

(2000) 11 AHC CK 0120
In the Allahabad High Court
Case No : C.M.W.P. No. 8864 of 1998

Vishanji Tokarsi

APPELLANT

Vs

Collector, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 —
Section 3, 5A

Citation : (2001) 1 AWC 373 : (2001) 92 RD 57

Hon'ble Judges : R.P. Mishra, J;D.S. Sinha, J

Bench : Division Bench

Advocate : V.B. Tiwari, for the Appellant; S.C., Sudhir Agarwal and R.C. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Heard Sri V. B. Tiwari, learned counsel appearing for the petitioner, Sri Vinay Malviya, learned standing counsel of the State of U. P., representing the respondent Nos. 1 and 2 and Sri Sudhir Agarwal, learned counsel representing the respondent No. 3, at length and in detail.

2. Though the petition is not admitted formally, yet it is ready for final hearing inasmuch as requisite affidavits between the parties have already been exchanged. Learned counsel appearing for the parties jointly pray and agree that the petition may be disposed of finally. The Court, therefore, proceeds to dispose of the petition finally.

3. By means of the impugned citation dated 22nd January, 1998, a photo-copy whereof is Annexure-1 to the petition, a sum of Rs. 31,128 is being recovered from the petitioner as arrears of land revenue towards the dues of Kanpur Electricity Supply Administration, Kanpur Nagar, the respondent No. 3, which is, indisputably, a Government undertaking as defined in the Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958, hereinafter

called the "Act".

4. The petitioner seeks to challenge the recovery of the amount on following two counts :

(a) that no notice of demand as contemplated u/s 3 of the Act was issued before issuing the recovery certificate for the purposes of recovering dues as arrears of land revenue ; and

(b) that the recovery is barred by limitation prescribed u/s 5A of the Act.

5. It is not disputed on behalf of the respondents that issuance of a notice of demand to the petitioner u/s 3 of the Act was necessary and default thereof would render recovery proceedings invalid. However, the respondents contend that requisite notice of demand was in fact sent to the petitioner. Therefore, the question that arises for adjudication is whether the requisite notice of demand u/s 3 of the Act was sent to the petitioner.

6. In paragraph 6/e of the counter-affidavit of Sri Virendra Srivastava, filed on behalf of the respondent No. 3, it is categorically asserted that the notice of demand was sent to the petitioner at his known address, House No. 84/76, G.T. Road, Kanpur. The averment in paragraph 6/e of the counter-affidavit has been replied by the petitioner in paragraph 6 (e) of his rejoinder-affidavit. In his reply, the petitioner does not clearly and categorically plead that notice of demand was never sent to him. What is stated by the petitioner is that there was no reason to send the bill at 84/76, G.T. Road. Kanpur address of the petitioner when the petitioner had requested to remove the meter from the aforesaid premises and to transfer it to 102-A, Dada Nagar, Kanpur. After advancing the said logic, petitioner asserts "Be as it may, the petitioner never received CA 4 or any other bill."

7. It is to be noticed that Explanation (1) of Section 3 of the Act provides that sending of notice of demand by registered post shall be deemed to be sufficient service on the person concerned. In the instant case, plea of the petitioner is not that no notice of demand was sent. Plea taken in the rejoinder-affidavit is that notice of demand was never received. In the absence of any plea denying the sending of notice of demand to the petitioner, and keeping in view the Explanation (1) of Section 3 of the Act, it cannot be held that requisite notice of demand u/s 3 of the Act was not sent to the petitioner. Thus, the first contention of the petitioner fails.

8. Coming to the second contention of the petitioner about the limitation, the Court is of the opinion that the submission is based totally on misconception of the provisions of Section 5A of the Act. The plea of bar based on the provisions contained u/s 5A of the Act can be raised only as defence in a civil suit that may be filed against "the consumer for recovery of any dues. The provisions contained u/s 5A of the Act have no application in proceedings for recovery of the dues as arrears of land revenue. The contention of the petitioner has no

force. It deserves to be rejected, and is so rejected.

9. All told, in the opinion of the Court, there is no illegality or infirmity in the recovery proceedings in pursuance of the impugned citation, founded on the recovery certificate issued by the respondent No. 3, warranting interference by this Court in exercise of its special and extraordinary jurisdiction under Article 226 of the Constitution of India. The petition is devoid of merits and is dismissed summarily. The interim order/orders shall stand vacated. There is no order as to costs.