
(2002) 09 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 37629 of 2002

Smt. Malka Begum

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 AWC 4374 : (2003) 94 RD 20

Hon'ble Judges : M. Katju, J;K.N. Sinha, J

Bench : Division Bench

Advocate : Manish Kumar Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned Counsel for the parties.

2. The facts of this case are covered by the Division Bench judgment of this Court in Rakesh Shukla Vs. District Magistrate/Sub-Divisional Magistrate and Another, .

3. Learned Counsel for the Petitioner has relied on the decision of a Division Bench of this Court in Mahesh Chandra Vs. The Zila Panchayat, Mainpuri,

4. In that decision it was held that the recovery cannot be made as arrears of land revenue unless the Statute permits it. A similar view has been taken in Raj Bahadur Singh v. Collector 1985 ACJ 615; Mumtaz Ali v. S. D. M. 1970 ALJ 114 , and in several other decisions of this Court. The same view has also been taken in Ram Bilas Tibriwal Vs. Chairman, Municipal Board, Titri Bazar and others, . In our opinion, all these decisions are distinguishable because it has not been noticed in these decisions that writ is a discretionary remedy, and hence this Court is not bound to interfere merely because there is violation of law, if there is no equity in favour of the Petitioner. In a writ petition the Petitioner must satisfy the Court that not only the law has been violated but also that equity is in the Petitioner's favour. Merely showing violation of law is not sufficient for invoking

writ jurisdiction.

5. In cases where the Petitioner does not dispute his liability to pay but only claims that the recovery cannot be made as arrears of land revenue, he really wishes to delay the payment. If a suit is to be filed for recovery of the amount it will take years and years to decide, because it is well known that suits take a long time to decide in our country. The Court should not exercise its discretion in favour of such persons who do not deny the liability to pay but only want to delay the payment by contending that the recovery cannot be made as arrears of land revenue.

6. Hence, in our opinion, the time has now come when the Court should dismiss all such writ petitions where the liability to pay is not disputed but the only argument is that the recovery cannot be made as arrears of land revenue. All these writ petitions should be dismissed on the ground that such petitions are not a fit case for exercise of discretion under Article 226 of the Constitution. Accordingly, this petition is also dismissed.