

10. Paragraph Nos. 6 and 7 of written arguments filed by Respondent No. 2 are quoted below:

6. That when the aforesaid amount was given on behalf of the Respondent No. 2 to the Petitioner at that time Shri N.P. Singh Tevatiya was the Managing Director of the Bareilly Mandal Vikas Nigam Ltd. and Shri K.P. Barathwal was the Manager Marketing in the said corporation. The said amount was given on the basis of the approval of Shri K.P. Barathwal. Shri N.P. Singh Tevatiya was a PCS Officer and was holding independent charge as a Managing Director of Bareilly Mandal Vikas Nigam Ltd. The Commissioner Bareilly Region Bareilly and Additional Commissioner Bareilly Region Bareilly had no concern with the affairs of the Nigam and when Nigam came in for a heavy loss then the Government had decided to close down the said Nigam and at present Commissioner of the Bareilly Region Bareilly is ex-officio Chairman of the Nigam and the Additional Commissioner of Bareilly Region Bareilly is the ex-officio Managing Director of the Nigam.

7. That Shri N.P. Singh Tevatiya and Shri K.P. Barathwal, the Managing Director as well as Manager Marketing respectively have already expired long back.

11. The allegation of Petitioner that an amount of Rs. 10 lakh was due to it against Respondent No. 2 is not at all tenable because till the date on which arguments were heard it was not pointed out that any suit for recovery had been filed by the Petitioner against Respondent No. 2.

12. Accordingly, both the parties are directed to appear before the Collector on 17.08.2011 alongwith certified copy of this judgment who shall decide the question of quantum of dues by a reasoned order. Both the parties shall file all the relevant documents before the collector.

13. Recovery proceedings against the Petitioner shall remain stayed until decision by the Collector provided that 50% of the demanded amount i.e. Rs. 11.82 lakh is deposited before the Collector on or before the date fixed before the Collector.

The said amount shall be retained by the Collector and shall not be handed over to Respondent No. 2. Until decision by the Collector. After decision amount shall be disbursed according to the decision and the following directions. As the collusion of authorities of Respondent No. 2 is writ large on the face of the record hence it is directed that whatever amount is found to be due (which in no case shall be more than the amount mentioned in the recovery certificate i.e. about Rs. 23.64 lakh) shall be recovered from the Petitioners and the interest thereupon shall be recovered from the erring authorities of Respondent No. 2 and from the assets of such of those authorities who have died. The Collector shall make all efforts to decide the matter expeditiously preferably within four months from the date on which certified copy of this order is filed before him. The Collector shall send a copy of report to this Court for perusal.

14. Writ petition is disposed of accordingly.