

Mohd. Umar Vs. Nagar Palika Khatima, Nainital and Others

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Court : Allahabad

Decided On : Feb-10-1998

Reported in : 1998(1)AWC764

Judge : D.S. Sinha and ;R.K. Mahajan, JJ.

Acts : [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 279 to 282

Appeal No. : C.M.W.P. No. 34677 of 1991

Appellant : Mohd. Umar

Respondent : Nagar Palika Khatima, Nainital and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Rahul Sripat, Adv.

Judgement :

D.S. Sinha, J.

1. Heard Sri Diwakar Ram Sharma. holding brief of Sri Rahul Sripat, learned counsel of the petitioner and Sri O. P. Singh. learned standing counsel representing the respondent Nos. 4 and 5. No body appears for the remaining respondents though the case has been taken up on revision of the cause list.

2. The learned counsel appearing for the parties jointly pray and agree that Instant petition may be disposed of finally though it has not been admitted formally. Accordingly, the Court proceeds to do so.

3. An amount of Rs. 19.350 is sought to be realised from the petitioner through the citation dated 9.7.1991 Issued by the respondent No. 5, a photostat copy whereof is Annexure-IV to the petition.

4. According to the averments made in the writ petition, the petitioner was awarded a contract by Nagarpalika of Khatima district Nainital, respondent No. 1 for collection of slaughtering fee in the slaughter house of Khatima, district Nainital for a consideration of Rs. 29.000. In the counter-affidavit filed on behalf of the respondent No. 1, it is asserted that out of contract money, the petitioner paid a total sum of Rs. 9.550. Thus, an amount of Rs. 19.350 is still due against him. Therefore, for the purpose of recovery of this amount, the respondent No. 1 through its Administrator, the respondent No. 2, issued recovery certificate to the Collector, Nainital.

5. On the basis of recovery certificate issued on behalf of respondent No. 1, the impugned citation has been issued to the petitioner.

6. It is not disputed that the money sought to be recovered from the petitioner is not the land revenue, recoverable under U. P. Zamindari Abolition and Land Reforms Act, 1950. and that the said money is due under the contract awarded to the petitioner by the respondent No. 1.

7. The money due under a contract, in the opinion of the Court, cannot be recovered as arrears of land revenue, unless any statutory provision makes It recoverable as arrears of land revenue or there is an agreement between the parties to the contract for recovery of the amount due under the agreement as arrears of land revenue. In the instant case, neither any statutory provision nor any stipulation in the contract awarded to the petitioner, has been placed before the Court to point out that the amount sought to be recovered under the impugned citation is recoverable as arrears of land revenue. Thus, the recovery of the amount under the impugned citation is clearly without jurisdiction and illegal.

Consequently, the impugned citation is liable to be struck off.

8. On the facts and circumstances emerging from the pleadings of the parties, and for what has been said above, the petition succeeds and is allowed. The impugned citation dated 9.7.1991 (Annexure-IV to the petition) is quashed. There is no order as to costs.

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