

**Court No. - 3**

**Case :-** WRIT - C No. - 8055 of 2007

**Petitioner :-** The Oudh Sugar Mills Ltd.

**Respondent :-** State Of U.P. Thru Prin. Secy. Sugar Ind. And 5 Ors.

**Counsel for Petitioner :-** Dr. R.K.Srivastava,Sudeep Kumar

**Counsel for Respondent :-** C.S.C.,Gaurav Mehrotra,K.S. Pawar

with

**Case :-** WRIT - C No. - 8028 of 2007

**Petitioner :-** M/S Dalmia Chini Mills And 2 Ors.

**Respondent :-** State Of U.P. Thru Prin. Secy. Sugar Ind. And 4 Ors.

**Counsel for Petitioner :-** Sushil Kumar,Siddharth Lal Vaish

**Counsel for Respondent :-** C.S.C.,K.S Pawar

with

**Case :-** WRIT - C No. - 8099 of 2007

**Petitioner :-** M/S K.M. Sugar Mills Ltd. Thru Exec.Director

**Respondent :-** State Of U.P. Thru Secy. Sugar And 5 Ors.

**Counsel for Petitioner :-** S.K. Srivastava

**Counsel for Respondent :-** G.A.,C.S.C.,K.S. Pawar,Paramanand Asthana

with

**Case :-** WRIT - C No. - 8148 of 2007

**Petitioner :-** Upper Ganges Sugar And Ind. Ltd.

**Respondent :-** State Of U.P. Thru Prin.Secy. And 14 Ors.

**Counsel for Petitioner :-** Dr. R.K. Srivastava

**Counsel for Respondent :-** C.S.C.,K.S. Pawar

with

**Case :-** WRIT - C No. - 8149 of 2007

**Petitioner :-** Govind Sugar Mills Ltd.

**Respondent :-** State Of U.P.Thr. Pirn Secy Sugar And 8 Ors

**Counsel for Petitioner :-** Sudeep Kumar

**Counsel for Respondent :-** C.S.C.,K.S.Pawar

with

**Case :-** WRIT - C No. - 8205 of 2007

**Petitioner :-** M/S D.S.M. Sugar Mansoorpur Muzaffar Nagar

**Respondent :-** Union Of India Thru Secy. Food And 11 Ors.

**Counsel for Petitioner :-** Akhilesh Kalra

**Counsel for Respondent :-** C.S.C.,Paramanand  
Asthana,Pushkar Baghel

with

**Case :-** WRIT - C No. - 8270 of 2007

**Petitioner :-** M/S Dcm Shriram Consolidated Limited

**Respondent :-** Union Of India Thru Secy. Food And 21 Ors.

**Counsel for Petitioner :-** Sushil Kumar,Siddharth Lal Vaish

**Counsel for Respondent :-** C.S.C.,K.S. Pawar

**Hon'ble Vivek Chaudhary,J.**

**Hon'ble Manish Kumar,J.**

1. Shri Anand Shankar Asthana, Advocate has filed his Vakalatnama on behalf of the respondents in connected Writ-C Nos.8270 of 2007, 8149 of 2007 & 8028 of 2007 and Shri P.N. Asthana, Advocate has filed his Vakalatnama on behalf of the respondents in connected Writ-C Nos.8148 of 2007 &, which are taken on record.

2. Heard learned counsel for the petitioners, learned counsel for the cane co-operative societies and learned Standing Counsel for respondent-State and perused the materials available on record with their assistance.

3. Since the subject matter of the aforesaid writ petitions is similar in nature, thus, with the consent of the respective parties, all petitions are decided by this common judgment although demand notices raised against the petitioners by the Cane Commissioner under the clause 17(4) and 18(3) of the U.P. Sugarcane (Regulations of Supply and Purchase) Rules, 1953 are different. In all the writ petitions the demand notices were issued on 17.10.2007, except in Writ-C No.8148 of 2007, in which it was issued on 18.10.2007.

4. Present writ petitions have been filed with a prayer to quash aforementioned demand notices, whereby 10% collection charge have been demanded against the petitioners Sugar Mills.

5. Brief facts of the cases are that the several demand notices

were raised against the petitioners herein by the Cane Commissioner under the clause 17(4) and 18(3) of the U.P. Sugarcane (Regulations of Supply and Purchase) Rules, 1953 whereby the Cane Commissioner has sought to recover 10% collection charges from respective petitioners as arrears along with interest on purchase of sugarcane. The petitioners challenged the aforesaid recovery citation before this Court by filing the instant writ petitions and this Court by an interim order stayed the operation of the recovery citation with the 25% of the amount demanded to be deposited before the Collector before the Cane Commissioner. Admittedly, the petitioners had deposited the entire cane dues. Petitioners are challenging the said demand notices through present writ petitions.

6. Learned counsel for the petitioners challenge the impugned demand notices on the ground that since they have deposited the amount raised by aforementioned demand notices before this Court, which had also stayed the operation of the recovery citation and since the amount has not been recovered as arrears of land revenue under the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and Rules made thereunder, therefore, petitioners are not liable to pay any collection charges for the same. Learned Counsel for the petitioners further rely on a Division Bench judgment of this Court in the case of **Mirza Javed Murtaza v. U.P. Financial Corporation, Kanpur and another; AIR 1983 All 234** which held that collection charges can be levied only when the sale of the property actually takes place in the manner provided under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and Rules framed therein.

7. Learned Standing Counsel for the respondent-State supports the impugned demand notices for collection charges and submits that since the recovery was initiated under provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, therefore, collection charges are required to be paid by the petitioners.

8. In the present case, the demand raised by the notices referred above are paid by the petitioners under the orders of this Court. The Revenue Officers did not take any further step such as attachment, etc., and therefore, they did not incur any expenditure in the entire matter. The controversy regarding levy of collection charges has been settled by a Full Bench of this Court in the case of **Mahrajwa v. State of U.P.; 2013 SCC OnLine All 14291; (2013) 119 RD 717** which has also considered and affirmed the judgment in the case of **Mirza Javed (supra)** and held that unless coercive steps are taken by the authorities to recover the amount from the defaulter, no cost

is incurred by the revenue authority, and therefore, no question of levy of collection charges arises. Relevant paragraphs of the judgment in the case of **Maharjwa (supra)** reads:-

*"27. From the scheme of 1890 Act, 1950 Act and 1973 Act as also 1952 Rules and 1975 Rules one thing is amply clear that while sections 3 and 5 of 1890 Act and Rule 29 of 1975 Rules speak of the cost of recovery to be realised along with the arrears it is necessarily to be understood and restricted to where the arrears have been recovered by the concerned authorities. If the authorities have not been able to recover the amount of arrears through coercive process undertaken by them, then there is no question of realising the cost of recovery from the defaulter. The issuance of recovery certificate is a ministerial job. If no concrete further steps have been taken and the arrears have not been realised by them and instead the defaulter pays the amount of arrears directly to the creditor or to the person to whom it is due then it cannot be said by any stretch of imagination that the State authorities have recovered the amount of arrears. In that event, there is no question of realising the cost of recovery/recovery charges from the defaulter either under the 1890 Act or under the 1975 Act. The provisions of section 3 of the 1890 Act and Rule 29 of 1975 Rules have to be read accordingly.*

....

*34. In the case of Mirza Javed Murtaza (supra), a Division Bench of this Court has held that no collection charges is payable if no property is sold for recovery of loan. It has held as follows:*

*"Where the State Financial Corporation sent a certificate under section 3 of the Act to the Collector for recovery of the loan advanced by it as arrears of land revenue, it cannot include the collection charges in the certificate, in view of Rule 284 of U.P. Zamindari Abolition and Land Reforms Rules, The costs of the collection proceedings are not known when the certificate is sent to the Collector by the Corporation asking the Collector to recover certain sum from the debtor as an arrear of land revenue. It can merely ask the Collector that the sum mentioned in the certificate be recovered together with costs of the proceedings. What would be the actual costs of the proceedings would naturally be ascertained when the costs are actually incurred. So, the charge can be levied only when the sale of the property actually takes place."*

....

*37. From the aforesaid decisions, it is absolutely clear that it has to be seen as to under what Act the recovery has been initiated. Whether it is under 1890 Act, 1950 Act or 1973 Act. If the recovery proceedings have been initiated under 1890 Act then in that event if the recovery is being made under section 3 of the Act then cost of recovery would be 10% of the amount stated in the certificate. However, if recovery certificate has been issued but no recovery had been made by the State authorities, who had issued the recovery certificate as for example the defaulter directly deposits the amount or the recovery certificate is withdrawn or cancelled for any reason whatsoever then in that event there is no question of charging any costs of recovery. At best the fee for the process mentioned in 1952 Rules can be levied. However, if the recovery certificate has been issued under section 5 of 1890 Act then there is no question of any cost of*

*recovery being realised as the State Government has not yet issued any notification specifying any rate. If the recovery has been issued under 1973 Act then in that case realisation of recovery, charges by the State authorities can be made from the defaulter only where the entire amount had been recovered by the authorities of the State. If the recovery as arrears of land revenue is being made by invoking the provisions of 1950 Act then in that event the fee prescribed under 1952 Rules for various process for realisation of arrears of land revenue while selling moveable and immovable properties and also where properties are not sold alone is payable. It appears that this aspect of the matter was not brought to the notice of the Hon'ble Judges who decided the case of Chinta Mani (supra). We are, therefore, in respectful agreement with the view taken by this Court in the case of Mange Ram (supra) and hold that the decision in the case of Chinta Mani (supra) does not lay down the correct law. Before parting with the case, we may mention here that we have not gone into the question as to whether recovery charges of 10% fixed under section 3 of 1890 Act or the fee of 10% to be deposited by the bank while making an application under Rules 12 and 23 of 1975 Rules or the costs of recover @ 10% specified in 1975 Rules bears any correlation with the expenditure incurred by the State Government in recovering the dues as arrears of land revenue as there is no pleadings on this issue in the writ petition."*

9. The controversy involved in the present writ petitions squarely covers by the aforesaid judgment in the case of **Maharajwa (supra)**. In the instant bunch of petitions also, the petitioners themselves deposited the first installment within time before the appropriate authority and, therefore, entire amount was deposited as per directions of the Court. Since no cost was incurred by the revenue officers, therefore, no collection charges can be recovered from the petitioners.

9. In light of the aforesaid, the demand notices referred herein-above are, therefore, quashed.

10. Accordingly, present writ petitions are **partly allowed**.

**(Manish Kumar,J.) (Vivek Chaudhary,J.)**

**Order Date :- 28.10.2023**

Ashutosh Pandey