

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 295 OF 2023

11TH AUGUST, 2023

BETWEEN:

Bhupendra Rawat

.....Appellant.

And

State of Uttarakhand & others

....Respondents.

Counsel for the Appellant

:

Mr. Neeraj Garg, learned counsel.

Counsel for the State

:

Mr. J.C. Pande, learned Standing Counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The present special appeal is directed against the judgment dated 21.07.2023, passed by the learned Single Judge in Writ Petition (M/S) No.1851 of 2023. By the impugned judgment, the writ petition preferred by the appellant has been dismissed by the learned Single Judge.

2. The appellant had preferred the writ petition, firstly, to assail the order dated 13.06.2023, whereby the appellant's representation for reduction of rent- in respect of the premises of the Corporation leased to the appellant, from Rs.15,000 per month to Rs.5,000/- per month was rejected. The appellant also assails the Recovery Citation dated 07.12.2022, issued by the Tehsildar, Tehri, Tehri Garhwal, as well as the consequential notice dated 18.01.2023, issued by the said authority. The appellant also assails the recovery

order/ certificate dated 16.11.2022, issued by the Executive Officer, Nagar Palika Parishad, Tehri Garhwal to Collector, Tehri, Tehri Garhwal.

3. The submission of Mr. Garg, learned counsel for the appellant is that the issue raised by the appellant before the learned Single Judge was whether the recovery of arrears of rent could have effected by resort to the U.P. Land Revenue Act, by considering the arrears of rent as arrears of land revenue. According to the appellant, the arrears of rent could be recovered only by instituting a Civil Suit, and not by resort to coercive method prescribed in the U.P. Land Revenue Act.

4. The impugned judgment shows that the learned Single Judge has squarely dealt with the said aspect of the matter, and rejected the same.

5. Section 292 of the Uttarakhand Municipalities Act, 1916, provides that 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. Chapter VI of the Act contains Section 173-A, which provides that where any sum is due on account of a tax, other than any tax payable upon immediate demand, from a person to a Municipality, the Municipality may, without prejudice to any other mode of recovery, apply to the

Collector to recover such sum together with costs of the proceedings as if it were an arrear of a land revenue.

7. The submission of Mr. Garg is that Section 173-A was brought in by way of an amendment of the Municipalities Act *vide* U.P. Act No.26 of 1964, and it was not in the original Chapter VI of the enactment. The submission is that Section 292, which is a provision contained in the Act from the beginning would apply to Chapter VI, as originally framed, and would not apply to the amended provisions contained in Chapter VI.

8. The learned Single Judge has considered this submission, and in our view, rightly concluded that Section 173-A, which is contained in amended Chapter VI of the said Act, would be attracted to recovery of rent under Section 292.

9. We do not find any merit in the aforesaid submission of Mr. Garg, since we completely agree with the view of the learned Single Judge.

10. The appeal is, accordingly, dismissed.

11. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 11th August, 2023

NISHANT