
Deonath Singh Vs State of U.P. and Others

C.M.W.P. No. 12396 of 1992

Court: Allahabad High Court

Date of Decision: March 25, 1996

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 – Section 278, 287A

Citation: (1996) 03 AHC CK 0081

Hon'ble Judges: S.N. Tiwari, J; R. Dayal, J

Bench: Division Bench

Advocate: Sankatha Rai, for the Appellant;

Final Decision: Dismissed

Judgement

R. Dayal, J.

Sheonath Singh, Respondent No. 5, was sanctioned a loan of Rs. 35,000 under the Small Loan Guarantee Scheme, 1971 by

Union Bank of India, Chetganj Branch Hathuwa Market, Varanasi, Respondent No. 4, for business of whole-sale timber. The amount of the loan

was repayable in instalments as per paragraph 12 of the Scheme (Annexure 3 to the writ petition). The Petitioner stood as a guarantor to the loan.

The recovery proceedings were initiated against the Petitioner and also Respondent No. 5 as arrears of land revenue. By this writ petition, the

Petitioner has claimed a writ, order or directions in the nature of certiorari quashing the notice of demand dated 5th February, 1992 sent by the

Tehsildar, Varanasi to recover Rs. 48,088.70 and also interest, recovery charges and the cost of the notice and also the Recovery Certificate

dated 2nd July, 1990, sent by the Manager, Union Bank of India, Respondent No. 4 to Collector, Varanasi to recover the amount of Rs. 43,717

towards the principal and Rs. 4,371.70 towards interest. A further prayer is made for a writ of mandamus, order or direction in the nature of

mandamus directing the Respondents not to arrest the Petitioner and also not to attach and sell his property for the recovery of the loan which was

not actually taken by him.

2. Sri Sankatha Rai, learned Counsel for the Petitioner, has submitted that the Bank has not made any attempt to recover the principal from the

debtor, Respondent No. 5, that interest is sought to be recovered at the rate of Rs. 16.5% per annum whereas under the scheme interest could be

recovered at a rate of not more than 11% per annum and that the loan was advanced for 5 years but the recovery proceedings have been initiated

before the expiry of that period.

3. After hearing learned Counsel for the Petitioner, we see no merit in the submission that no steps were taken against the principal debtor before

starting recovery proceedings against the Petitioner. As we have already indicated, recovery certificate was issued against the principal debtor also.

Whether genuine efforts were made to recover the loan prior to the issue of the certificate against the Petitioner is not relevant for the purpose of

the writ petition, since it was permissible to the Bank to initiate recovery proceedings simultaneously against both the guarantor and the principal

debtor.

4. As regards the submission about the rate of interest, paragraph 7 of the Scheme runs as under:

7. Rate of interest--Eleven percent per annum. Note : Rate of interest is subject to revision from time to time.

In view of the fact that the rate of interest could be revised from time to time, there is no substance in the submission that interest could not be

recovered at more than 11% per annum. The Petitioner has not filed the agreement under which the loan was advanced by the Bank.

5. As regards the submission that the loan is sought to be recovered before the expiry of 5 years within which the amount was to be paid, the

relevant clause in the Scheme is contained in paragraph 12 of the Scheme (Annexure 3), which states:

12. Repayment.--The term loans will be required to be repaid within 5 years in monthly/quarterly/half yearly instalments depending upon the

surplus generating capacity of the project and the life span of the machinery/equipment.

6. A perusal of Para 12 shows that the loan advanced under the Scheme was required to be paid within 5 years in monthly/quarterly/half yearly

instalments. It does not say that recovery proceedings could be initiated after the expiry of 5 years. In the counter-affidavit filed by the Bank,

Respondent No. 4, it is stated that the amount was being recovered, since there were defaults in the payment of instalments. Furthermore the

petition is not an appropriate proceeding to dispute the quantum of the amount due sought to be realised as arrears of land revenue. Section 287A

of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, provides a remedy in this regard. It says:

287A. Payment under protest and suit for recovery.--(1) Whenever proceedings are taken under this Chapter against any person for the recovery

of any arrears of land revenue, or for the recovery of any sum of money recoverable as arrears of land revenue, he may pay the amount claimed

under protest to the officer taking such proceedings, and upon such payment, the proceedings shall be stayed and the person against whom such

proceedings were taken may sue the State Government in the Civil Court for the amount so paid, and in such suit the Plaintiff may, notwithstanding

anything contained in Section 278, give evidence of the amount, if any, which he alleges to be due from him.

(2) No protest under this section shall enable the person making the same to sue in the Civil Court, unless it is made at the time of payment in

writing and signed by such person or by an agent duly authorised in this behalf.

Learned counsel submits that this remedy is available only where the amount has been paid under protest but where the amount has not been so

paid, this remedy is not available, and so the writ petition should be entertained. It is difficult to accept the submission. The purpose to impose the

condition requiring payment of the amount under the protest as a pre-requisite to the institution of the civil suit is to ensure that public dues do not

remain unpaid for long periods and thus to advance public interest. The purpose behind the enactment cannot be allowed to be defeated to give an

undue benefit to a defaulter, who has failed to fulfil the condition stipulated in the enactment. When the Legislature has provided a remedy subject

to a condition and a person does not choose to fulfil that condition, it is not open to him to complain that the remedy is not available to him,

because he did not fulfil the condition.

7. In the result, the writ petition is dismissed with costs which we quantify at Rs. 2,000 (two thousand). Half of this amount shall be payable to

Respondent Nos. 1, 2 and 3 and the other half to Respondent No. 4. The interim order dated 7th April, 1992 stands vacated.