
(2000) 11 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 7603 of 1995

Prasad Industries and others	Vs	APPELLANT
District Magistrate/Collector, Shahjahanpur and others		RESPONDENT

Date of Decision : 10-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 133 : (2001) 92 RD 272

Hon'ble Judges : S.K. Jain, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : K.M.L. Hajela, for the Appellant; Smt. Sarita Singh and Senior Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and S. K. Jain, JJ.—Petitioner No. 1, M/s Prasad Industries and petitioner Nos. 2 to 4 who are its partners, have come up with a prayer to quash the entire recovery proceeding initiated at the instance of respondent No. 3, Deputy Regional Marketing Officer, Shahjahanpur, through respondent Nos. 1 and 2 for realisation of Rs. 19,36,784.40 paise from them as arrears of land revenue under the provisions of the Rules framed under the U.P.Z.A. and L.R. Act, 1951 and to command them not to realise the said amount from them.

2. Paragraphs 29 and 42 of this writ petition reads thus :

"29. That the petitioner ultimately filed a Writ Petition No. 21812 of 1994 for a writ of certiorari for quashing the citation dated 31.5.1994 and also for a writ of mandamus that the amount of Rs. 1936,784.40 p. be not realised from the petitioners in lump-sum.

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42. That this Hon'ble Court finally disposed of the said Writ Petition No. 21812 of 1994 by order dated 30.9.1994 permitting the petitioners to pay the amount in

dispute in instalments. The first instalment was required to be paid by 31.3.1995."

3. Sri Hajela, learned counsel appearing on behalf of the petitioners, shows us the order dated 30.9.1994 by which the earlier writ petition was disposed of by this Court. It is useful to reproduce that order :

"This an application by the petitioners seeking instalments of Rs. 2 lakhs of three months each.

Learned counsel for the petitioners submits that the applicants are willing to repay the entire outstanding amount as mentioned in the impugned citation dated 31.5.1994 (Annexure-15A to the writ petition], provided reasonable instalments are made.

Hearing of the case has been expedited as prayed by the petitioner. Both learned counsel for the parties agree to take up the matter today itself.

Ordinarily, we would not have interfered in such matter as the liability has not been denied, but as Sri S. K. Srivastava, the learned standing counsel has no objection to the instalments being granted, provided the petitioners deposit half of the impugned amount upto 31.3.1995 and pay the balance amount in monthly instalments of rupees 1 lakh each, we dispose of the writ petition finally with the observations that further recovery proceedings pursuant to the impugned citation dated 31.5.1994 (Annexure-15A to the writ petition), will remain stayed, provided the petitioners deposit half of the amount as mentioned in the aforesaid impugned citation upto 31.3.1995, and thereafter continue to deposit monthly instalments of Rs. 1 lakh each. The first instalment shall be paid by the petitioners on or before 30.4.1995 and the remaining instalments shall be paid on or before the last date of each succeeding month. In case of default of any such condition, the respondents will be free to proceed against the petitioners."

4. From a bare perusal of the aforementioned order, it is crystal clear that the petitioners had not pressed their prayers either for quashing of the proceedings and/or for restraining the respondents from proceeding further with the proceedings, rather the only prayer which they made was to fix instalments so that they could clear off the dues sought to be recovered which was allowed on certain terms and conditions. It appears from the submissions made at the Bar that the petitioners failed to comply with the terms and conditions imposed by this Court.

5. Apparently, the prayers made by the petitioners in this writ petition, which were also made in the earlier writ petition, were not granted. Thus, this writ petition for the same reliefs, which is second one, in the absence of grant of leave to the petitioners to sue afresh is barred by the principle of res judicata/constructive res judicata in view of the ratio decidendi laid down by the Hon'ble Supreme Court in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, , besides on the grounds of estoppel, waiver,

acquiescence and abandonment and, thus, this writ petition is dismissed, but without cost.

6. When we pointed out the aforementioned legal position. Sri Hajela, learned counsel for the petitioners, very fairly accepted it and, thus, we do not impose cost on the petitioners.