

(1994) 11 AHC CK 0029

Allahabad High Court

Case No: First Appeal From Order No. 169 of 1994

U.P.State Industrial
Development Corporation Ltd.

APPELLANT

Vs

Chand Rattan Newar & Ors.

RESPONDENT

Date of Decision: Nov. 17, 1994

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 9
- Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 - Section 3

Hon'ble Judges: V.P.Goel, J and S.C.Mohapatra, J

Final Decision: Disposed Of

Judgement

1. This is an appeal against an order of temporary injunction.

2. Appellant is a Public Sector Undertaking which has been registered to assist persons for development of Industries. Respondents No. 4 and 5 being promoters registered a company (respondent No. 6) and approached appellant for assistance. Respondents No. 4 and 5 executed a written agreement with appellant. Second agreement was executed between the company floated by respondents No. 4 and 5 and appellant. As per agreement with respondent Nos. 4 and 5, appellant purchased equity shares of Rupees 8.75 Lakhs. Respondent Nos. 4 and 5 agreed to repurchase the same by phases as provided in the agreement. Appellant had right to transfer the shares purchased in case respondent No. 4 and 5 do not repurchase the same as per agreement and appellant was to recover the short fall in case of transfer to others. It was agreed that in case promoters intend to transfer some of the shares which were with them, the same would be the subject to approval of appellant. When promoters intended to transfer some shares to plaintiffrespondent No. 1 the same was approved by appellant. There were correspondence as regards the liability of the plaintiff and the question of repurchase of the shares from appellant. At that stage appellant issued recovery certificate against plaintiffrespondent No. 1 for recovery of value of the shares purchased by it with interest thereon. To avoid

this recovery plaintiff respondent No. 1 filed the suit for injunction. In this suit, an application was filed for temporary injunction. Trial Court after considering the materials brought before it held that the amount under the certificate shall not be recovered during the pendency of the suit in case respondent No. 1 furnished security as directed. This is grievance of the appellant.

3. Mr. Tewuri, learned counsel for appellant submitted that in view of statutory provision under Uttar Pradesh Public Moneys (Recovery of Dues) Act, suit is not maintainable and certificate issued to the Collector is final. Besides, no injunction can be granted against such recovery. His further submission is that respondent No. 1 having approached this Court to exercise writ jurisdiction which has been dismissed for the same purpose for which the suit has been filed, impugned order ought to be set aside. Third contention of Mr. Tewari is that ingredients of temporary injunction have not been considered by the Trial Court and order have become vulnerable.

4. Mr. Gupta, learned counsel for respondent submitted that the decision in the writ application was not before that Trial Court as such decision would not also affect the maintainability of the suit. Since there is no agreement with plaintiff, there was no scope for appellant to recover the amount from respondent No. 1 on basis of agreement with respondent Nos. 4 and 5. In such circumstances, where a public body intends to recover money in colour of exercise of its statutory right against person for which there is no basis, the act being without jurisdiction, a suit can be filed to avoid any such ultra vires act. Mr. Gupta submitted that there being no agreement with respondent No. 1 to repurchase the shares of the company (respondent No. 6) from appellant. He is not liable and appellant ought to have proceeded against to promoters. Besides, promoters have not transferred all their shares to plaintiff respondent No. 1 and no steps for recovery could have been taken against him.

5. In case we enter into the merits of the case, any finding given by us is likely to prejudice either party in the suit itself. It is enough to find that plaintiff has a fair question to raise in the suit and thus has a prima facie case. When in the agreement with the promoters, appellant has right to recover the value of shares in various modes from them, recovery of the entire amount from plaintiff without explaining Court why other modes have not been adopted and why the promoters have been left out, balance of convenience is in favour of granting injunction than refusing the same. Coming to question of irreparable injury effect of recovery of the amount is to be considered. This would vary in such circumstance. Normally, where there is a debt or dues are to be paid, there would be no question of any injury. Where, however, one party claim that he is entitled to it and the other denies his liability to pay and has been able to make out a prima facie case, recovery during pendency of the suit would cause injury to that party. In such circumstance it is to be examined if such injury can be repaired. In this case plaintiff carries on business of running an

industry by managing the company (respondent No. 6). If the business would be affected to such extent that it would be irretrievably injured would be irreparable. On the other hand if nonrecovery would put appellant to such a position that it would not be able to fulfil the defect for which it has been registered as a public undertaking, hardship of the plaintiff may not get advantage of temporary injunction. Adequate materials have not been produced before the Court by either party. Trial Court does not appear to have examined the matter in this light possibly for want of materials. Interest of justice would be best served if we maintain order of injunction till fresh consideration by Trial Court after giving opportunity to parties to bring materials to record. Mr. Gupta, learned counsel for plaintiff/respondent submitted that no oral evidence would be necessary for the plaintiff for disposal of the suit, defendant No. 1 appellant who is the main contestant has already filed written statement. They have also filed same documents and suit can be disposed of on the basis of the documents and the submission of the learned counsel in the suit. Sri Tewari is not able to accept such submission in absence of instruction. We feel that this is a fit case where Trial Court should expeditiously dispose of the suit itself giving full opportunity to the parties to adduce their evidence oral or documentary.

6. In result, appeal is allowed to the extent indicated above subject to the directions and considerations as stated in this judgment that Trial Court shall consider question of irreparable injury afresh. Application for injunction is directed to be disposed of within two months of the receipt of this order. Till disposal of the application, temporary injunction shall continue provided plaintiff complies with the conditions directed by Trial Court. There shall be no order as to costs.