

(1996) 09 AHC CK 0152
In the Allahabad High Court
Case No : C.M.W.P. No. 7473 of 1994

U.P. Avas Evam Vikas Parishad and Another	APPELLANT
Vs	
Collector and Another	RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 09 AHC CK 0152

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : P.K. Singhal, for the Appellant;

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, J.—The Petitioner before the Court is a State Corporation, namely, Uttar Pradesh Avas Evam Vikas Parishad. The writ petition has been filed against the State, though not made a party. The party Respondent is the Collector, Kanpur Nagar, Kanpur, and the Sub-Divisional Magistrate, Kanpur Nagar, Kanpur. The State of Uttar Pradesh ought to have been made a party and this writ petition in the absence of the State of Uttar Pradesh would be bad for non-Joinder of parties. The Court is mentioning this matter because if the State of Uttar Pradesh is arrayed as a party, then, a very peculiar situation which cannot happen and is not meant to happen will happen in this case, contradicting settled law as has been laid down by the Supreme Court. In that eventuality, that is, if according to the norms of law the State of Uttar Pradesh is a party Respondent and was to be arrayed as such and if the Court were to lift the corporate veil of the personality of this State Corporation, then, the persona designata of those incharge will emerge, thus; the Chief Secretary is the ex officio Chairman of the Corporation. The Chief Secretary is also the head of the administration of the State of Uttar Pradesh. Is it possible that the Chief Secretary would permit this writ to be filed against the Chief Secretary? This aspect was the subject matter of a very serious concern by the Supreme Court in

the matter of 1992 (61) ELT 3 (SC) Lifting the corporate veil of a corporation is a known concept in corporate law to find out the personality of a corporation in civil law. Very recently this principle has been applied to determine liability in criminal law also, Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, .

2. The essence of the decision of the Supreme Court is that the State should not be seen in litigation between its constituents. The Supreme Court noticed that there was a bad tendency of departments of the State fighting with another department of the State or a State Corporation taking up an issue with the State. This reflects badly on the administration and rather that certain matters of public policies be made an issue by the State itself, such litigations should not be encouraged. It was held that it would be best that before a litigation enters a Court with two departments in lis or a State Corporation with the State, it would be best that a Committee specially constituted resolves issues so that such matters are kept out of Court. A Division Bench of this Court also had an occasion to reflect on a similar situation when another State Corporation filed a writ petition against the Sales Tax Department. This was the matter of Pradeshia Industrial and Investment Corporation, U.P., Ltd., PICCUP Bhawan, Lucknow v. Deputy Collector (Collection/Sales Tax), Nainital and Ors. Writ Petition No. 1135 of 1993, decided on 6th July, 1993.

3. The standing counsel, Mr. Krishna Prasad, at the outset raised a preliminary objection that he has instructions to oppose this writ petition as not being maintainable for more than one reason. In so far as the counter-affidavit filed on behalf of the Respondents is concerned, i.e., on behalf of the Collector and the Sub-Divisional Magistrate, it is shabby. But, the standing counsel intimated to the Court that he has clear instructions to oppose the petition by giving the background that what in fact is the subject matter of recovery is otherwise a direction in a pending first appeal before the High Court arising out a reference decided by the Additional District Judge in land acquisition cases where the Division Bench in the first appeal has given directions, to the effect, that fifty per cent of the compensation be deposited within a certain time. This direction was to be complied with by the U.P. Avas Evam Vikas Parishad. The direction was not complied within the time given by the Division Bench in the first appeal.

4. Subsequently, when the period during which the order was to be complied with was over and the deposit was not made. The U.P. Avas Evam Vikas Parishad made an application in the First Appeals (First Appeals Nos. 39 of 1993, 40 of 1993 and 41 of 1993) by seeking a prayer that further time be granted to comply with the orders of the Division Bench for depositing the fifty per cent of the compensation.

5. Clearly, seeking further time to make the deposit implies that the order would be complied, but a little more time is required. Acquiescing to comply with the order was an undertaking placed on record of the first appeals which are pending before a Division Bench. In those first appeals, the State of Uttar Pradesh is one

of the Respondents. The application seeking further time to make the deposit of fifty per cent of the compensation is still pending consideration before the Division Bench.

6. An aspect which is clear on the record of the first appeal needs to be noticed that proceedings of like nature have already been before the Supreme Court. These were cases from Uttar Pradesh. A copy of the order of the Supreme Court dated 23 October, 1992 is appended as Annexure 1 to the writ petition to the application of the U.P. Avas Evam Vikas Parishad. The contents of which are reproduced below:

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) No. 7818 OF 1992

Meerut Development Authority Petitioner Versus

Nawab and Ors. Respondents. ORDER

By order dated 27.11.1991, the High Court directed the Government to pay one half of the decretal amount. We are of the view that one half of that amount should be paid in cash and for the balance a bank guarantee should be furnished. There will be an interim stay in respect of the remaining 50% of the decretal amount. The amount which has to be paid in cash, as aforesaid, has to be paid to the Respondents within one month from the date of receipt of a copy of this order.

The SLP is, accordingly, disposed of.

Sd./- (T. K. Thomman) Sd./- (K. Jayachandra Reddy)

New Delhi.

21st September, 1992.

7. As a submission to suggest, in effect, that regard being had to the circumstances that the references arise out of and would partake the nature of a money decree, only fifty per cent of the decretal amount may be required to be deposited is the theme of the orders of the Supreme Court in similar circumstances. Thus, it was on the application of U.P. Avas Evam Vikas Parishad that the Division Bench in the concerned first appeals, as an indulgence instead of requiring the deposit of the whole of the decretal amount permitted the deposit of only fifty per cent. The U.P. Avas Evam Vikas Parishad having obtained an order, as an indulgence, for the deposit of fifty per cent of the decretal amount did not comply with the order. The amount, aforesaid, was not deposited within the stipulated period. Thereafter, an application was moved that further time be granted to make the deposit of fifty per cent of the decretal amount. Three months' time was sought as an extended time to make the deposit. This was another undertaking. The U.P. Avas Evam Vikas Parishad was awaiting for the orders of the Court. Between the time when the application was made to seek the extension, and today, more than three years have passed. The U.P.

Avas Evam Vikas Parishad is still awaiting orders of the Court in the first appeals. It is submitted that the Division Bench was not constituted to consider the application. The U.P. Avas Evam Vikas Parishad did not need any further orders as it was seeking extension of its own volition, in effect, by giving an undertaking that it would deposit the amount in question in the next three months. It did not need a Court order when the U.P. Avas Evam Vikas Parishad had made a submission of its own volition that it needs an extension. It should have been seen to have deposited the amount within the extended period.

8. As the State of Uttar Pradesh is a party, which necessarily it has to be, and as these matters arise out of land acquisition proceedings, the Collector, Kanpur Nagar, Kanpur, is directly connected with acquisition cases. Knowing that the compensation was not deposited, the Collector, Kanpur Nagar, rightly took steps for recovery of the amount of compensation as in the award. But, as the High Court had directed that only fifty per cent of the compensation be deposited, he was obliged to seek recoveries to secure the deposit of this fifty per cent. The U.P. Avas Evam Vikas Parishad did not respond to the steps of the Collector, Kanpur Nagar, Kanpur, and did not keep its promise to make the deposit within three months as an extension of the original order. Recovery as would be made from an ordinary citizen when he would not pay a public debt to the State was made for the State by the Collector, Kanpur Nagar, accordingly and rightly.

9. The matters did not cease here. Having undertaken to make the deposit within three months of its application filed on 8 December, 1993 and chased by recovery proceedings, instead of filing and approaching the Division Bench where the first appeals are still pending, the U.P. Avas Evam Vikas Parishad took recourse to seek a prerogative writ under Article 226 of the Constitution of India against the State of Uttar Pradesh. The filing of it and the advising of it both were bad. They are bad because the Supreme Court has already given enough guidelines that the State must not litigate within its departments, nor within its Corporations. The filing of the writ petition is bad as it is an abuse of the process of the Court by avoiding a Court where the first appeals are pending. The filing of the writ petition is bad as it virtually eliminates those who are waiting for the compensation to be deposited and receive it, notwithstanding that at this stage it is only fifty per cent twenty five per cent is to be withdrawn on furnishing security and twenty five per cent without furnishing security. Otherwise, parties in the land acquisition reference proceedings before the Additional District Judge are party Respondents in the first appeals pending before the High Court before another Division Bench and would not know that this writ petition has been filed nor would know why the compensation has not been deposited by the U.P. Avas Evam Vikas Parishad. Orders of the High Court in the pending first appeals are being avoided from being complied with. Disrespect has been shown to the orders of the Division Bench and simultaneously an undertaking has been violated, notwithstanding that the process of the Court has been abused first by filing a writ petition when, otherwise, it was not maintainable and keeping essential parties away to their detriment, for no fault of theirs.

10. If an ordinary man were to do the same thing, the High Court in all probabilities would put him under a notice of motion and call him to answer a charge for contempt. What may be the measure of justice and equity for a State Corporation in such circumstances.

11. The reliefs sought in this writ petition are basically two. First, a writ of certiorari to quash the order of the Sub-Divisional Magistrate, Kanpur Nagar, Kanpur, dated 28.2.1994, Annexure 7 to the writ petition, by which the Petitioner, i.e., the U.P. Avas Evam Vikas Parishad, has been required to deposit a sum of Rs. 6,31,91,697.17. The second, is ancillary, a prayer for the issue of a direction in the nature of mandamus directing the Respondents, i.e., the Collector, Kanpur Nagar, Kanpur, not to recover the amount as arrears of land revenue.

12. With what the Court has noticed in this order these reliefs cannot be granted. Firstly, the petition itself is not maintainable as, in effect, this is a petition of the State against the State. Secondly, the recovery is in pursuance to a stay order of the High Court in pending first appeals where a Division Bench gave an indulgence that instead of the whole of the decretal amount representing compensation, fifty per cent be deposited as an ad interim measure. The High Court granted the prayer as sought by the U.P. Avas Evam Vikas Parishad. Thirdly, acquiescing to the order, the U.P. Avas Evam Vikas Parishad, itself, went to the High Court by a subsequent application that further time be granted to deposit it. Fourthly, after the decision of the Supreme Court that the State departments should not be seen in litigation with each other, or for that matter, State Corporations with the State, any relief in this petition is not possible.

13. This writ petition is against public justice. This writ petition reflects lack of faith in a public justice system and the violation is at the hands of a public corporation, which in its functioning has shown disrespect to orders of the High Court and violated its undertakings twice. The situation is contemptuous. Neither law nor equity is in favour of the U.P. Avas Evam Vikas Parishad.

14. This Court would award exemplary costs in this writ petition in lieu of the fact that to summon the Chairman would also show a ridiculous circumstance that upon the veil of the corporate personality being lifted it would turned out to be the Chief Secretary. It is possible that the Chief Secretary does not know about this writ petition. If the Court were to award costs it will come out from the subsidy created by the State and ultimately will be a tax on the public.

15. The reliefs prayed in the petition cannot be granted. The action of the Collector, Kanpur Nagar, Kanpur in seeking recoveries of the amount from the U.P. Avas Evam Vikas Parishad is certified to be correct.

16. The writ petition is dismissed with costs to both the Respondents, the Collector, Kanpur Nagar, Kanpur, as Respondent No. 1 and the Sub-Divisional Magistrate, Kanpur Nagar, Kanpur, as Respondent No. 2.

17. This order, with the Chief Standing Counsel, Prabodh Gaur, present in Court, will be brought to the notice of the Chief Secretary, by the former. Suffice it to say that it also goes to the credit of the Chief Standing Counsel to have presented this case very fairly on the two aspects one on behalf of the Collector and the other of the Parishad, as if the Chief Secretary was the Chairman, but in an ex officio capacity.