
(1999) 10 AHC CK 0114

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30639 of 1998

Shakuntala Sharma and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 10 AHC CK 0114

Hon'ble Judges : R.S.Dhavan, J and Aloke Chakrabarti, J

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—M/s. Smt. Shakuntala Sharma, Atul Sharma, Hemant Sharma and Km. Anuradha Sharma, the last two being minors, have filed the present writ petition against the State of U.P. resisting recovery proceedings for realisation of an amount as may be due and may not have been paid by their ancestor, Jyoti Prasad Sharma. Jyoti Prasad Sharma was a forest contractor and having been successful in bids to cut forest trees, had been assigned a contract. The consideration of the entire value of the contract not having been paid, a suit had been filed by the State of U.P. before the District Judge, Dehradun, being Suit No. 207 of 1968, State of U.P. v. Jyoti Prasad Sharma. This suit was decreed. The claim sought in the plaint was for a sum of Rs. 59, 294/ with interestpendente lite. The State of U.P. had a judgment and the decree in its hand. Having succeeded the fruits of the judgment could be had if the State of U.P. were to put the decree in execution. Whatever the reason, the State of U.P. did not execute the decree.

2. In the meantime, the defendant Jyoti Prasad Sharma died. Yet, it was entirely upon the State of U.P. to execute the decree inasmuch if the action survived against the heirs. Even this recourse was not taken by the State of U.P.

3. With a judgment and decree in its favour of the State of U.P. permitted the benefits of the judgment to lie in cold storage. Instead, took recourse to realisation of the amount under the decree as arrears of land revenue by

proceeding under the U.P. Land Revenue Act 1901. By taking recourse to this measure, Bungalow No. 36, East Canal Road, Dehradun was attached. It is not on record and it is not in issue that even much prior to the filing of the suit this property had been transferred by Jyoti Prasad Sharma to his wife as a gift. The wife of Jyoti Prasad Sharma was Smt. Jayawanti Devi. Jayawanti Devi also died, her son also died. Her son was Sri Bhakt Vatsal. Petitioners are the widow and progenies of this son of Jyoti Prasad and Jayawanti Devi. Their contention is, that the attachment which is being resorted to by coercive process cannot visit their property. This is the property known as 36, East Canal Road, Dehradun. They contend that this was never the estate of Jyoti Prasad Sharma. They contend that it is nobody's case nor in issue and it is accepted on record that this property had been transferred by Jyoti Prasad Sharma much before filing of the suit, to his wife Jayawanti Devi. In the circumstances, taking recourse to attachment of this property, by coercive process, is illegal and without jurisdiction.

4. The contention of learned counsel for the petitioners is that assuming without conceding that the Government may have recourse or for that matter even under the Forest Act, 1927 under Section 82 but the attachment must be caused on the property of the person from whom the money is due. The amount of money which may be due notwithstanding the decree, cannot be recovered from a property which did not belong to Jyoti Prasad Sharma. It is submitted that the suit having been decreed the only recourse which the State of U.P. can take is to execute the decree.

5. Apart from the submissions which have been made the Court's attention is drawn to the fact that that coercive process cannot be resorted to as there was no guidance available to the State of U.P. in writ petition No. 18151 of 1984, Bhakt Vatsal Sharma and another v. State of U.P. and others. It is pointed out that in similar circumstances all dues which may have been due from Jyoti Prasad Sharma, a suit was decreed and instead of executing the decree the State of U.P. took recourse to realise the amount by coercive process. On the writ petition, the High Court held that realisation of amount as arrears of land revenue in the face of judgment and decree in favour of the State of U.P. was an action in excess of jurisdiction and illegal, both. The judgment of the High Court dated 6/8/1998 is appended as Annexure 11 to the writ petition.

6. It is unfortunate that in the counsels' affidavits what is due process of law has been submitted by the deponent, a Forest Ranger as argumentative in nature. It is contended in the counter-affidavit that the decretal amount could not be realised as arrears of land revenue and that this step was just and legal because the heirs happened to be owners of the present property. This is a misconceived submission. At the time of filing of the suit the property in question on which distress and attachment was caused by realisation of amount as arrears of land revenue was not the property of Jyoti Prasad Sharma.

7. Further, regard being had to the judgment of the High Court in similar circumstances, virtually inter parties of dues relating to the State and on issues

between the same contractor there cannot be a different principle for the present case. The State of U.P. did not impugn the judgment. The judgment is final and this Court is bound by the decision of the judgment in Writ Petition No. 18151 of 1989.""

8. Ordinarily, a party is to seek adjudication of a claim. The due process of law is prescribed. Once it has been resorted to by the State of U.P. as in the present case "then only that recourse is available. Similarly procedure being resorted to against persons who had nothing to do, with the distress and attachment, is illegal.

9. The petition thus succeeds. The sale proclamation dated 208 1998 issued by the Collector at AnnexureI0 to the writ petition is quashed. It will be open to the State of U.P. to execute the decree arising out of Suit No. 207 of 1968 if it is otherwise permissible under the law.

10. The writ petition is allowed with costs one set of Rs. 5000/ to the petitioners.