

Johal and Others, 2019 (2) T.A.C. 705 (S.C.), the appellant nos.1 and 2 shall be entitled to the rate of interest as 7.5% per annum from the date of filing the claim petition.

15. In view of the above, the appeal is *partly allowed*. Judgment and award passed by the Tribunal shall stand modified to the aforesaid extent. The respondent-Insurance Company shall deposit the amount within a period of 08 weeks from today with interest at the rate of 7.5% from the date of filing of the claim petition till the amount is deposited. The amount already deposited be deducted from the amount to be deposited.

(2022)02ILR A752

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 05.01.2022

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 19263 of 2021
connected with
Writ A Nos. 19265 of 2021 and 19267 of 2021

Chandan Lal ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Ashok Kumar Singh

Counsel for the Respondents:
C.S.C., Sri Jeevanjee Srivastava

(A) Civil Law - Recovery of rent - Uttar Pradesh Municipalities Act, 1916, S. 292 - Rent due to municipality from a tenant of its demised shop can be recovered by issuance of recovery certificate & be recovered as arrears of land revenue

(B) Uttar Pradesh Municipalities Act, 1916, S. 292 - U/s 292 rent in respect of properties such as demised shop can be recovered by the Nagar Palika either by directly levying distress, attaching and selling movable property of the defaulter under Chapter VI or issuing a recovery certificate u/s 292 read with Section 173-A to the Collector – all the provisions of chapter VI apply to recovery of rent due to the Nagar Palika relating to the immovable property in view of Section 166 (1) (c) of the Act, that say *any other sum, declared by the Act of 1916 or by Rules or Bye Laws to be recoverable in the manner provided under Chapter VI, can also be recovered (Para 19, 20, 21)*

Father of the tenant-petitioner, allotted Shop, owned by the Nagar Palika Parishad, on the basis of an auction for a period of 99 years - Nagar Palika Parishad issued recovery certificate, on account of outstanding unpaid rent – Petitioner pleaded that Nagar Palika Parishad have no legal right to issue a recovery certificate vis-a-vis defaulted rent due for demised shop & to recover it as arrears of land revenue – Petitioner contended u/s 173-A only taxes due can be recovered as arrears of land revenue but not rent, that is contractual in nature - Held - Nagar Palika well within their rights in issuing a recovery certificate to the Collector for the realization of arrears of rent due in respect of the shop that the petitioner holds on lease against payment of rent (Para 21)

Writ Petition dismissed. (E-5)

List of cases cited :-

1. Ram Bilas Tibriwal Vs Chairman, Municipal Board, Titri Bazar, Siddarthnagar & ors., 1998 (89) RD 514
2. Mohd. Umar Vs Collector/D.M, Moradabad & ors., 2006 (9) ADJ 66 (All) (DB)
3. Iliyas Vs St. of U.P. & ors., 2007 (2) ADJ 143 (DB).

(Delivered by Hon'ble J.J. Munir, J.)

This judgment and order shall dispose of the present writ petition and connected Writ-A Nos. 19265 of 2021 and 19267 of 2021, all of which involve identical questions of fact and law. Writ-A No. 19263 of 2021 is being treated as the leading case.

2. Heard Mr. Ashok Kumar Singh, learned counsel for the petitioner, Mr. Jeevanjee Srivastava, learned counsel appearing on behalf of respondent no. 3 and Mr. V.K. Nagaich, learned Standing Counsel appearing on behalf of the State.

3. The brief facts of the leading case are that the Late Kamla Prasad, father of the tenant-petitioner, Chandan Lal was allotted Shop No. 6 on the basis of an auction dated 29.08.1990, for a period of 99 years. The shop is owned by the Nagar Palika Parishad, Gopi Ganj, District Bhadohi and the Nagar Palika, represented by the Executive Officer, is the landlord of the said shop. The rent of Rs. 250/- per month was settled, besides a premium of Rs. 30,000/-. The case of the petitioner is that he has been regularly paying rent to the Nagar Palika Parishad, but without determining his tenancy, the Nagar Palika Parishad have issued a recovery certificate dated 05.11.2019 for a sum of Rs. 93,508/- claimed to be outstanding against the petitioner on account of unpaid rent.

4. The petitioner challenged the order dated 05.11.2019 before this Court vide Writ-C No. 37670 of 2019 on the ground that the petitioner's lease has not been determined, yet a recovery citation has been issued. Substantially, the recovery citation was objected to on the ground that the petitioner is not in default of payment of monthly rent and further, that he has already deposited all outstanding rent under

Section 30 of the U.P. Act No. 13 of 1972. It was contented, therefore, on behalf of the petitioner, in the writ petition last mentioned, that the petitioner cannot be said to have committed default in payment of rent. The writ petition was contested by the respondent-Nagar Palika Parishad on the ground that the provisions of U.P. Act No. 13 of 1972 do not apply to the Nagar Palika Parishad owned buildings, in view of the provisions of Section 2(1)(a) of the said Act. Therefore, deposit of rent in Court under Section 30 of the Act under reference would not enure to the petitioner's benefit. A further objection raised on behalf of the Nagar Palika Parishad was that the petitioner was not at all a tenant and the lease, pleaded by the petitioner, was denied.

5. The writ petition under reference came up for determination before a Division Bench of this Court and their Lordships were of opinion, considering the stand of the Nagar Palika Parishad, denying the petitioner's tenancy, that disputed questions of fact were involved, which cannot be decided in a writ petition. So far as the fact that the Nagar Palika Parishad being exempt from the operation of U.P. Act No. 13 of 1972 under Section 2(1)(a) thereof, no deposit under Section 30 could be made is concerned, this Court held that the Act would not apply to a Nagar Palika Parishad. It was also remarked by the Division Bench that the question, whether a sum of money due to the Nagar Palika as rent can be recovered as arrears of land revenue, is also a disputed question of fact, that cannot be gone into.

6. In view of the findings, the Division Bench directed the District Magistrate, Bhadohi to decide the matter in accordance with law, after hearing the

petitioner as well as the Nagar Palika, subject to the condition that the petitioner deposits half of the sum of money due under the impugned recovery certificate, within fifteen days of the date of that order with the respondent-Nagar Palika Parishad. It was further directed that the petitioner would deposit the rent/damages at the rate of Rs. 1000/- per month, in future. It was provided that subject to compliance with these directions, *status quo* with regard to possession, nature and character of the property in question would be maintained. The District Magistrate, Bhadohi was directed to decide the dispute preferably within a period of three months of the date of the order, under reference. The petitioner was granted liberty to adduce evidence in support of his case. The order further provided that in case the petitioner commits default, either in depositing half of what was shown recoverable under the impugned recovery certificate or in the matter of deposit of current rent/damages at the rate indicated and within time, the benefit of the order dated 22.11.2019, passed by this Court, would not be available to the petitioner.

7. Now, the District Magistrate has proceeded to pass the order impugned dated 07.10.2021, purportedly under Section 24(2) of U.P. Act No. 13 of 1972, whereby he has rejected the petitioner's application submitted in compliance with the orders of this Court dated 22.11.2019, passed in Writ-A No. 37670 of 2019. An objection to the said application was filed before the District Magistrate by the Nagar Palika, being an objection dated 24.02.2020.

8. A perusal of the application submitted to the District Magistrate on behalf of the petitioner shows that he has

asserted the fact clearly that he was granted lease of the demised shop for a period of 99 years, consequent to an auction by the Nagar Palika on the monthly rent of Rs. 250/- In order to establish the factum of his lease, the petitioner has brought on record the order of the Additional Commissioner (Stamp), Sant Ravidas Nagar, Bhadohi dated 28.03.2007, passed in Case No. 303 of 2006-07, under Section 33 of the Indian Stamps Act, 1899, adjudicating a deficiency of stamp duty paid on the instrument to the tune of Rs. 7,250/-, besides imposing a penalty in the sum of Rs. 100/-. A copy of that order was filed before the District Magistrate and also before this Court. In addition, it was pleaded that the petitioner has been a regular pay master and not a defaulter. As such, no case for recovery of arrears of rent is made out. It was urged that there being no default in the payment of rent, no recovery certificate could have been issued by the respondent-Nagar Palika Parishad. It was also pleaded that the Nagar Palika Parishad have no legal right to issue a recovery certificate vis-a-vis the rent they claim to be due from the petitioner for the demised shop.

9. It appears from a perusal of the impugned order passed by the Collector that so far as the issue about the petitioner being a tenant in the demised shop is concerned, the stand of the Nagar Palika Parishad is utterly confounded and contradictory, which the Collector has made worst confounded. The Nagar Palika has almost disowned the fact that any lease deed was ever executed, relating to the demised shop, in favour of the petitioner, but acknowledged the fact that the petitioner's predecessor, Kamla Prasad, along with a number of other shop-keepers were allotted shops, including the demised

shop on rent, through a document called a "Shartnama" (a memorandum of terms). Since the petitioner as well as the other allottee shop-keepers committed default in payment of rent, an order was passed, asking them to vacate shop and pay the outstanding rent. The stand of the Nagar Palika further is that no lease deed for a period of 99 years was executed. The Collector has recorded the fact that the demised shop was allotted to the petitioner's father, Kamla Prasad, who was asked to get the allotment renewed through a notice dated 15.06.2015. The original allottee, Kamla Prasad's successor, that is to say the petitioner, Chandan Lal, instead of contacting the Office of the Nagar Palika, approached this Court, which is a violation of Clause 12 and 13 of the *Shartnama*. The Collector has also taken note of the Nagar Palika's case that the impugned notice has been issued to recover arrears of rent from the petitioner, as the heir and successor-in-interest of the original allottee, Kamla Prasad and to ensure vacation of the demised shop, the same being required for expansion of office premises of the Nagar Palika. The Collector has also recorded that notices dated 17.05.2011, 11.07.2018 and 16.10.2018 have been issued by the Nagar Palika, asking the petitioner to vacate the demised shop.

10. After setting out the case of the petitioner and the other similarly situate allottees of shops, the Collector has recorded his findings in a short paragraph, that says that the petitioner, being an allottee of the shop along with other similarly situate tenants, bears the moral responsibility of paying rent, which he has not. There is also a remark that the shopkeepers do not have the right to make any kind of alteration in the shops allotted,

but the petitioner and the other shop-keepers have not complied with the terms of allotment and the *Shartnama*. The petitioner has been found in default. Therefore, the Nagar Palika has a right to recover the rent that is in default and take steps to dispossess the petitioners.

11. Now, before this Court, the learned counsel for the petitioner has primarily questioned the right of the Nagar Palika Parishad to recover the defaulted rent as arrears of land revenue. It is submitted that the Nagar Palika Parishad has no jurisdiction to recover the rent due as arrears of land revenue and, therefore, the impugned recovery certificate, that has been approved by the order impugned, are both without jurisdiction. He has relied on the provisions of Section 173-A of the Uttar Pradesh Municipalities Act, 1916 (for short, "the Act of 1916") to submit that only taxes due to the Nagar Palika from a person can be recovered as arrears of land revenue but not rent, that is contractual in nature. In support of his contention aforesaid, Mr. Ashok Kumar Singh has placed reliance upon Division Bench decisions of this Court in **Ram Bilas Tibriwal vs. Chairman, Municipal Board, Titri Bazar, Siddarthnagar and others, 1998 (89) RD 514; Mohd. Umar vs. Collector/D.M, Moradabad and others, 2006 (9) ADJ 66 (All) (DB); and, Iliyas vs. State of U.P. and others, 2007 (2) ADJ 143 (DB).**

12. Refuting the contention of the learned counsel for the petitioner, Mr. Jeevanjee Srivastava, learned counsel for the Nagar Palika Parishad and Mr. V.K. Nagaich, learned Standing Counsel appearing on behalf of the State submit that the law relating to realization of Tehbazari is different from realization of rent due to the Nagar Palika Parishad. Mr. Jeevanjee

Srivastava, in particular, has drawn the attention of this Court to Section 292 of the Act of 1916 to submit that the arrears of rent due from a person to the municipality, relating to immovable property, can be recovered as arrears of land revenue.

13. This Court has considered the rival submissions canvassed on behalf of the parties.

14. In **Ram Bilas Tibriwal** (*supra*), the question before this Court was, whether a sum of money due from the petitioner under a contract for realization of Tehbazari, settled in his favour by the municipality, could be recovered as arrears of land revenue. The further question that was involved appears to be - Whether the said sum of money could be recovered under Section 21 of the Town Areas Act, 1914 (for short, "the Act of 1914"). Their Lordships of the Division Bench, after referring to the provisions of Section 173-A of the Act of 1916 and Section 21 of the Act of 1914 held:

5. ...A bare perusal of the two provisions, extracted above, reveals that the contention of the learned counsel of the petitioner is well founded. The aforesaid two provisions make recoverable as arrears of land revenue only such sum which is due on account of a tax. Admittedly, the amount alleged to be due from the petitioner is not due on account of a tax. Indeed, it is due on account of the contract of realisation of Tah-bazari settled in favour of the petitioner. Therefore, for recovery of this due, the provisions of Section 173-A of Municipalities Act and Section 21 of Town Area Act cannot be resorted to. Under the provisions of U.P. Zamindari Abolition and Land Reforms Act 1950

only such sum can be recovered which is due as arrears of land revenue. It cannot be gainsaid that the amount in question is not due on account of a land revenue. Under the provisions of U.P. Zamindari Abolition and Land Reforms Act, an amount other than land revenue can be realised as arrears of land revenue only if it is made recoverable as arrears of land revenue under any statutory provision or any agreement in that regard. If the money due is not a land revenue or is not made recoverable as arrears of land revenue in the manner aforesaid, it can be recovered only by filing a Civil Suit. The respondent No. 1 may, if so advised, institute a Civil Suit against the petitioner for recovery of the alleged dues but the amount cannot be realised through the impugned recovery proceedings. The impugned proceeding is totally without jurisdiction and deserves to be quashed.

15. Likewise, in **Mohd. Umar** (*supra*) the question that fell for consideration before the Division Bench was - Whether contractual dues on account of settlement of Tehbazari rights in one set of cases could be recovered as arrears by the Zila Panchayat under the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 and in another set, similar Tehbazari dues under a contract for realization could be recovered by the Nagar Palika Parishad and the Nagar Panchayat under the Act of 1916. The group of cases considered pertaining to the Act of 1916 in **Mohd. Umar** are more relevant to the issue here. Their Lordships held that contractual dues outstanding against a person granted rights to collect Tehbazari cannot be recovered as arrears of Land Revenue under the Act of 1916 or under the Act of 1914, as both the statutes do not invest the municipality with that authority. It was held by the Division

Bench in **Mohd. Umar** in the following terms:

71. Section 173-A of the U.P. Municipalities Act empowers the recovery of any sum due on account of tax, other than any tax payable upon immediate demand as arrears of land revenue. Section 21 of the Town Area Act provides for recovery of an arrear of tax imposed under the Act. The amount due against the petitioners is not a tax but a premium for right to collect Tehbazari dues. The amount due to the petitioners being a consideration for contract given to them by the respondents it cannot be characterised as arrears of tax. Likewise, the amount due to the petitioners cannot be recovered as arrears of land revenue under Section 21 of the U.P. Town Area Act. The amendment of Section 173-A of the U.P. Municipalities Act has not made any difference, as the amount due against the petitioners is not a tax. Under the provisions of the U.P. Zamindari Abolition and Land Reforms Act an amount other than land revenue can be recovered as arrears of land revenue only if it is made recoverable as such under any statutory provision. In case, the amount due is not land revenue or is not made recoverable as arrears of land revenue under the statutory provisions, the said amount cannot be recovered as arrears of land revenue. The amount due from the petitioners not being an amount of arrears of tax, the recovery of the said amount cannot be made as arrears of land revenue by invoking the provisions of Section 173-A of the U.P. Municipalities Act and Section 21 of the U.P. Town Area Act. Section 293 of the Municipalities Act provides that the municipality may charge fee to be fixed by bye-law or public auction or by agreement for the use or occupation otherwise than under a lease of any immovable property vested in or entrusted

to the management of the Municipality including any public street or place of which it allows the use and occupation whether by allowing a projection thereon or otherwise. The petitioners were required to pay a fixed sum under the contracts. The contracted amount is not Tehbazari. Tehbazari dues were payable by the shopkeepers for the use of land, therefore, the Tehbazari dues cannot be equated with rent, sayer or other dues in respect of the property vested in a local authority recoverable as arrears of land revenue under the provisions of Section 225 of the U.P. Zamindari Abolition and Land Reforms Act. Under Section 293 of the U.P. Municipalities Act the municipality may charge fees for use otherwise than under a lease of municipal property. The amount due is not fees but contract money, therefore, cannot be recovered under the provisions of Section 293 of the Act. Moreover the recovery of fee for use as contemplated under Section 293 of the Act cannot be made as arrears of land revenue. The recovery of the arrears of fee under the said provision is to be made under Chapter VI of Act by distress or sale of movable property.

72. The question whether the amount due towards the contract for realisation of Tehbazari dues can be recovered as arrears of land revenue came up for consideration before this Court in the case of *Mumtaz Ali v. Divisional Magistrate and others*, 1970 AWC 6 ; *Chiranji Lal v. Collector and others*, 1973 AWR 124 ; *Raj Bahadur Singh v. Collector Etawah-cum-District Magistrate Etawah and others*, 1985 UPLBEC 680, *Ram Bilas Tibriwal v. Chairman, Municipal Board Titri Bazar and others*, 1998 (2) AWC 1468 ; *Titu Singh v. District Magistrate/Collector, Mathura and others*, 2003 (5)

AWC 3479 and it was held that there is no provision under the U.P. Municipalities Act or U.P. Town Area Act authorizing the respondents to realise Theka money as arrears of land revenue, as such the said amount cannot be recovered in the said manner. In view of these facts, the respondents have no authority to recover the amount of Theka money due against the petitioners as arrears of land revenue.

16. In **Iliyas** (*supra*) the question that fell for consideration again was - Whether a sum of money due to the Nagar Palika Parishad from a person under a contract for realization of Tehbazari can be realized as arrears of land revenue, under Section 173-A of the Act of 1916? Answering the question in the negative in **Iliyas**, it was held by their Lordships, thus:

4. In view of the aforesaid provisions the learned counsel for the petitioner submits that it is clear that only taxes, which are due to the municipalities can be recovered as arrears of land revenue and no other sum can be recovered as arrears of land revenue.

5. The petitioner has placed reliance upon a Division Bench judgement of this Court reported in 2006 (9) ADJ 66 (All) Mohammad Umar v. Collector/District Magistrate, Moradabad and others and reliance has been placed upon paras 10, 12 to 14 and paras 15 and 17 of the said judgement and has submitted that the Division Bench of this Court has held that amount due towards the contract for realization of Tehbazari cannot be recovered as arrears of land revenue and there is no provision under the Municipalities Act or U.P. Town Area Act authorizing the respondents to realize theka money as arrears of land revenue, as such,

the said amount cannot be recovered in the said manner and has held that in view of the aforesaid fact, the respondents have no authority to recover the amount due to the petitioner as arrears of land revenue.

6. We have considered the submission made on behalf of the petitioner and the respondents. We are in full agreement with the judgement relied upon by the counsel for the petitioner. As there is no factual dispute in the present writ petition, the only question was to be decided whether the amount due against the petitioner can be recovered as arrears of land revenue or not. As in view of the Division Bench judgement of this Court, which is fully applicable to the present case, the Tehbazari amount due against the petitioner cannot be recovered as arrears of land revenue, as such, without inviting the counter affidavit, with the consent of the parties, the writ petition is being disposed of.

17. Section 291 and 292 of the Act of 1916 find place under Chapter VIII of the Act of 1916, entitled, "Other Powers and Penalties". Section 291 to 294 are placed under the heading "Rent and Charges". These read :

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.

18. Chapter VI of the Act of 1916 is entitled "Recovery of Certain Municipal Claims". A perusal of Sections 166 to 177 generally shows that the chapter contains machinery provisions for the enforcement of certain claims of the Nagar Palika, due from third parties. These claims mentioned in Section 166 relate to 'taxes or charges' in respect of water supply or license fee etc. that are mentioned therein. The Nagar Palika is invested with the authority to issue distress warrant, attach movable property of the defaulter and sell it off by a public auction to realize its dues. Section 173-A is a later addition to Chapter VI, brought in by amendment, empowering the Nagar Palika to issue a recovery certificate to the Collector to recover any sum of money due from a person to the Nagar Palika on account of tax, other than a tax payable upon immediate demand, as arrears of land revenue. Thus, Chapter VI carries provisions setting up two different mechanisms for recovery of the specified dues of the Nagar Palika; one by distress laid by the Nagar Palika itself through its agencies, limited to attachment and sale of movables of the defaulters, and the other, under Section 173-A by issue of a recovery certificate to the Collector to recover the specified dues as arrears of land revenue.

19. Generally speaking, Section 173-A or Chapter VI, do not authorize the recovery of dues of the municipality on account of rent, either by distress or by the

issue of a recovery certificate to the Collector. However, the provisions of Section 166(1)(c) show that any other sum, declared by the Act or by Rules or Bye Laws to be recoverable in the manner provided under Chapter VI, can also be recovered. Section 166 is extracted below:

166. Presentation of bill.- (1) As soon as a person becomes liable for the payment of,-

(a) any sum on account of tax, other than any tax payable upon immediate demand; or

(b) any sum payable under clause (c) of Section 196 or Section 229 or Section 230 in respect of the supply of water, or payable in respect of any other municipal service or undertaking; or

(c) any other sum declared by this Act or by rule or bye-law to be recoverable in the manner provided by this chapter, the Municipality shall, with all convenient speed cause a bill to be prescribed to the persons so liable.

(2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable.

20. A perusal of Section 291 and 292, on the other hand, shows that recovery of a sum of money due to the Nagar Palika from a person, on account of rent relating to land vested in the Nagar Palika, or entrusted to its management, can be recovered by the Nagar Palika asking the Collector to recover it as arrears of land revenue.

Section 291 thus applies in case of rent due to the Nagar Palika from a person, relating to land vested in it or entrusted to its management. The Nagar Palika has been empowered, under the provision itself, to issue a recovery certificate to the Collector for the recovery of rent due in respect of land, by virtue of Section 291 and without the aid of Chapter VI. However, in case of property other than land, like the one involved here, which is a shop let out to the petitioner, it is provided that rent due to the municipality from a tenant, in respect of a property of this kind (that is other than land vested in or entrusted to the management of the Nagar Palika) shall be recovered in the manner prescribed by Chapter VI. Thus, for the recovery of rent due to the Nagar Palika from a tenant in respect of property other than land, the entire provisions of Chapter VI apply. Rent in respect of properties such as the demised shop can, therefore, be recovered by the Nagar Palika either by directly levying distress, attaching and selling movable property of the defaulter under Chapter VI or issuing a recovery certificate under Section 292 read with Section 173-A to the Collector. The legal position that Chapter VI would apply validly to recovery of rent due to the Nagar Palika relating to the immovable property, other than land vested in or entrusted to the said local body, is placed beyond any cavil by the terms of Section 166 (1) (c) of the Act, that say, "**that any other sum declared by this Act**", would be the subject matter of presentation of a bill under Section 166 and its recovery under Chapter VI.

21. What Section 292, therefore, does is to apply all the provisions of Chapter VI to the recovery of dues on account of rent owed to the Nagar Palika by a tenant in respect of immovable property, other than

land vested or entrusted to the management of the Nagar Palika. The property, in respect of which rent is sought to be recovered from the petitioner, is a shop claimed by the tenant to be rented out to him, and not forthrightly denied by the Nagar Palika too. Thus, what the Nagar Palika seeks to recover by issuing the impugned recovery certificate to the Collector is rent in respect of the Nagar Palika property, other than land vested in them or entrusted to their management. The Nagar Palika are well within their rights in issuing a recovery certificate to the Collector for the realization of arrears of rent due in respect of the shop that the petitioner holds on lease against **payment of rent. The decisions of this Court in Ram Bilas Tibriwal, Mohd. Umar and Ilyas** are not at all applicable on principle, inasmuch as what is laid down there is that contractual dues of the Nagar Palika, due under a *Tehbazari* contract, cannot be recovered as land revenue. Thus, those authorities do not, at all, relate to rent due to the Nagar Palika for a property other than land.

22. In this view of the matter, none of the authorities relied upon by the learned counsel for the petitioner, would come to his rescue. The impugned recovery, therefore, cannot be faulted or questioned on the ground of lack of jurisdiction. Whether, in fact, there are any dues or not outstanding against the petitioner is beyond the province of this Court to adjudicate in exercise of our powers under Article 226 of the Constitution.

23. It must, however, be remarked that so far as the order of the Collector says that since the petitioners are defaulters in the payment of rent it can be recovered and they can be evicted, that remark may not be

without its own fallacies. Recovery of possession from a tenant in default, or for whatever reason can be made by a landlord, even if it is the Nagar Palika or the State, in accordance with the procedure established by law and not by employing the administrative authority or the force of State available at their command. Also, the remarks of the Collector that there is nothing to show that the petitioner holds a 99 years' lease, may not be a well considered finding at all, because it is ultimately acknowledged that the petitioner's predecessor, and thereafter, the petitioner in the leading case, and the petitioners in the other cases as well are tenants who owe rent to the Nagar Palika. It is for the said reason that the respondent-Nagar Palika seeks to recover rent from the petitioners. Thus, this Court thinks that so far as recovery of possession from the petitioner is concerned, the Nagar Palika would be free to take steps in accordance with law, by approaching a forum of competent jurisdiction, and so far as the petitioner is concerned, he would have liberty to establish his case of tenancy on whatever terms he pleads, also in a suit instituted before a Court of competent jurisdiction. It is not for this Court to go into those questions, as these involve disputed questions of fact about the terms of the lease/ tenancy, the right to recovery of possession etc. Thus, these questions are left open to be examined in a suit that may be instituted by one party or the other, for the purpose of relief, to which the concerned party thinks himself/itself entitled.

24. So far as the recovery certificate that has led to this writ petition is concerned, and the impugned order made by the Collector, insofar as it relates to recovery, though for reasons very different

than those that have weighed with the Collector, must be upheld. As such, subject to the liberty given above to both parties, these petitions **fail** and are *dismissed*.

25. No costs.

(2022)02ILR A761

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 17.12.2020

BEFORE

THE HON'BLE MRS. SUNITA AGARWAL, J.

THE HON'BLE JAYANT BANERJI, J.

Writ C No. 34 of 2020
with other cases

M/s Panchsheel Buildtech Pvt. Ltd.

...Petitioner

Versus

State Of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sri Sanjay Kumar Mishra, Sri Nikhil Agarwal

Counsel for the Respondents:

C.S.C., Sri Mahesh Chandra Chaturvedi (Senior Adv.), Sri Mahesh Narain Singh, Sri Ravi Prakash Pandey

A. Civil Law - UP Urban Planning and Development Act, 1973 – Ch. VI – Sections 15 and 18 – Imposition of infrastructure surcharge and corner charge by Development Authority – Validity challenged – Provision for 10% additional infrastructure charge as envisaged in the First Government Order does not find place in the Second Government Order – Benefit claimed – First Government Order stood amended and degraded/devolved to the extent provided by the Second Government Order – Held, intention of the Second Government Order is clear that it seeks to modify and degrade the First Government Order in terms explicit in the Second Government Order – Waiver of