

A.F.R.

Court No. - 39

Case :- WRIT - C No. - 5284 of 2009

Petitioner :- Manjeet Singh And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Rameshwar Nath,Ashish Jaiswal,Randhir Jain

Counsel for Respondent :- C.S.C.,Manu Saxena,S.K. Srivastava

with

Case :- WRIT - C No. - 44108 of 2010

Petitioner :- Manjeet Singh

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena,S.K. Srivastava

with

Case :- WRIT - C No. - 56439 of 2010

Petitioner :- Abdul Sayeed And 22 Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Randhir Jain,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Sharad Kr. Srivastava

with

Case :- WRIT - C No. - 7015 of 2011

Petitioner :- Smt. Laxmi Devi And Others

Respondent :- State Of U.P And Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena,R. Nath

with

Case :- WRIT - C No. - 41284 of 2011

Petitioner :- Ashok Kumar And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena,S.K.Srivatava

with

Case :- WRIT - C No. - 42531 of 2011

Petitioner :- Dilip Singh Dead Thru L.R.

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - C No. - 42669 of 2011

Petitioner :- Om Prakash Sharma Advocate Dead Thru L.R.

Respondent :- Additional District Magistrate And Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena,Sharad Kumar Srivastava

with

Case :- WRIT - C No. - 44245 of 2011

Petitioner :- Malkeet Singh Dead And Others

Respondent :- Additional District Magistrate And Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena,S.K.Srivastava

with

Case :- WRIT - C No. - 51960 of 2011

Petitioner :- Darshan Singh Dead Thru L.R. And Another

Respondent :- Additional District Magistrate And Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena

with

Case :- WRIT - C No. - 913 of 2012

Petitioner :- Prem Das And Others

Respondent :- District Magistrate Bareilly And Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena,Sharad Kumar Srivastava

with

Case :- WRIT - C No. - 48816 of 2012

Petitioner :- Jhamman Lal And Another

Respondent :- District Magistrate Bareilly And Others

Counsel for Petitioner :- Ashish Jaiswal,Rameshwar Nath

Counsel for Respondent :- C.S.C.,Manu Saxena

with

Case :- WRIT - C No. - 34847 of 2013

Petitioner :- Manjeet Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rameshwar Nath,Ashish Jaiswal

Counsel for Respondent :- C.S.C.,Manu Saxena,Sharad Kumar Srivastava

Hon'ble Salil Kumar Rai,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. The bunch of petitions challenge the recovery certificates sent by the Executive Officer of Nagar Palika Parishad, Baheri, District Bareilly to the Collector/Additional District Magistrate (Finance

and Revenue), District Bareilly to recover the arrears of rent, allegedly due on the petitioners. In Writ-C Nos. 48816 of 2012, 51960 of 2011, 913 of 2012, 42531 of 2011, 42669 of 2011 and 44245 of 2011 consequential recovery citations have also been issued by the Collector u/s 173-A of the U.P. Municipalities Act, 1916 (hereinafter referred to as "Act, 1916").

2. It has been argued by learned counsel for the petitioners that the arrears of rent, allegedly due on any shopkeeper in possession of a shop allotted to him by the Municipality can be recovered only u/s 292 of the Act, 1916 in the manner prescribed in Chapter-VI of Act, 1916. It was argued that as the rent is not due on the land and the rent allegedly payable by the petitioners, is not a tax, therefore, any alleged arrears cannot be recovered as arrears of land revenue under Section 173-A or Section 291 of the Act, 1916. It was argued that under Chapter-VI of the Act, 1916, it was incumbent on the municipality to first raise a bill fulfilling the requirement of Section 167 of the Act, 1916 and on failure of the petitioners to satisfy the said bill, a demand notice was to be issued u/s 168 of the Act, 1916. In case the petitioners failed to pay as specified in the demand notice, the arrears can be recovered only by a warrant issued u/s 169 of the Act, 1916 and signed either by the President of the Municipality or any officer authorized for the said purpose or by the Executive Officer. The warrant can be executed only in the manner prescribed u/s 170, 171 and 172 of the Act, 1916 by sale of the movable property of the alleged defaulter. In their petitions, the petitioners have pleaded that no bills or any notice of demand as required u/s 167 and 168 of the Act, 1916 was served on the petitioners. No counter affidavit has been filed, rebutting the aforesaid averments. It was argued that in view of the aforesaid recovery certificates issued by the Executive Officer to the Collector/Additional District Magistrate (Finance and Revenue), District Bareilly and the consequential recovery citations challenged in the Writ-C Nos. 48816 of 2012, 51960 of 2011, 913 of 2012, 42531 of 2011, 42669 of 2011 and 44245 of 2011 are without jurisdiction and liable to be quashed.

3. Rebutting the argument of the counsel for the petitioners, the counsel for the Nagar Palika Parishad has argued that the recovery certificates and also the consequential recovery citations are according to law and the petitions are liable to be dismissed.

4. We have considered the submission of the counsel for the parties.

5. Sections 291 and 292 of the Act, 1916 read as under:-

"291. Recovery of rent on land. - (1) Where any sum is due on account of rent from a person to a [Municipality] in respect of land vested in, or entrusted to the management of the [Municipality], the [Municipality] may apply to the Collector to recover any arrear of such rent as if it were an arrear of land revenue.

(2) The Collector on being satisfied that the sum is due shall proceed to recover it as an arrear of land revenue.

292. Recovery of rent of other immovable property. - Any arrears due on account of rent from a person to the [Municipality] in respect of immovable property other than land vested in or entrusted to the management of the [Municipality], shall be recovered in the manner prescribed by Chapter VI."

6. Reading of Section 292 of the Act, 1916 indicates that any arrears of rent for a shop from a person in possession of the shop after the same having been allotted to him by the Municipality, can be recovered only in the manner prescribed in Chapter-VI. Rent is not a tax and, therefore, it cannot be recovered as arrears of land revenue u/s 173-A of the Act, 1916.

7. Sections 167 and 168 of the Act, 1916 provide that for any arrears due on a person, Municipality shall raise a bill specifying the period for which and property in respect of which the same is claimed, the liability or penalty enforceable in default of payment and time within which an appeal may be preferred as provided u/s 161. In case the alleged defaulter fails to satisfy the bill raised by the Municipality within 15 days from its presentation, the Municipality shall serve a demand notice on the defaulter in the form set forth in Schedule-IV of the Act, 1916.

8. A perusal of Schedule-IV indicates that 15 days is to be provided to the defaulter for payment of the alleged dues. In case the defaulter fails to satisfy the demand notice a warrant, signed by the President/Executive Officer or any other person on whom such power has been delegated by the Municipality is to be issued by the Municipality in Form as prescribed in Schedule-V for recovery of the dues by distress and sale of the movable properties of the defaulter. The manner of executing warrant is provided u/s 170, 171, 172 of the Act, 1916. There is no provision in the Act, 1916 which empowers the Municipality to recover arrears of rent for a shop as arrears of land revenue through a recovery citation issued by the Collector.

9. Apparently the recovery certificates and the citations challenged in the present petitions are without jurisdiction.

10. For the aforesaid reasons, the petitions are **allowed**. The

recovery certificates issued by the Executive Officer to the Collector/Additional District Magistrate (Finance and Revenue) and the consequential recovery citations, if any, issued by the Collector are hereby quashed.

11. However, the Nagar Palika Parishad, Baheri, District Bareilly shall be at liberty to recover any rent due against the petitioners in accordance with law as observed above.

Order Date :- 25.5.2023

Vandana