

(2014) 08 AHC CK 0110

Allahabad High Court

Case No: Writ-C No.-65807 of 2013

Aparna Construction and
Suppliers

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 21, 2014

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 278

Citation: (2014) 7 ADJ 512 : (2014) 125 RD 324

Hon'ble Judges: Krishna Murari, J; Ashwani Kumar Mishra, J

Bench: Division Bench

Advocate: P.N. Tripathi, Advocate for the Appellant

Final Decision: Allowed

Judgement

Ashwani Kumar Mishra, J.

Petitioner firm is a contractor duly registered with the office of Divisional Forest Officer, Forest Region, Mirzapur. It claims that pursuant to award of contract, a work order was issued by respondents for construction of 30 houses on 12.11.2010. It is asserted that the contract work was satisfactorily completed, whereafter a physical verification was also done on 9.9.2011. Subsequently, a team of officers also conducted physical verification and submitted its report. The Assistant Engineer concerned forwarded the report stating that on 25.10.2012 the verification team found 20 houses to be as per norms. The petitioner thus represented on 2.2.2012 that he has substantially completed the work and the remaining work is withheld only due to non-release of payment against pending bills and sought release of payment. The demand for release of payment was also pressed by the petitioner.

2. The petitioner claims that instead of releasing the withheld payment, it was served with an order dated 24.4.2013, cancelling the contract itself on the ground

that the construction since was not completed within a period of six months, as was required in the contract, as such, the contract was cancelled under Clause 44.1 of the agreement for breach of contract. The petitioner was also informed that losses caused were liable to be recovered from petitioner by virtue of Clause 45.1 of the Contract. A recovery thereafter under Z.A. Form 68 has been issued on 8.11.2013 for a sum of Rs. 22,02,454/-, which is under challenge in the present writ petition.

3. We have heard Sri Anil Bhushan, Advocate for the petitioner and learned Standing Counsel for the respondents-State.

4. Sri Anil Bhushan, learned counsel for the petitioner has submitted that:-

(i) Petitioner has not been heard in the matter before issuing the recovery proceedings and thus the impugned action is violative of the principle of natural justice.

(ii) The liability of petitioner to pay the amount claimed has not been determined in any valid proceedings, and as such, recovery is illegal.

(iii) The amount claimed is in essence a contractual claim, which cannot be recovered as arrears of land revenue.

5. Learned Standing Counsel for the respondents, on the other hand, has submitted that the recovery from the petitioner is of the amount due and payable to the respondents, and is rightly being realized as arrears of land revenue.

6. We have examined the respective contentions and have perused the records.

7. Petitioner has asserted in Para 12 of the writ petition that the order for cancellation of contract was passed mechanically and without any opportunity of hearing to the petitioner. The reply of the respondents contained in Paras 8 and 9 of the counter affidavit is wholly vague. No instance of issuance of any notice to petitioner before determining petitioner's liability has been brought on record. The letters enclosed along with the counter affidavit do not go to show that petitioner was given any notice or opportunity before working out the dues, alleged to be payable by the petitioner. Thus, contention of denial of opportunity to petitioner is borne out from the record.

8. Further contention of Sri Bhushan is that the amount claimed by the respondents, even otherwise, is at best a contractual due, which cannot be realized from petitioner as arrears of land revenue particularly without any prior adjudication of the liability. A supplementary counter affidavit has been filed by the respondents to deal with the argument. The respondents have asserted that they are entitled to recover the amount by virtue of Clause 45.1 of the Contract, which is quoted hereinafter:-

45.1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the DFO, Mirzapur shall issue a certificate for the values of the work

done and Materials ordered less liquidated damages, if any less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the values of the work not completed, as indicated in Contract Date: If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be recovered from the security deposit. If any amount is still left unrecovered it will be a debt payable to the Employer.

A perusal of the clause relied upon does not show that any amount due to the employer can be recovered as arrears of land revenue.

9. The citation under challenge has been issued on 8.11.2013 by invoking the jurisdiction conferred under Rule 282 of the U.P.Z.A. Rules, 1950. Rule 282 provides that the proclamation of sale shall be in Z.A. Form 74. Chapter XII of the U.P. Zamindari Abolition and Land Reforms Act, 1950 provides for land revenue and the manner of its realization. Section 278 of U.P.Z.A. & L.R. Act provides that a statement of account certified by the Tehsildar shall for the purpose of this Chapter, be conclusive evidence of the existence of the arrears of land revenue, of its amount and of the person who is the defaulter. However, other dues payable can also be recovered as arrears of land revenue, if it is so permitted by law. Reliance has also been placed upon Section 3 of The U.P. Public Moneys (Recovery of Dues) Act, 1972, which provides for recovery of certain dues as arrears of land revenue. Section 3(1)(d) contemplates that money payable to the State Government or the Corporation, under an agreement, is recoverable as arrears of land revenue, if conditions contemplated therein are satisfied.

10. In the present case, the agreement which has been relied upon by the respondents contained no stipulation or clause that any sum due thereunder can be recovered as arrears of land revenue. In the absence of there being any provision in law or agreement for recovery of contractual due being realizable as arrears of land revenue, the contractual due cannot be realized as arrears of land revenue. Learned counsel for the petitioner has relied upon a Division Bench of this Court in [Mohammad Umar Vs. The Collector/District Magistrate, The Tehsildar, Zila Parishad](#), wherein after noticing the relevant provisions of the U.P.Z.A. & L.R. Act, it has been held that contract money for realization of Tehbazari dues cannot be recovered as arrears of land revenue. Various other judgments on the point having been relied upon.

11. In view of the discussions made above, we find that issuance of recovery citation against the petitioner for realization of the contractual dues, alleged to be payable by the petitioner as arrears of land revenue, is contrary to law. The citation issued on 8.11.2013 calling upon the petitioner to pay the amount, therefore, is wholly without jurisdiction and is liable to be quashed.

12. The writ petition, therefore, succeeds and is allowed. Impugned recovery citation dated 8.11.2013 (Annexure No. 7 to the writ petition) issued by respondent no. 3 is

quashed. However, it would be open for the respondents to proceed in accordance with the terms of the contract for determination of petitioner's liability and its recovery, if any, in accordance with law.