

**(1958) 02 AHC CK 0017**

**Allahabad High Court**

**Case No:** Civil Writ No. 2949 of 1957

Bheem Thakur

APPELLANT

Vs

District Board, Ballia and  
Another

RESPONDENT

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**Date of Decision:** Feb. 19, 1958

**Acts Referred:**

- Northern India Ferries Act, 1878 - Section 6, 7A, 9

**Citation:** AIR 1958 All 464

**Hon'ble Judges:** V.G. Oak, J

**Bench:** Single Bench

**Advocate:** A.P. Panday, for the Appellant; S.N. Dwivedi and S.N. Upadhya, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

V.G. Oak, J.

This petition under Article 226 of the Constitution is directed against coercive measures, which are being taken against the petitioner in order to realise certain dues from him.

2. According to the petitioner's affidavit, five public ferries ply on river Ganga between districts Ballia & Shahabad. These public ferries are under the management of District Board, Ballia, which is opposite party No. (1) in this writ petition. The tolls of these ferries were put to auction. The highest bid in the auction was by the petitioner. The tolls were knocked down in favour of the petitioner for a sum of Rs. 50,100. The petitioner acquired the right to ply the ferries for a period of one year from 1-10-1956 to 30-9-1957. A quarter of the auction money was to be paid down by the petitioner forthwith. The balance of the lease money was payable in monthly instalments during the course of the year of the lease. The petitioner

entered into possession of the ferries with effect from 1-10-1956.

3. The petitioner made an application to the District Board praying for reduction of the lease money. The District Board recommended reduction of 20 per cent. The recommendation was sent to the District Magistrate of Ballia. The petitioner was allowed time to pay up the dues upon furnishing two sureties. The petitioner produced two sureties accordingly. The petitioner applied to the Commissioner of Varanasi Division for reduction of the lease money, but that application was rejected in August 1957. The District Board moved the District Magistrate Ballia to realise dues from the petitioner as arrears of land revenue. The District Magistrate, therefore, issued warrants of arrest for realising the dues both against the petitioner and his sureties. One surety was actually arrested. According to the petitioner, no warrant of arrest could be issued by the District Magistrate in order to collect money due to District Board.

The petitioner has prayed that the proceedings taken against the petitioner and his sureties for realising the dues should be quashed.

4. A clerk in the office of the District Board, Ballia filed a counter-affidavit, on behalf of opposite party number (1). According to the counter-affidavit, the District Board is only the manager of the ferries on behalf of the State Government. Proprietary rights in ferries vest in the State of Uttar Pradesh. The proceedings against the petitioner are justified u/s 9 of the Northern India Ferries Act.

5. There was some discussion before me about the possibility of realising the dues in question under the District Boards Act. Chapter VII of the District Boards Act deals with recovery of certain claims. Sub-section (1) of Section 133 of the District Boards Act states:

"As soon as a person becomes liable for the payment of-- (a) .....(b) any other sum declared by this Act or by any rule or by law made thereunder, or under the Northern India Ferries Act to be recoverable in the manner provided by this Chapter, the Board shall ..... cause a bill be presented....."

6. Section 136 of that Act provides for the issue of a warrant. In the present case it is not necessary to decide the question whether the dues from the petitioner can be realised u/s 136 read with Section 133 of the District Boards Act. The question for consideration in this case is whether the dues can be realised u/s 9 of the Northern India Ferries Act (hereinafter referred to as the Act).

7. In order to decide the question whether the dues can be realised u/s 9 of the Act, it is necessary to examine certain other provisions of the same Act. u/s 4 of the Act the State Government may declare what ferries shall be deemed public ferries. Section 6 of the Act states:

"The immediate superintendence of every public ferry shall, except as provided in Section 7 and Section 7-A be vested in a Magistrate of the district in which such ferry

is situate .....".

8. Section 7 provides for management by a Municipality. Section 7A states:

"The State Government may direct that any public ferry, wholly or partly within the area subject to the authority of a District Council, or District Board, or a Local Board in the state be managed by that Council or Board, and thereupon that ferry shall be managed accordingly.

9. Section 8 of the Act Provides for letting-out ferry tolls by auction.

10. Section 9 provides for recovery of arrears from lessee. Section 9 states:

"All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety, if any, by the Magistrate of the district in which such ferry is situate as if they were arrears of land revenue."

11. It will be seen that the act contemplates different arrangements for the management of public ferries. The District Magistrate may manage public ferries directly, or a District Board may manage public ferries u/s 7A of the Act. The expression used in Section 6 is:

"Superintendence of every public ferry shall be vested in the Magistrate."

The expression used in Section 7-A is :

"Any public ferry be managed by that Board".

On comparing the language of the two sections, we find that the arrangement u/s 7A is somewhat different from that u/s 6 of the Act. The legislature used two different words "Superintendence" and "managed" in the two sections. The word "Vested" appears in Section 6 of the Act. That word does not appear in Section 7A of the Act. It, therefore, appears that, the rights of a District Board u/s 7A of the Act are not of the same nature as the rights of the Magistrate u/s 6 of the Act.

12. According to the counter-affidavit, the proprietary rights in the ferries vest in State of Uttar Pradesh. This position was not disputed by Mr. A.P. Pandey appearing for the petitioner. It was not suggested for the petitioner that, the District Board, Ballia is the owner of the public ferries in question. The District Board is merely the manager of the ferries.

It is further stated in the counter-affidavit that, the auction money was to be divided between the District Board and the District Magistrate in the ratio of 3:4. Annexure A to the counter-affidavit is a copy of the lease given to the petitioner. In this lease the Governor of Uttar Pradesh was referred to as the lessor. The Commissioner of Varanasi Division signed the lease on behalf of the Governor.

Although the District Board was at one time agreeable to reduce the lease money, the Commissioner was not agreeable to any such reduction. It will be seen that the

State of Uttar Pradesh is vitally interested in realising the full amount of Rs. 50,100/- from the petitioner.

13. The Northern India Ferries Act is Act No. XVII of 1878. Mr. A.P. Pandey pointed out that, Section 7A was not in the original Act of 1878. Section 7A was inserted in the Act later. Mr. Pandey, therefore, argued that, Section 9 of the Act cannot govern cases which fall u/s 7A of the Act. It is, however, to be noted that the Legislature did not make any amendment in Section 9 of the Act, when Section 7A was inserted.

14. Mr. A.P. Pandey strongly relied upon a decision by the Lahore High Court reported in *Abdullah v. District Board, Montgomery* AIR 1950 Lah 193 (A). In that case it was held by a learned single Judge of Lahore High Court that the District Board cannot proceed to recover the balance of lease money by an application to a Magistrate u/s 9 of the Northern India Ferries Act.

15. No doubt the decision in *Abdullah's case* (A), lends support to Mr. Pandey's contention. But with respect, I am unable to agree with that view. One of the reasons given by the learned Judge in *Abdullah's case* (A), was that, a District Board is a corporation created by the Statute. Summary procedure must be confined to the realisation of money under the Statute. In the present case the District Board Ballia is not exercising any special powers under the U. P. District Boards Act. The District Board merely proceeded to avail of a remedy provided by the Northern India Ferries Act. The coercive steps were not taken by the District Board itself. The warrant of arrest was issued by the District Magistrate of Ballia. There is nothing in the District Boards Act or in the Northern India Ferries Act to prevent the District Board, Ballia from drawing the attention of the District Magistrate of Ballia to the fact that the lease money has been paid up in full.

16. The words used in Section 9 of the Northern India Ferries Act are:

"All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered."

The conditions necessary for taking action u/s 9 of the Act are: (1) Public ferry, (2) lease to collect tolls, and (3) arrears due by the lessee. All these conditions are fulfilled in the present case. It was therefore, open to the District Board, Ballia to take action u/s 9 of the Act. In my opinion, the remedy u/s 9 of the Act is available even when management of a public ferry is made over to a District Board u/s 7A of the Act. The coercive steps taken by opposite party No. (2) in the present case were legal.

17. The petition is dismissed with costs to opposite party No. (1). The stay orders dated 15-11-1957, 29-11-1957 and 15-1-1958 are vacated.