

(2022) 06 UK CK 0060

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 101 Of 2020

Mukti Dutta

APPELLANT

Vs

Collector/District Magistrate, Almora, District Almora

RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 279, 284, 287(a)
State Financial Corporations Act, 1951 — Section 3, 29
Uttar Pradesh Land Revenue Act, 1901 — Section 183(4)
Code Of Civil Procedure, 1908 — Order 6 Rule 17
Constitution Of India, 1950 — Article 226

Citation : (2022) 06 UK CK 0060

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench?

Advocate : Rajendra Dobhal, Shubhang Dobhal, Devesh Ghildiyal, Nandan Arya

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. This Court feels it apt, to begin this judgment with the following concise aptitude of the petitioner, to litigate upon a recovery proceedings for recovery of public money initiated against her.
2. This could be said to be the best example, where a litigant for the reasons best known to her had played with the jugglery of the judicial proceedings, despite of the various false pretext and statement being placed before the writ courts as apparent from the order sheet of the writ petition, just to buy time to honour the loan liability, which could be termed as to be a conscious abuse of the process of the law court.
3. The brief facts of the case are that in the year 1987, the petitioner has contended, that a Society was registered under the provisions of the Societies Registration Act, under the name and style of the "Jan Jagran Samiti". The

society, thus, constituted in accordance with its objective, which was the basis for registration, and in accordance with the objectives provided therein in its bye laws, under which it was registered. It is contended by the petitioner that its object was women empowerment, health education, leprosy eradication, rehabilitation and environment conservation. The petitioner has contended, that the society was initially registered, which continued with its registration, till it was later on renewed by the Renewed Registration No.49 of 2014-2015, which remains effective for a period of 5 years, with effect from 15th March 2014.

4. The petitioner has come up with a case, that the internal management of the society thus registered, was vested in the Governing Body of the society, as provided in its clause 3 of its bye laws. It is alleged that in the year 2008, when the erstwhile Chief Minister Mr B.C Khanduri, had visited District Almora, it is contended by the petitioner, that the Honorable Chief Minister, had ensured the society of the petitioner for its uplift in the financial status of the society, to provide infrastructural and financial help to the society, in order to augment the various training programs, which is alleged to have been undertaken by the society of the petitioner for the uplifting of the cultural heritage of the hills, and particularly for providing, an employment to the rustic and illiterate women villagers. It was contended that the prime objective of the Society, with which it was registered under the Societies Registration Act, was also to work in building and developing cooperatives for the aforesaid objectives of the society, but this itself will be with the note, that the said purpose as projected by the petitioner, that the society intended to augment a cooperative development in the hills, in fact, is contrary to the stand taken by the respondents in their counter affidavit, wherein, the respondent No.4, had specifically denied the fact that the alleged "Jan Jagran Samiti", was at any point of time was ever registered as a cooperative Society under the provisions of the either UP Cooperative Societies Act or later on as enforced under the Uttarakhand Cooperative Societies Act. Hence, for all practical purposes, the alleged "Jan Jagran Samiti" and there was no evidence on record to support the stand of the petitioner of being a Cooperative thus it, cannot be treated as to be having a legal status as that of being a cooperative society, due to the specific denial of the said fact by the counter affidavit of the respondent no.4, who happens to be the Principal Secretary of the Cooperative, Secretariat, Dehradun, Uttarakhand.

5. The controversy, which begins factually, which is the subject matter of consideration in the present writ petition, is that the petitioner has contended that the respondent No.2, which happens to be a statutory Corporation created for the purposes of providing a multipurpose finances and development of various Bodies at a local level, is said to have approved the proposal of the project of the petitioner on 7th March 2008. As a consequence of the approval of the project, as alleged by the petitioner, an agreement was entered between the petitioner and respondent No.2, for the purposes of providing a financial assistance, which aimed for being utilized for the payment of stipend of the trainee women, who were undertaking the training for the aforesaid objectives of

the society, and according to the pleadings of the petitioner, there were about 250 women, who were said to be living below the poverty line and belonging to an oppressed community of the society, who had constituted its member, are said to be part and parcel of the training program, which was said to have been approved by the respondent No.2 in March 2008.

6. The petitioner further submitted that for meeting up the expenditures of the aforesaid objectives of the society, and for the purposes of payment of the stipend to the women trainees under the programme, it is admitted by the petitioner that respondent No.2, on 13th March 2008, in the first phase had admittedly disbursed an amount of financial assistance to the tune of Rs.15,15,000/-, and later on, in further extension of financial support on 3rd September 2008, an amount of Rs.49,47,000/-, was admittedly sanctioned to the "Jan Jagran Samiti", of which the petitioner admittedly at the relevant time in 2008, and even thereafter was the Chief Executive Officer and the Secretary, who was in the helm of affairs of regulating the management, and meeting the financial liabilities accruing for and by the Society, in its day-to-day management of the affairs for the aforesaid objectives, as already detailed above.

7. The controversy germinated when despite of the financial assistance extended under the terms of the agreement of 14.01.2008, when the petitioner has not fulfilled its obligations for remitting back of the amount of financial assistance taken by the petitioner, the respondent No.2, was constraint to resort to the proceedings for recovery of the defaulted amount, initially by issuing notices to the petitioner to remit the amount as requested for. In the communications, which has been placed on record by the petitioner, the embargos which were pleaded by the petitioner for her incapacity to remit the financial assistance already availed was on account of the fact that the responsibility, was rather attempted to be shouldered to be shifted on respondent No.2, contending thereof, that since it was rather respondent no.2, who had not fulfilled its obligation under the agreement of 14th January 2008, because it is respondent No.2, who has not appropriately facilitated the raising of the construction of the infrastructure, it had not made arrangements for the installation of the machineries and equipments, which were required for the purposes of imparting training to the women members of the "Jan Jagran Samiti". The petitioner contended that it was rather the inaction on the part of the respondent no.2, that in the absence of which the women being trained, the actual production could not start, by the Society, for the projects for which financial assistance from respondent Corporation was availed.

8. It was contended that in fact under the terms of the agreement dated 14th January 2008, it was rather the responsibility of the respondent No.3, also i.e. Principal Secretary, Department of Social Welfare to the State of Uttarakhand, to ensure to provide for three storeyed structures, from where the operational activities, to meet up the objective of the society, would be met with. But since it was inaction on part of respondent no.3, that since the infrastructural facilities

were not provided, the petitioner had contended, that she as the Chief Executive Officer, and the Secretary of the Society, was unable to perform his liability towards the financial assistance which was extended to the petitioner's Society by an agreement of 14th January 2008.

9. It seems from the records, that though the financial assistance were extended on 13th March 2008, and 13th September 2008 respectively, as detailed above, but it seems that neither it was ever utilized for the objectives of the Society nor it was actually implemented to be utilized for the various artificial and concocted reasons, which has been carved out by the petitioner in the writ petition, where she has attempted to shift the burden of inaction, due to the non-cooperation of the respondent Nos.2 and 3, but the fact remains that when the defaulted liability of the petitioner reached to the tune of Rs.61,40,000/-.

10. It is admitted that the first attempt, which was made by the respondent no.2, for referring to recover the amount, as an arrears of land revenue, it was initiated, by issuance of the direction to the respondent No.1 Collector, to issue a recovery citation in furtherance to it, the respondent no.1, had issued a recovery citation in February 2013, for recovering of an amount of Rs.61,40,000/-, which then fall due to be paid.

11. It is admitted by the petitioner, that after being in receipt of the recovery citation, she has submitted a representation on 17th June 2013, before respondent nos.2 and 3, making a request to stay the recovery proceedings, till the dispute pertaining to non providing of the infrastructural facilities, as it was allegedly assured with the sanction of the scheme on 7th March, 2008 is provided, no coercive action may be proceeded with in pursuance to the recovery citation as back as of the year February 2013.

12. The petitioner contends, that in response to her representation of 17th June 2013, though without specifying any specific date, she has submitted that one building was donated by the society at Village Matena, District Almora, and the second building was constructed by the State and it was handed over to the petitioner's Society, of which she was the Secretary.

13. This Court is of the tentative view, that not giving the complete, absolute and correct details of the procedure adopted for the purposes of providing the buildings to the petitioners society, that itself creates a bonafide doubt with regards to the conduct and the functioning of the "Jan Jagran Samiti", of which the petitioner contends that she was the Secretary. By the time the aforesaid controversy was put as a subject matter under consideration on an issuance of the recovery citation in February 2013, the total amount of recovery mounted up to Rs.64,62,000/-, on account of the inclusion of the interest, which was recurringly accruing on it, which though the petitioner without any records being brought before this Court, submits that an amount of Rs.56,16,664/-, was repaid. But this contention of the repayment of the aforesaid amount is yet again it's a prematured stage to record any finding, on the alleged pleadings of the

petitioner, that she had repaid the amount, as pleaded in the writ petition.

14. The reasons for not accepting this stand taken by the petitioner in defence of having repaid the amount partially, is presently not accepted for the reason being that, since the default persisted to continue even thereafter, and the amount ever since issuance of the first recovery citation in February 2013, was not paid, the respondent No.2 admittedly, according to the petitioner's own case, had issued a second notice on 16th November 2019 after six and half hears, calling upon the petitioner to pay the balance amount due to be paid to the tune of Rs.64,62,000/-. But when despite of the said notice having been issued to the petitioner and to the Society, wherein, the petitioner was shown as to be the Secretary, the reference was made by the petitioner in defense to the audit report also, which was conducted by the Auditors of the society of the petitioner specifying the mode and manner in which, the aforesaid financial assistance was utilized by the "Jan Jagran Samiti".

15. When the amount was not remitted despite of the second attempt made by the respondent No.2, by issuance of the notice on 16th November 2019, the respondent No.2, thereafter again had referred the recovery proceedings to the Collector for the third time, who had issued the third impugned recovery citation dated 16th December 2019, for the purposes of recovering of an amount of Rs.96,45,423/-. To sum up, the petitioner in the writ petition has submitted, that there is no individual liability of the petitioner because whatsoever the loan advances were taken, it was taken for the "Jan Jagran Samiti", and the loan amount would be made payable by way of an installment to the respondent No.2, only after the earnings made by the women, who were supposed to be trained by the petitioner's society.

16. It was submitted, that since it was rather the inaction on part of the respondents, rather they would be rather responsible for not enabling the trained women of the petitioner's society to generate their own revenue, and hence took a ground, that the default of the arrears due to be paid could not be remitted. In fact, if the pleading raised in the writ petition are taken up as a whole, it is quite apparent that in principle the petitioner has admitted the fact that there was a default in the payment of the loan amount, and the recovery sought to be made by issuance of the recovery citation dated 12th December 2019, for recovering of the amount of Rs.96,45,422, in fact was a fact, which was not denied specifically by the petitioner in the writ petition.

17. When the writ petition was preferred, the coordinate Bench of this Court by an order dated 9th January 2020, had issued notices to the respondent No.2, and since respondent nos.1, 3, 4, are represented by the Standing Counsel, they were directed to file their respective counter affidavits. The respondent No.1, i.e. Collector, District Almora, since he was the recovering agency, who had proceeded to recover the amount, as arrears of land revenue, which was sought to be recovered on the directions and notices issued by the respondent No.2, which was a statutory corporation engaged in providing financial assistance to

the such Societies for the upliftment of the oppressed class of society. Respondent no.1, while filing his counter affidavit on 12th February 2020, infact had nothing much to say, pertaining to the recovery recommended to be made by him by, respondent No.2.

18. The respondent No.2, on the receipt of the notices had filed its counter affidavit on 17th February 2020, and in support of the contention and the proceedings, which were being taken against the petitioner for recovery of the amount, the respondent no.2, in the counter affidavit, apart from raising various rival contentions, for meeting up the liability for the recovery and justifying the recovery of the amount sought to be recovered by the recovery citation dated 12th December 2019, had submitted that the petitioner would be liable to pay the amount because as per the loan agreement dated 2nd January 2008, which was subsequently ratified by the agreement of 14th January 2008, which was an admitted financial assistance extended to the petitioner's society.

19. What would be more important to observe at this juncture is the correspondence of 9th October 2017, which has been filed by respondent No.2, in their counter affidavit, in which the respondent No.2, had made a reference, that in fact the petitioner herself in the said correspondence of her had admitted the liability, and has ensured and had undertaken to pay the loan amount, which was due to be paid to the aforesaid Corporation of the respondent No.2. The relevant extract of the correspondence dated 9th October 2017, is extracted hereunder:-

"I will be paying you the entire amount outstanding for the loan (minus interest) by the middle of November. I will be coming to Dehradun and will come to see you on the 16th or 17th of October so that a payment schedule for the interest remaining can be worked out."

20. When the aforesaid amount was not remitted, despite of the undertaking and assurance given on 9th October 2017, by the petitioner undertaking herself to repay the loan amount, it is contended by the respondent No.1, that they were yet again in a receipt of the Letter No.1159, dated 6th December 2019, that is almost approximately after more than two years from the date of the undertaking given by the petitioner before the respondent No.2 on 09.10.2017, to pay the amount, when respondent No.2, has requested the respondent no.1, to issue a recovery citation for recovering of the defaulted amount of Rs.96,45,423/-.

21. Consequently as a result of the aforesaid correspondence, the Tehsildar, had issued a recovery citation on 12.12.2019. The respondent No.2, in the counter affidavit has submitted, that in the various correspondences, and the meetings which were held between the petitioner and the respondent No.2, there were various admissions made by the petitioner herself, wherein she admits the loan amount and liability of Rs.75,00,000/- which was sanctioned by the respondent No.2, to be utilized by the "Jan Jagran Samiti", for its alleged objective of the

societies, it was alleged that approximately a sum of Rs.13.60 Lakhs, were deposited by the petitioner, as against the total amount due to be paid, but still despite of partial remittance of the amount towards the total loan liability it was not satisfied, and as in the year 2013, the amount of Rs.61.40 Lakh, was still left due to be paid by the petitioner.

22. In the counter affidavit filed by the respondent No.2, they have submitted that since owing to the correspondences made by the Uttarakhand Government Peyjal and Social Welfare Department on 17th June 2013, through its Additional Secretary, Social Welfare, who directed the District Magistrate, Almora, to postpone the recovery proceedings, on the basis of the report submitted on 28th May 2013. Momentarily the recovery proceedings contemplated by the recovery citation of February 2013, was initially kept in abeyance.

23. The respondent no.2, filed its counter affidavit, and it was further elaborated therein, that if the bye laws of the society, and its basic structure of the society, is taken into consideration, as placed on record i.e. of 02.01.2008, all rights of internal management and liabilities were vested with the Secretary of the society, and hence, the petitioner would be bound by the terms of the loan agreement dated 14th January 2008, and more particularly, in the context of the Gmail communication made by the petitioner to the respondent No.2 on 9th October 2017, where she has admitted the liability, and has only sought time to deposit the amount with the condition that they are in the process of transferring the unit to some other organization called as "Hans Foundation", and as soon as the said transaction is satisfied, they will be remitting the amount, but despite of the aforesaid assurance made by g.mail of 09.10.2017, the amount was not remitted.

24. The respondent No.2, in the counter affidavit have submitted that the petitioner's assurances to deposit the amount was artificial and concocted for the reason being, that the petitioner herself while making the correspondences with respondent no.2, vide its letter dated 17th October 2017, in fact once again she has reiterated that she would be needing some more time to pay the amount, and she assured that she would be paying the amount by 25th November 2017. The relevant extract of the undertaking given by the petitioner before the Managing Director of the respondent No.2, is extracted hereunder:

"With reference to my e mail dated 17 October. I visited your office this morning. I request some time to pay the due installments as I am in the process of selling a part of my ancestral land for the same. I will positively pay your before the 25th of November 2017."

25. In fact on a simplicitor decipher of the contents of the said correspondence, it shows that she undertook to sell a part of her ancestral property, and the land positively by 25th November 2017, in order to pay the amount in question.

26. In fact, in furtherance thereto, admittedly the petitioner has deposited the amount of Rs.9,00,000/- through her cheque, which was issued from her own

bank account, which was standing in the branch of HDFC Bank, by issuing a cheque bearing Cheque no.330, dated 20th December 2017. The assurance of 17th October 2017, the issuance of the cheque of 20th December 2017, in fact it shows that it was the personal liability, which the petitioner admitted that it was to discharge towards the loan advances, but when despite of having paid partially paid the amount when the total amount was not satisfied, respondent No.2 on 25th May 2019, had issued notices to the petitioner to pay the balance amount. It was yet again on the receipt of the aforesaid notice, the respondent no.2, has placed on record the correspondence made by the petitioner through her Gmail of 27th May 2019, wherein she has yet again undertaken that she may be granted further three months time to deposit the entire loan liability as sought to be recovered from her. The relevant undertaking is extracted hereunder:-

"With regard to your letter attached below, I would like to request you to kindly give me three months time in which to raise the funds to repay the amount, I would also request that the interest may kindly be waived or else that the interest may be repaid over a longer period of time. In which case I would try and repay the principal amount within two months.

Please note that the background of this loan was for TRAINING purposes for SC women and that the Department of Cooperative had committed to construct three buildings to accommodate the 500 trainees so that they could start production. Three Cooperative Societies were formed and one building was built. We could employ 150 of the 500 trained women in this building and repaid 15 lakhs loan in 2013 for these women. The remaining two buildings were never constructed and I have repaid 45 lakhs from my own pocket by selling my land.

It is on this basis that I have appealed to the Government to kindly exempt the interest, and through this letter I am once again appealing to the Chief Secretary to very kindly look into the matter and afford me some relief. I will come to Dehradun before the 15th of June positively to resolve the matter and at least give you a cheque for the balance principal amount by then."

27. It was yet again despite of expiry of two months period on 22nd July 2019, the petitioner had once again written letter to the respondent no.2, assuring the amount to be repaid at the earliest, and sought an extension of time to pay the amount within two months. The relevant extract of the undertaking given by the petitioner is extracted hereunder:-

"Thank you. As I have already written to you, I am working on organizing the funds and this will take another two months. Kindly bear with me in the meantime. I have had to organize huge funds from my personal means for a social project in which Jan Jagaran Samiti fulfilled its part of responsibility in training 500 women, a fact attested to by the then DM's report on the matter, but the Department of Cooperative failed to construct 2 buildings for production units as a result of which 350 of the total women could not start production. The loan would have been repaid from the sales, as was done initially when 15 lakhs

was paid back. Remaining 45 lakhs I paid from my pocket.

Please give me some more time to resolve this matter.”

28. The inaction, and the act of extension of false assurance at the hands of the petitioner with the respondent No.2, continued and despite of various undertaking given for paying the amount by selling her property, or by selling the unit of the society to “Hans Foundation”, she assured to remit the amount, but the same was not honoured by her at any point of time. Hence, lastly on 10th November 2019, the notices were issued by the respondent No.2, to the petitioner, to repay the amount due to be paid as demanded from her by issuance of the notice November 2019. The petitioner had preferred this writ petition by filing the same before the registry on 8th October 2020, praying for the following reliefs:-

“It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased:

(1) To Issue a writ, order or direction in the nature of certiorari, quashing the impugned notice dated 16.11.2019 (Annexure No. 9) and the recovery citation issued on 12.12.2019 (Annexure No. 1) for recovery of Rs. 96,45,423/-issued by respondent no. 1 against the petitioner.

(ii) To Issue a writ, order or direction in the nature of mandamus directing respondent no. 3, 4 to conduct high level inquiry in regard to inaction for not providing the infrastructure wherein trained women were to work under the cooperatives and the price received was to be paid as loan repayment and to ascertain the liability of respondent no. 3, 4.

(iii) To pass such other orders and direction as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case.

(iv) Allow the writ petition with costs.”

29. No interim order was granted, hence during the pendency of the writ petition, the petitioner filed an application on 26th August 2020, being Application No.7857 of 2020, praying for to stay the recovery proceedings, because during the intervening period when despite of the assurance extended by the petitioner to deposit the amount, as per her own request made in November 2019, the respondent No.1, has proceeded to issue an order on 10th June 2020, whereby, the property of the petitioner was attached as lying in Village Binsar and Village Matkhata.

30. The grounds taken in the Stay Application No.7857 of 2020, it was for the first time develop, that the direction issued by the Assistant Collector of attaching the property on 10th June 2020, in fact is bad in the eyes of law, because her personal property could not be attached for the default committed by the society from remitting the amount due to be paid and taken by way of the financial assistance from the respondent no.2.

31. But owing to the correspondences and the extract of the various letters already referred to above, in fact the stay application which was filed on 26th August 2020, it was for the first time a somersault stand, was taken by the petitioner contrary to her own undertakings, that it was not a personal liability of the petitioner for the amount payable by the society, which could be recovered from her or her personal assets, as an arrears of land revenue. This changed stand taken by the petitioner for the first time would be contrary to her own earlier undertakings given before respondent No.2, in the various correspondences made by her and even contrary to the subsequent applications and the orders passed by this court too on the application submitted by the petitioner wherein the petitioner had consistently admitted her personal liability to pay the defaulted amount to the respondents, which was being sought to be recovered.

32. The respondent no.4 i.e. the Principal Secretary Cooperative through its Deputy Secretary filed a counter affidavit on 1st October 2020, wherein, she has submitted that the petitioner since being a Secretary of the "Jan Jagran Samiti", it is absolutely the entire responsibility of the Secretary of the Society to pay the loan amount, which was extended by the respondent No.2, on the sanction of the project, which was allured by the petitioner to be a lucrative project for accrual of sufficient finances with the petitioner's society, which could have enabled her to meet the financial liability, and the dues payable by her as demanded by the respondent No.2.

33. But, however, the respondent no.4, in the counter affidavit had specifically denied, that the claim of the petitioner which was yet again a change stand taken, contending thereof that its functioning was that of the cooperative society, was denied by respondent no.4, by making a specific averment that the petitioner is not a cooperative society, which was ever registered under the provisions of the Uttarakhand Cooperative Societies Act or the erstwhile UP Cooperative Societies Act, and rather respondent no.4, has submitted that respondent no.4, has got no connection with the alleged controversy of the loan amount nor is involved at all over the controversy of the recovery which has been sought to be made by respondent No 1, on the instructions of the respondent no.2.

34. Respondent no.4, further submitted, that since respondent no.2, is exclusively funded by the State, which assures and guarantees the extension of financial assistance to the different societies, for uplifting the oppressed class of the society of the interior hills. In fact, it was the project, which was called as "Integrated Cooperative Development Project (ICDP)", which was launched by the Government of India, in various other internal areas of the country as back as in the year 2005, and it was under the said project of the Government of India, which was controlled and managed by the State in four choosen Districts of the State of Uttarakhand, it was said to have been selected for being brought within the ambit of the aforesaid integrated project i.e. Districts Haridwar,

Pithoragarh, Chamoli and Almora, and since it was a project managed and controlled by the State and the specialized agencies, which were deployed by the State to meet the objective of project of Government of India, it would be the exclusive prerogative of the petitioner to repay the amount to the financial assistance extended to the society, under the States scheme, which was a public funded scheme, launched by the Government of India, and enforced through the State Government and its statutory agencies, who was supposed to regulate and guarantee the successful functioning of meeting the objective of the project floated by the ICDP.

35. During the pendency of the proceedings of the writ petition, the petitioner had filed an IA No.10424 of 2020, in the application, thus, submitted by the petitioner being Application No.10424 of 2020, which was filed on 09th October, 2020, the petitioner has attempted to bring on record the fact that subsequent to the order of 13th October, 2020, passed by this Court, the petitioner did approached before respondent no.2, for making efforts for one time settlement, but since the Board of respondent no.2, was not constituted, it was submitted that the request for one time settlement as sought to be enforced by the Misc. Application no.10424 of 2020, could not be matured and proceeded with further.

36. During the intervening period, the respondent no.1, had filed a supplementary counter affidavit on 28th October 2020, under the affidavit of the Collector, Almora for recovery of the amount under the provisions of the UP Public Money Recovery of Dues Act, because it was a financial assistance which was extended to the petitioner's society, under the Integrated Cooperative Development Project of the Government of India, which was enforced through the State Government and its agencies, and hence, it was a public scheme under which the financial assistance was extended, and if the supplementary counter affidavit filed by the respondent No.1, on 28th October 2020, which was brought to the notice of the Court, that as a consequence of the issuance of the recovery citation dated 12th December 2019 and default committed, in fact, the property of the petitioner was attached by the attachment order dated 10th June 2020.

37. The additional fact, which has been brought on record by the respondent No.1, in its supplementary counter affidavit, was yet again a correspondence made by the petitioner on 26th December 2019, praying for an extension of time for the recovery of the amount as sought to be recovered by the impugned recovery citation.

38. On the said application, the matter was taken up by this Court, and on an oral request of the learned counsel for the petitioner, that if the attachment made on 10th June 2020 is lifted, she would be selling the property on her own, and would repay the amount as sought to be recovered. The relevant submissions made by the learned counsel for the petitioner, as referred to, in the order dated 18th November 2020 of this Court, is extracted hereunder:-

"Learned counsel for the petitioner submits that in order to meet up the financial

liability, which has been levied on her due to default in remittance of amount, the petitioner is unable to deal with her property, which stands attached, which she wants to sell in order to repay the amount sought to be recovered against her.

He makes an oral prayer that the attachment be lifted, to which the learned counsel for respondent no. 2, wants to complete his instructions and to make his statement on the next date."

39. On the instructions, as it was directed to be collected from respondent No.1, on the oral request of the petitioner for lifting the attachment in order, in order to enable her to sell the property. The instructions were not parted. Accordingly the petitioner had filed yet another application being Extension Application No.10731 of 2021, on 13.01.2021, in which the petitioner has sought two months time to comply the order dated 18th December 2020. The prayer made thereof is extracted hereunder:-

PRAYER

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) To extent the time period as mentioned in the order dated 18.12.2020, for further two months, for complying with the conditions of the order dated 18.12.2020, otherwise applicant/petitioner would suffer irreparable loss and injury.

(b) To pass such further orders or directions which are just and proper in the facts of the case."

40. Nothing proceeded further, later on, the petitioner filed yet an another Misc Application No.10733/2021 on 29.09.2021, by invoking the provisions contained under Order 6 Rule 17 of the CPC, bringing on record the auction notice dated 25th September 2021, and the representation submitted by her to restrain the auctioning proceedings of the property, which was scheduled to be held on 5th October 2021, but in the affidavit filed in support thereto, where the amendment was sought, the petitioner has yet again reiterated her liability to pay the amount, and assured the remittance of the same, subject to the extension of some time to be granted to her, but the inaction on her part persisted despite several consistent assurances.

41. Later on, she field yet another stay application being Stay Application no.10732 of 2021, in which the petitioner had submitted that though the loan amount was taken by the society, but that cannot be remitted within the granted time, and hence in the application, thus, submitted by the petitioner, she prayed for suspension of the auction proceeding scheduled to be held on 5th October 2021, with the assurance to remit the amount, which has fallen due to be paid, but nothing proceeded further.

42. Ultimately, the petitioner made a request before the Court that, in case, if

the attachment of the property is lifted, she would be selling the property to the identified purchaser by her, and will deposit the sale proceeds before respondent No.2 as an amount payable towards loan, which was a subject matter of the recovery citation of 12.12.2019. Based on the aforesaid assurance, where the petitioner undertook the liability to pay the amount, this Court has passed an order dated 18th December 2020, issuing following directions:-

"8. In compliance thereto, the Standing Counsel, has placed before this Court, the attachment order, as well as correspondence made to the office of the Chief Standing Counsel, from the office of District Magistrate, Almora, dated 08.12.2020, wherein, the said correspondence which was made by the District Magistrate. The District Magistrate, Almora, in principle, has agreed that for the purposes of facilitating, the one-time settlement process, the District Magistrate, in principle, has agreed to release the property in order to enable the petitioner to sell the property attached, on her own but that was subject to the rider attached to the permission; that the petitioner would be liable to remit the recovery charges @ 10% to the District Magistrate. The relevant part of the communication made by the District Magistrate vide his letter No. 1236 dated 8th December, 2020, is quoted hereunder:-

9. Matter was taken up today. In view of the aforesaid consent which had been extended by the District Magistrate, subject to the conditions imposed therein, coupled with on considering the attachment order which was also produced before this Court, this Court passes the following directions on the consensus, which has been given by the petitioner, Mr. Nandan Arya, Advocate for the respondent No.2 and the State Counsel. The conditions thus imposed are as under:-

1. The property, which has been attached by the order of S.D.M. dated 10th June, 2020, would be temporarily released only for the purposes to enable the petitioner, to sell the property and to get an appropriate adequate sale consideration exclusively in order to enable her to meet up her loan liability.

2. The exercise of sale, which has been thus permitted in pursuance to this order, would be notified in the office of Sub Registrar, in order to let the general public know, the conditions under which the sale deed is being permitted to be executed.

3. The exercise of entering into the sale with the private person as a consequence of the release permitted by the District Magistrate by an order of 8th December, 2020, as well as by this Court by today's order, would be ensured to be carried by the petitioner, positively within a period of one month from the date of receipt of the certified copy of the order. On expiry of the above period, the permission granted, would lapse and property would once again be deemed to be attached.

4. The sale transaction, if any, which is entered into by the petitioner would be made in the presence of the representative of the respondent No.2 as well as, of

the Office of the Collectorate, who would be authorised by the District Magistrate, to participate at the time when the deed of conveyance is executed by the petitioner with the private person.

5. The sale deed thus executed would also reflect the effect of pendency of this Writ Petition, as one of the convonents of the sale deeds.

6. As soon as the sale transaction is completed, the petitioner would ensure to remit the amount due to be paid to the respondent No.2, towards the recovery proceedings, which is the subject matter of the Writ and subsequently, if there happens to be any outstanding balance, this Court will pass an appropriate orders depending upon the circumstances prevailing thereafter.

7. The petitioner, hereby also undertakes that as a consequence of the permission of the sale granted to her, she is willing to comply the conditions of depositing the recovery charges as indented to be levied by the District Magistrate vide his communication dated 8th December, 2020."

43. The petitioner was unable to comply with the conditions as imposed for lifting of the attachment as directed by the order of 18th October 2020. Hence, the petitioner filed an application praying for an extension of time (detailed in the earlier part of the judgment) in order to enable her to sell the property as directed by the order of this Court dated 18th December 2020, and in the application thus preferred, the petitioner had submitted that the time period granted by this Court by an order of 18th November 2020, the same may be extended.

44. The Court while considering the application for extension of time on 23rd February 2021, had extended the time by period of five weeks to comply with the directions given in the order dated 18th December 2020. If the contents of the Time Extension Application no.10731 of 2021, is taken into consideration, in fact, in paragraph no.3, she has submitted that in pursuance to the order dated 18th December 2020, the petitioner has searched the proposed purchaser one Mr. Mansingh, of Jaipur Rajasthan, with whom the negotiations were being carried, after lifting of the attachment in order to enable the petitioner to sell the property, but despite of the extension having been granted by this Court by an order dated 23rd February 2021, the property was not sold. The relevant extension order granted by this Court by an order dated 23rd February 2021 is extracted hereunder:-

"Exclusively, in the interest of justice, with an intention that the lis should come to an end, the time period which was granted for execution of sale deed by order dated 18.12.2020, is hereby extended by a further period of five weeks from today only, and if by the said time, the sale deed is not executed by the petitioner, the liberty which was granted to her by the order dated 18.12.2020 would automatically stand vacated.

Put up this writ petition immediately after five weeks.

List this case on 31.03.2021.

Let a certified copy of this order be supplied to the learned counsel for the parties on payment of usual charges today itself.”

45. The Court further proceeded in the matter and in the proceedings which were held on 4th October 2021, the writ petition was admitted, and the respondents were directed to file their objections to the proposed amendment application which was filed by the petitioner. The order of 4th October 2021 is extracted hereunder:-

“Mr. Shubhang Dobhal, Advocate, for the petitioner.

Mr. Suyash Pant, Standing Counsel, for the State of Uttarakhand.

Mr. Nandan Arya, Advocate, for the respondent.

All pending stay applications stand rejected.

Admit the writ petition.

Learned counsel for the respondent may file an objection to the amendment application within a period of three weeks.

List this writ petition in due course.”

46. The petitioner alleging herself to be aggrieved as against the order of 4th October 2021, where the writ petition was admitted, and the time was granted to the respondents to file objection to the amendment application, had preferred a Special Appeal before the Division Bench of this Court, being Special Appeal No.384 of 2021 “Mukti Dutta Vs. Collector/District Magistrate, Almora and others”, the same was considered by the Division Bench vide its judgment of 22nd November 2021, and the same was dismissed as withdrawn, with the cost of Rs.10,000/- on the ground that the petitioner while giving challenge to the order dated 4th October 2021, which was only an interlocutory order passed during the proceedings had concealed the earlier orders of 8th December 2021, and also concealed the order passed on the extension application on 23rd February 2021. The relevant part of the Division Bench judgment is extracted hereunder:-

“3. Moreover, by order dated 23.02.2021, the learned Single Judge had extended the period for selling of the property by a further period of five weeks. However, none of these material and vital facts have been mentioned in the appeal. Therefore, obviously, the appellant has approached this Court with unclean hands.

4. Once it was pointed out to Mr. Rajendra Dobhal, the learned Senior Counsel for the appellant, that the appellant is trying to take the Court out for a ride by hiding material and vital facts, the learned Senior Counsel seeks the liberty to withdraw this appeal with a liberty to file a fresh appeal with all the necessary facts.

5. This Court certainly does not appreciate a litigant, who comes with unclean hands. Therefore, while permitting the learned Senior Counsel to withdraw this appeal and to file a fresh appeal, this Court still imposes a cost of Rs. 10,000/- upon the appellant. The said cost shall be paid by the appellant to the Uttarakhand High Court Advocates Welfare Fund within a period of two weeks from today. The Registrar (Judicial) is directed to inform this Court whether the said cost has been paid, or not. In case the cost is not paid within the stipulated time period, the concerned Collector is directed to realise the said cost, as part of the arrears of land revenue."

47. But despite of it, when the amount was not remitted the matter was taken up for the hearing at final stage on 18th February 2022, wherein, after recording the finding about the effect of the orders dated 18th December 2020, and the order of extension of time, in order to enable the petitioner to sell the property, after lifting of the attachment, the Court observed that since the petitioner has not truthfully honoured the arrangements and liberty granted by the Court in selling the property to her identified borrower, as agreed by her, in her application submitted for lifting the attachment, the Court by an order dated 18th February 2022, had declined to grant any interim order, and following observations were, made by this Court in its order dated 18th February 2022, which is extracted hereunder:-

"Since it is an admitted writ petition and the petitioner has not complied with the conditions of the earlier orders, the respondents have proceeded to auction the property and had fixed 21.02.2022. But, considering the fact that the earlier orders itself has been solicited by the petitioner, which has not been honoured and complied by her, I think this is a case in which no equity lies in favour of the petitioner, which could be finally agitated without passing any interlocutory order any further."

48. Ultimately the matter was heard finally on 28th February 2022.

49. Though without there being any prior permission taken by the Court while during the course of hearing of the proceedings of the writ petition, on the culmination of the hearing on 28th April 2022, the petitioner had submitted the written arguments on 29th April 2022, summarizing his arguments and the foundation of the writ petition, while giving challenge to the notice of recovery, and the consequential auction notice, the reference of which has already been detailed, and discussed above.

50. The petitioner when he submitted his written arguments in fact there was certain new chapters which were opened by her in the written arguments, which were not even the part of the pleadings of the writ petition. Hence, this Court is apprehensive to accept the argument submitted on the grounds or the issue raised by her through her counsel by filing the written arguments.

51. The new ground, which has been agitated by the petitioner for the first time in the written arguments without prior leave of the Court, without there being a

principal pleading and foundation in the writ petition, and the opportunity having been granted to the respondents to controvert the same, are from the following perspectives:-

(1) That the recovery was time barred recovery having been resorted to after 12 years, just to increase the penalty and interest.

(2) One time settlement itself was rejected. Hence, the interlocutory orders which has been referred to above, it is the contention of the petitioner they will not be effective.

(3) He has submitted that as per the terms of the agreement of loan dated 14th January 2008, its clause 18, provided a forum for redressal of dispute by the courts situated in Dehradun.

(4) That the recovery of money, by invoking the provisions contained under the Zamindari Abolition Act, as a recovery of the revenue dues will not fall to be under clause 3 of the Public Money Recovery of Dues Act.

(5) Since the one time settlement proposal, which was submitted by the petitioner alleged to be in compliance of the interim orders passed by this Court stood rejected by the respondent No.2, vide its order dated 6th January 2020.

(6) Despite of the order dated 18th October 2020, passed by this Court, as extracted above, releasing the property in order to enable the petitioner to sell the same, and not being able to succeed in the one time settlement efforts, it is alleged that the action of the recovery is bad.

(7) In compliance of the order dated 18th October 2020, the sale deed could not be succeeded due to covid-19 pandemic.

(8) It is admitted in the written arguments that the extension of time was granted by this Court to enable the petitioner to sell the property, after lifting of the attachment order by the order dated 18th December 2020, with an observation that failure to sell the property within the time prescribed will lead to an automatic vacation of the interim arrangement.

(9) It is submitted in the written arguments that respondent No.2, had rejected the second proposal given for the one time settlement on 16 March 2022.

52. All these plea, which have been taken by the petitioner, for the first time in the written arguments, would not be acceptable by this Court, at this stage, of hearing and submitted in the written argument, after reserving of the judgment for the reason being that none of these pleadings are the grounds taken in the written statement nor the same was ever argued by any of the counsels to the writ petition at any stage of the proceedings before this Court. Thus all these pleadings would be treated to have been waived out to be argued, which was availed when the writ petition was filed on 08.01.2020 till it remained pending, upto the reserving the judgment on 28.04.2022, and that too by way of written arguments.

53. Apart from it, the arguments which are submitted by way of the written arguments, under the procedural law prescribed under the Code of Civil Procedure, it cannot be in an extension to the arguments and pleaded case, which was not in existence in the pleadings nor argued and the said grounds taken for the first time in the written arguments, cannot be considered, more particularly, when it was not pleaded and particularly when the opposite side, didn't had an opportunity to controvert the grounds, which were added for the first time by filing the written submissions after the reserving of the judgment, because under the principal law, on an any issue which was a subject matter of the consideration before the Court, the Courts have to procedurally ensure that whatsoever the grounds it may be for challenging a question, before the courts, all these grounds have had to be subjected to the part of the pleadings, so that the other side may be given an opportunity to controvert it and of hearing on the issues and since this was not complied with by the petitioner, the additional grounds which has been detailed above taken for the first time in the written arguments it cannot be permitted to be elaborated in the written arguments, and that too without a prior permission of the court.

54. Admittedly, as per the records and according to the admission made by the petitioner herself, the one time settlement proposal submitted by the petitioner was rejected by an order dated 6th November 2020, and then the second offer for one time settlement was also rejected by the order dated 16th March 2022. Meaning thereby, these decisions of rejecting the one time settlement proposal, as submitted by the petitioner for the first time as a ground which were taken in the written argument could not be scrutinized by this Court at this stage of the proceedings, for the reason being that the petitioner has waived off his right to put a challenge to the orders of rejection of an offer of one time settlement by the orders of 6th October 2020 and 16th March 2022, particularly when, the petitioner has not made it as part of the pleadings or relief claimed to the writ petition by way of an amendment nor the petitioner has given challenge to the orders of rejection of the offers of one time settlement.

55. Rest of the plea, which has been extracted above submitted in the written arguments invariably all the plea were ever available to the petitioner at the time when the writ petition itself was instituted by her before this Court on 8th January 2020. Knowingly not pleading the issue at that time and which has been raised for the first time in the written arguments, would be taken as to be the fact, that the petitioner had voluntarily waived off her rights to challenge the impugned action of issuance of the recovery citation by not drawing the attention of the court to answer the grounds taken by the petitioner, and this argument in relation to the other grounds raised in the written arguments, except for the rejection of the one time settlement would stand waived off since it was not a principal ground, which was ever earlier agitated. Coupled with the fact that in the proceedings, which were held before the Court, the petitioner herself in the various correspondences made by her to respondent No.2, and even to the offer which was extended before the Court to express her bonafide that she wants to

satisfy the loan, is quite explicit from her correspondences, and the orders passed by this Court, on the different dates, which shows that the petitioner had in principle admitted her liability to have befallen upon her, when she undertook to sell her personal assets, to the proposed purchaser identified by her from Rajasthan, and now at this stage reverting back and taking a somersault stand on the grounds raised in the written arguments, would be no more left open for her in view of the orders dated 18th December 2020 and 23rd February 2020, thus, the stand taken in the written argument is not acceptable by this Court at this stage.

56. Apart from it, learned counsel for the petitioner had made a references to certain judgments on which he wants to place reliance in support of his contention, as against the impugned action of recovery. The first judgment on which the reliance has been placed is that reported in 2014 (1) AWC 666, "Indira Nigam and another Vs. State of U.P.", whereby the Division Bench of Allahabad High Court, if the subject matter which was under consideration in the said case is considered it was that it was a recovery which was resorted to, for recovering the amount due to be paid therein, as arrears of land revenue, was as a consequence of execution of the hire purchase agreement, under which the payment was made by the Corporation, for the purchase of the machines, and which was not under the State sponsored scheme. Hence, the Division Bench of the Allahabad High Court, has taken a view that the money could not be recovered as an arrears of land revenue, since not being under a State sponsored scheme, which is factually not the case herein, because here the loan was extended under the ICDP scheme of Government of India, managed by State through its agencies.

57. This judgment of the Division Bench of Allahabad High Court, relied by the petitioner, would not be applicable in the present case for the reason being that (a) its not a recovery which is a subject matter of the hire purchase agreement. (b) the amount of loan which was extended to the petitioner was under the scheme of the Government of India, which was regulated and managed by the State Department of Social Welfare under the scheme which was called as "Integrated Corporative Development Project (ICDP)", launched by the Government of India throughout the country in the year 2005, and later on, it was enforced through the State Agencies, the Department of Social Welfare had enforced the scheme in four chosen Districts of State of Uttarakhand. Hence, the recovery which has been made herein was under a State sponsored scheme, where the finances were extended by the statutory Corporation of respondent No.2, in order to meet the objectives of the public scheme floated by the Government of India enforced through the agencies of the Department of Social Welfare of State of Uttarakhand. Hence, this judgment of the Division Bench will be of no avail for the petitioner.

58. The second judgment on which the reliance has been placed by the learned counsel for the petitioner is that as rendered by the coordinate Bench of the

Allahabad High Court in Misc. Writ Petition No. 1287 of 2001, "Bhau Pratap Singh & another Vs. Board of Revenue, U.P. Lucknow & other", wherein the coordinate Bench of Allahabad High Court, has observed with regards to the propriety of the recovery which was being made under the provisions of the Zamindari Abolition Act, but factually if the said judgment is taken into consideration, it was a case where the financial assistance was extended by way of the loan amount for purchasing the Tractor in the year 1985, from New Bank of India, Hardoi. It was a case where it was absolutely a private loan which was extended by the Banking Agency for the purposes of purchase of an agricultural implement, which was a subject matter of the consideration, and as per observations made in paragraph no.8, of the said judgment. In fact, all these parameters, and the subject which was consideration before the coordinate Bench of the Allahabad High Court in the matters of "Bhau Pratap Singh & another" were not the issues which was a subject matter in the present case. Hence, this judgment too will not apply when it was a recovery of the agricultural loan, which was extended on a personal side of the borrower and it was not under a State Scheme, where under the terms of the agreement it was recoverable as arrears of land revenue under Section 284 to be read with Section 279 Zamindari Abolition Act.

59. Learned counsel for the petitioner has referred to yet another judgment reported in 2008 Volume 12 SCC Page 596, "State of Uttar Pradesh Vs. Swadeshi Polytex Limited and others", and particularly, he has made a reference to paragraph no.37, of the said judgment, which is extracted hereunder:-

"37. The question of valuation is to our mind of the utmost importance as it is designed to ensure the best price for the property and it is essential in this circumstance that wide publication and notice of the proposed sale should be given as per Rule 285-A which postulates a notice of 30 days between the date of issuance of the sale proclamation and the date of auction. It can hardly be over emphasized that the proper valuation of the property and wide publicity of the proposed auction is intimately linked with the price that the auction fetches. As already mentioned above, the auction had been held on 2nd May 2005. The sale proclamation had been issued on the 1st April 2005, and served on the Chowkidar on the 21st April 2005, the publication made in "Amar Ujala" on 22nd April 2005 whereas Rule 285 itself postulates a notice period of 30 days to be counted from the date of issuance of the sale proclamation. While dealing with a similar situation, this is what this Court had to say in S.J.S. Business Enterprises (P) Ltd. v. State of Bihar:

"17. We are of the view that the sale effected in favour of Respondent 6 cannot be sustained. It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probalilise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is

no credible explanation forthcoming the court can assume that the impugned action was improper. (See Pannalal Binraj v. Union of India AIR at p.409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in Mahesh Chandra v. Regional Manager U.P. Financial Corporation Are no longer in place in view of the subsequent decision in Haryana Financial Corporation v. Jagdamba Oil Mills. However, in overruling the decision in Mahesh Chandra this Court has affirmed the view taken in Chairman and managing Director, SIPCOT v. Contromic (P) Ltd. and said that in the matter of sale under Section 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

"12.....This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.

18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on "as-is-where-is basis" to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.

We must, therefore, repel Mr. Dwivedi's argument that as SPL had suffered no prejudice in the auction proceedings, the sale should not be interfered with.

60. In case, if the said judgment is taken into consideration particularly the factual backdrop of the case, which was considered therein by the Hon'ble Apex Court, in the aforesaid matters of Swadeshi Polytex Limited (Supra), it was a case where Swadeshi Polytex Limited, was declared as to be a sick unit, which was registered with the Industrial Department of the State of Uttar Pradesh, and was an ancillary unit of National Textile Corporation, which was a government enterprises. It was a case where on account of financial constraints, the institution fell in default in remittance of the timely payment of wages to the workman and the proceedings which were drawn therein, were under the provisions of Uttar Pradesh Industrial Peace (Timely Payment of Wages), Act 1978, which was an issue, which stood adjudicated qua the recovery of the amount payable to the workman in relation to the company which was declared as to be a sick company, and the amount was determined to be made payable under the Act of 1978. Hence, the reference to paragraph no.37, which has been extracted above, were altogether under the different context and set and circumstances of the case which is absolutely in much contradiction to the present case in which:-

- (1) The loan liability has been accepted by the petitioner.
- (2) The liability has been accepted, by the orders of the Court too.
- (3) Partial payment has been made by the petitioner from her personal account.
- (4) Petitioner has undertaken before the court to pay the amount by selling her property to her chosen purchaser, after lifting of attachment.
- (5) Petitioner undertook to sell the property by seeking extension of time granted by earlier orders of this Court.
- (6) In various correspondences made before respondent nos.1 and 2, she has admitted her personal ability.

61. In these grounds of distinction, the ratio of Swadeshi Polytex Limited, will not be applicable in the case at hand. Rather this Court is of the view, that if the order sheet the part of which has been extracted above itself is taken into consideration, it was nothing but a deliberate and intentional effort of the petitioner to procure an order from the court and mislead the same, by not fulfilling its terms and conditions, despite of the undertaking given by her before the Financial Corporation, before the Recovering Agency and even before this Court.

62. The next judgment on which the reference has been made by the learned counsel for the petitioner in her written arguments is that rendered by the coordinate bench of this Court in Writ Petition (M/S) No.2535 of 2012 "Govind Singh Rautela Vs. U.P. Financial Corporation and others", and particularly, the learned counsel for the petitioner had made a reference to paragraph no.6, of the said judgment which is extracted hereunder:-

"6. The petitioner relies upon a decision of Allahabad High Court in Narendra Kumar Vs Collector, Bulandshahar reported in 2004 Allahabad L.J. 2235 wherein it has been held that in a case where recovery proceeding loan was given by the Finance Corporation and subsequently recovery proceedings initiated in the year 1979, thereafter stopped in the year 1982, but was again being initiated in the year 2000, was held to be wrong and barred by limitation. The said judgment also holds that though the Public Money Recovery Act does not prescribe a period, the period should be reasonable period. In the same judgment the Allahabad High Court further states as under:-

"The reasonable period would be the period during which the suit could have been filed. Since the respondents slept over the matter for eighteen years, the recovery of loan in 2000 was barred by time. No effort has been made by the respondents to establish that the cause of action for recovery survived after eighteen years. Law recognises various events, which may extend the period of limitation or revive it. For instance, part payment during statutory period or acknowledgement to pay after running out of period of limitation. The allegation in Paragraph 16 of the writ petition that there was no correspondence between

the petitioners and respondents after 1981 in respect of loan or arrears, nor the petitioners ever acknowledged any debt or loan after 1981, which could entitle the respondents to start recovery again, was vaguely denied. In reply to Paragraphs 12 and 14 of the writ petition the respondents have stated that the officers of the Corporation had been visiting and demanding arrears from petitioners. No material has been filed in support of it. The reference to Annexure 3 filed by the petitioners is irrelevant. This letter is the letter sent by the Corporation in the year 2000 to the petitioners to avail the benefit of one time settlement scheme. There is nothing to prove that the amount was demanded after 1981 and before 2000. It is of no help for the purpose of limitation. The counter affidavit has been filed by the Deputy Senior Manager Law of the Corporation. He has stated that, "officers of the Corporation during all the period kept on writing letters and made personal visits to the petitioners for repayment of loan". It is obviously an attempt to bring the recovery in period of limitation. But the allegation is not helpful to the respondents. The affidavit does not disclose the name of the officer or the date of visit. Nor any letter has been filed in support of the allegation that various letters were written demanding arrears. The affidavit has been sworn on personal knowledge without disclosing the source of information. It cannot be relied. It is insufficient to prove that limitation to start recovery survived after eighteen years."

63. The said judgment was in relation to the principle, as to whether the time barred recovery could be made by recovering the amount as arrears of land revenue, under the provisions of UP State Financial Corporation Act. Those principles yet again would not apply in the circumstances of the present case for the reason being that the financial assistance extended, therein, by the State UP Financial Corporation, were exclusively governed by the UP State Financial Corporation Act, and the proceeding for recovering were drawn, therein, under section 29 of the Act, where the question was raised with regards to the propriety of the recovery in the context of the provisions contained under Section 3 of the Act, and particularly the case was regards the extension of an argument in the context of the period of limitation for recovery drawing from the principles laid down by the Allahabad High Court in the judgment reported in 2004 Allahabad Law General page 2235, "Narendra Kumar Vs. Collector Bulandshahar" with all profound respect, these principle as envisaged in the judgment, which was considered were in the context of section 183 (4) of the UP Land Revenue Act, and Section 287(a) of the Zamindari Abolition Act, was all together under a different factual parameters, which will not at all be applicable and that too particularly when in the instant case this has never been a ground raised by the petitioner at any stage of the proceedings before this Court.

64. Hence, the very conduct of the petitioner itself shows that she was only cleverly playing with the delicacies of law in order to intentionally to avoid payment of an admitted liability, which she has admitted in the proceedings. Hence, this Court is not inclined to interfere because was the petitioner has cleverly made an attempt to mislead the Court for not to meet the extension of

the latitude granted in the intervening proceedings of the writ petition, the petitioner is not entitled for any equitable relief under Article 226 of the Constitution of India, for the aforesaid reasons.

65. Hence, the writ petition fails and the same is accordingly dismissed.