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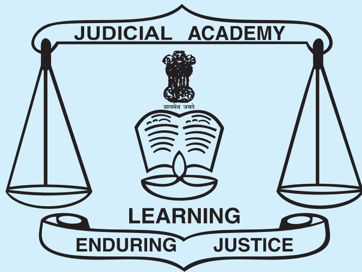

Judicial Academy Jharkhand

READING MATERIAL

for

Civil Judge (Sr. Div.), Revenue Officers of the State (CO/ LRDC/Addl. Collector) and Certificate Officers of Revenue, Transport, Electricity and Mining Departments

IN TWO DAYS CONFERENCE
ON

INTERDISCIPLINARY CONFERENCE ON REVENUE LAWS

(Course No. C-4)

Date : 9th & 10th September, 2017
Venue : Judicial Academy Jharkhand

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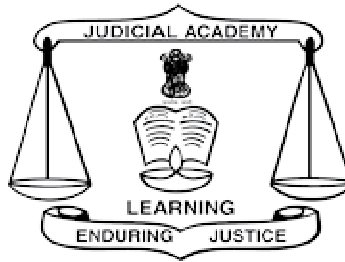

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HIGHLIGHTS
OF
CERTIFICATE PROCEEDING

- The Bihar & Orissa Public Demand Recovery Act, 1914 was enacted for recovery of any money declared as public demand and recoverable as arrears of land revenue.
- The Public Demand Recovery Act is a complete code in itself which prescribes for recovery of Public Demand within the meaning of the Act and provides for the manner in which requisition is filed, certificate signed, notice issued, objection heard and adjudication for recovery of the Certificate dues is to be made.
- The Public Demand is defined Under Section 3(6) of the Act which means any arrears of money mentioned to in Schedule-1 and includes interest. The Schedule-1, runs into 15 Clauses containing various types of dues which can be recovered.
- The Section-4 provides for filing of Certificate for Public Demand payable to the Collector. The Certificate Officer upon satisfaction that any Public Demand payable to the Collector is due, signs a Certificate in the prescribe form stating about the due demand. The signing of the Certificate is based on the ex-parte satisfaction of the Certificate Officer.
- The Section 5 of the Act provides for the requisition in prescribed format to be made to the Certificate Officer which is to be properly signed and verified and supported by Court Fees.
- The section 6 of the Act provides for filing of Certificate on requisition.
- The Section 7 of the Act provides for service of notice alongwith the copy of the certificate on Certificate Debtor.

- The Section 8 prohibits any private transfer of property after service of notice under section-7.
- The Section 9 provides that the Certificate Debtor may within a period of 30 days file a petition denying the liability in whole and part.
- The section 10 provides and casts a statutory obligation upon the Certificate Officer to hear the petition, take evidence and determined the liability for which the certificate was signed and he has the power to set aside, modify or vary the Certificate.
- The Section 12 provides for Execution of the Certificate and while executing the Certificate, the Certificate Officer may issue attachment Notice or even warrant of arrest for detaining the Certificate Debtor in Civil Prisons. The Certificate holder is also entitled to recovery the interest in the Execution Proceeding.
- The Section 18, 19, 20 of the Act provides for attachment and sale in execution of Certificate.
- The Section 60 provides for Appeal as against the order passed by the Certificate Officer which is to be filed within a period of 15 days or 30 days. The Appeal as against the order passed by Assistant Collector or Deputy Collector would lie before the Collector and as against the order passed by the Collector to the Commissioner.
- There is a provision of Revision under Section 62 of the Act, however, before a Revision is to be entertained the Certificate Debtor is to deposit 40% of the Certificate dues at the time of filing.
- The Certificate Officer shall be deemed to be a code and any proceeding shall be a civil proceeding within the meaning of Section 14 of the Limitation Act.

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SUMMARY OF JUDGMENTS

1. Tata Yodogawa limited Through its ... Vs. Jharkhand State Electricity, 26.03.2015 & 22.05.2015 –

Section 10 of The B & O PDR Act, 1914 – Underlining the role & responsibility of the Certificate Officer It is held that being the authority in seisen of the matter, the Certificate Officer can make a meticulous examination of the bills raised in terms of the tariff applicable from time to time in exercise of his powers under section 10, which envisages that the Certificate Officer after hearing and taking evidence, if necessary, determines whether the Certificate debtor is liable for whole or any part of the amount, for which the certificate was signed and may set aside, modify or vary the certificate accordingly.

The principle of Law quasi judicial authority discharging such functions in exercise of the statutory power is entitled to discharge his function in light of his own independent perspective. The obligation is to act fairly was evolved to ensure the rule of law and to prevent failure of justice. The B & O PDR Act 1914 is a complete code in itself vesting the Certificate Officer with wide amplitude of power to determine liability of the certificate debtor. He is duty bond to consider the objections and make take necessary evidence before deciding the issue finally. His order after considering each and every aspect of the hand has to be a reasoned and explicit one and must not be like the inscrutable face of sphinx.

2. Ms Sanjeev Trading Company... Vs. Jharkhand State Urja Vikas Nigam 04 Dec. 2014 –

Section 18 of The B & O PDR Act 1914 read with Section 2 (15) of the Electricity Act 2003 – The petitioner appellants case seeking electricity connection in the lease hold cold storage without making payment of arrears of the electricity charge, consumed by the earlier lessee was dismissed in view of the definition of consumer u/s 2 (15) of the Electricity Act 2003 which includes the lessee or the lesser and also considering that the electricity dues can be recovered as an arrears of land revenue under section 18 of The B &O PDR Act as well as looking to clauses 1, 9 & 10 of the lease agreement between the lesser and lessee. This case was found factually different from the facts of the case Isha Marbels Vs Bihar State Electricity Boards and ors. (1995) 2 SCC 648 where it was held otherwise. Reliance in this case has been placed on the Paschimanchal Vidhut Vitran Nigam Vs. DVS Steel and Alloys P. Ltd. And ors. (2009) 1 SCC 210 Where it has been held the supply of electricity being sale of goods, the distributor of the electricity can stipulate in the terms, subject to which it would supply electricity, and one of such term could be to continue making supply only when arrears or dues in regard to the supply made to the premises when under occupation of previous owners as well.

3. **Bhagwati Prasad Agarwala, Engineering Works private Limited, Pakur (Petitiion in W.P. (T) No. 1967/2013 / Ravi Engineering Works, Partnership Firm, Through its Partner Raj Kumar Agarwala (Petitioner in W.P. (T) No. 1964/2013) / Vishal Industries, Partnership Firm, Through its Partner Ravi Kumar Agarwal (Petitioner in W.P. (T) No. 1968/2013 Vs. State of Jharkhand & Others – Date of Judgment – 31st July, 2014 – Section 6,7,9 and 60 of PDR Act –**

   The PDR stipulates a complete mechanism for hearing and determination of the petition and also filing of appeals, therefore, the writ court cannot entertains the writ petition by passing the efficacious alternative remedy available under the statute. The certificate proceeding cannot be quashed merely on the ground of pendency of the winding up petition. The statutory procedure initiated for recovery of tax along with interest / penalty cannot be circumvented by entertaining writ petition under Article 226 of the Constitution of India.

4. **Vishal Industries Through its… Vs. Commercial Taxes, 31.07.2014- Section 7, 9, 10 & 60 of PDR Act –**

   The writ was dismissed after emphasizing the strength of the scheme of remedy available under B & O PDR Act, 1914 particularly the remedy of appeal u/s 60 and mentioning that when efficacious alternative remedy is available, no relief can be granted to the petitioners in the writ jurisdictions.

5. **M/s. Hindalco Industries Ltd. Vs. Union of India & ors. 20 Dec. 2012 –**

   In a writ petition seeking declaration that order of the Certificate Officer (Mines) directing the petitioner to deposit fifty percent of the certificate amount raised by the Mining Department as royalty on vanadium sludge which comes out as impurities while processing Alumina is illegal and without jurisdiction, the Learned Court held that –

   (i) The powers of the authorities under the Public Demands Recovery Act are very wide and it can also entertain contentions as to the jurisdiction of the State Governments and its Officers in initiating certificate proceeding against the company.

   (ii) Quoting United Bank of India Vs Satyabati Tandon and Ors. (2010) 8 SCC 110- It is observed that the High Court will not permit entertaining a petition under article 226 of the Constitution of India and the machinery created under statute to be by passed, where it is open to the aggrieved petitioner to obtained redressed in the manner provided by a statute. In the matters of recovery of taxes, cess, fees, etc. The High Court should be extremely careful circumspect in exercise of its discretion where the petitioner can avail effective alternative remedy by filing application, appeal and revision and the statute contains a detailed mechanism for redressal for his grievance.

   (iii) Quoting Central Coal Fields Ltd. Vs State of Jharkhand and anrs. 2005 (7) SCC 492- It is further observed that the powers of the Appellate Authority u/s 60 of The B & O PDR Act 1914 are very wide and the appellant may raise all contentions including the contention

as to jurisdiction in initiative certificate proceedings. It has also been held that the appellate jurisdiction being so wide, it is an effective alternative remedy available to the petitioner which forecloses the option of remedy through filing a writ petition

The petitioners case was remanded that to the Certificate Officer with a direction to the Certificate Officer to consider and decide all the objections, both of law and facts, raised by the petitioner in the objection petition filed u/s 9 of the Act.

6. Central Coalfields Ltd Vs. State of Jharkhand & Ors 1st Sept. 2005- Section 6, 7, 60 of the B & O PDR Act 1914 –

The question as to whether the certificate proceeding under B & O PDR Act out to have been initiated in view of provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957, Mines and Mineral (Regulation and Development) Act, 1957 and the Cocking Coal Mines (Nationalization) Act, 1972; could also be adjudicated before the appellate authority in an appeal preferred under section 60 of the Act and the appellants may raise all contentions including contentions as to the jurisdiction of the State Governments and/or itself Officers in initiating certificate proceedings against the company. Giving liberty to the appellants to prefer and statutory appeal under section 60 of the Act the Supreme Court disposed of the appeal upholding the preliminary objection of the state government regarding availability of alternative remedy.

7. Sita Ram Agarwal and Ors. Vs. State of Jharkhand and Ors.- 2004 (4) JCR 552 Jhr.-

Section 4 and 7 read with Form NO. 1of Schedule II appendix of Public Demand Recovery Act. The certificate officer must meticulously apply his mind while filing the certificate including filling the details against relevant columns and entries, as a moment he put his signature on the certificate it has the force of a decree of court of law. If it is found that the certificate officer has not applied his mind and some of the blank spaces were not filled up or were incorrectly filled up the document so prepared and filed is not a certificate under PDR Act. Reliance placed on Nageshwar Prasad Singh Vs. Rai Bahadur Kashinath Singh, 1958 (VI) BLJR 820.

8. Indian Iron and Steel Co. Ltd. Vs. State of Jharkhand 2003 (4) JCR 515 Jhr-

The petitioner company's plea that having been declared sick under the sick Industrial Companies Act 1985, the certificate proceeding for recovery of certificate amount arising out of royalty with interest under Mineral Concession Rules, 1960 ought to be suspended was rejected holding that the petitioner company having been declared sick u/s 17 (3) of the SICA 1985, it cannot claim any protection u/s 22 of the said act in respect to royalty and interest payable by it for the period March 2002 to November 2002.

9. Tata Iron & Steel Company Ltd. Vs. State of Bihar and Ors. - 2003 (1) JCR 595 Jhr–

Maintainability of the certificate case under Article 7 of Schedule I of PDR Act – In view of the entry made in clause XV of the lease agreement it is evident that the entire amount realized by the company since 1/1/1956 upto 31/3/1984 towards hats, melas, bazaar, jal kar, fisheries and other sairats is to be paid by the company to the government, the certificate proceeding for realizing the said dues is maintainable. The agreement also mentions recovery of all dues as arrears of land rent under PDR Act. Relying upon Ramchander Singh Vs. State of Bihar 1987 PLJR 47 (FB). Where it has been held that under Article 7 of Schedule I the Collector can recover the agreed settlement amount from a settllee of that under PDR Act even in absence of duly executed lease deed, the certificate case is held maintainable.

10. State Bank of India Vs. Amirul Arfin Gandhi and Ors, 04 Jan. 2002 –

The question as to whether the loan amount disbursed to the barrower before the amendment made incorporating " any money payable to the State Bank of India" (11.07.1975) could be recovered through certificate proceeding, when subsequently (Post amendment) more amount was disbursed on execution of arrear documents mentioning recovery through invoking PDR Act; is decided in affirmative upholding the invocation of PDR Act retrospectively in such cases.

11. Santosh Kumar Narnolia Vs. The State of Bihar & ors. 1997 (2) PLJR 136 –

Section 9 and 63 of B&O PDR Act – The Certificate Officer can review his order after notice to all person interested, if there is good reason to review the order. However, the parties must be heard before passing an order in exercise of the powers of review under section 3 of the Act.

12. Bindesh Kumar Singh (CWJC 9328/93) / Ramesh Bhagat (In CWJC 9445/93)/ Shri Bharat Tripathy (in CWJC 10569/93) Vs. State of Bihar & Ors. / The District Co-operative officer-cum-Certificate Officer & ors.- 1995 (1) PLJR 86- Section 3 (6) (4) (5) and (9) of B&O PDR Act with section 52 of Bihar Cooperative Societies Act 1935 –

Money due not only from members or past members but also from the nominee of past members can be recovered by sending requisition for recovery of dues to the certificate officer by the administrator of the cooperative society.

Having regard to the provisions of section 9 and 10 there cannot be any doubt that the certificate officer is fully empowered to go behind the certificate and after determining the liability of the certificate debtor, to set aside, modify or vary the certificate. In that sense the position of the certificate officer is different from the executing court under the Civil Procedure Code who cannot go beyond the decree. It is open to him to determine the liability and allow the claim of the certificate debtor either in whole or part and is also competent to ascertain and determine the actual liability of the certificate debtor

and in case of more than one certificate debtor, to a portion the liability among them. Therefore, it is not correct if said that certificate proceeding cannot be initiated in respect of an unascertained sum of money.

13. Amar Nath Thakur Vs. State of Bihar and Ors. (1994 (2) BLJR 1264) –

Section 29 of the PDR Act – Entertainment of an application under section 29 is subject to the conditions that it is filed within 60 days from the date of sale and the certificate debtor pays the amount actually found to him. Proviso (a) Section 29 (1) makes it clear that even if there is any material irregularity, still the same cannot be set aside unless it is shown that the petitioner has sustained substantial injury.

14. Harish Tara Refractories (P) Ltd. Vs. Certificate officer, Sader 1994 (5) SCC 324 –

The incorporation of "any money payable to the State Bank of India" within the list of Public Demands set out in Schedule I (Article 15) to the B & O PDR Act 1914 is held to be within the legislative competence of the State Legislature. The judgment of Patna High Court passed in Sawar Mal Chaudhary Vs State Bank of India and others holding the said addition by the state legislature within its legislative competence is upheld.

15. M/s Pradip Lamp Works and anr. Vs. The Certificate Officer, Patna City & Ors. 1994 (2) PLJR 716-

Section 3 and 7 of PDR Act read with Section 33C of Industrial Disputes Act – Section 33C ID Act categorically mentions that the money due from an employer can be recovered vide a certificate issued by a Collector in the same manner as an arrear of land revenue which is squarly covered vide item 3 of Schedule I read with section 3 (6) of the PDR Act. Thus the Collector of the district is the appropriate authority to whom the certificate is to be send.

16. Ashok Kumar Singh (Cr. W.J.C. 63/94), Shiv Kumar Singh (Cr. W.J.C. 64/94) Vs. The State of Bihar and 2 ors. 1994 (1) PLJR 595 –

Section 3,7,9,14,15 and Rule 53 of Bihar & Orissa Public Demand Recovery Acts and Rules – The certificate debtor under the act cannot be arrested and detained until the expiry of 30 days from the date of service of notice required under section 7 and in case, objection is filed by him under section 9 until such petition has been heard and determined. Even if these conditions are satisfied steps for issuance of warrant of arrest should normally be taken only after hearing the certificate debtor as provided under Rule 53 of Bihar and Orissa Public Demand Recovery Rules.

17. Budha Singh Vs. The State of Bihar and Ors. AIR 1991 Pat. 149 –

Article 9 of Schedule I, read with section 3(6), 4 of B&O Public Demand Recovery Act and Section 73 of Bihar Private Forest Act, 1947 – The requisition as well as certificate issued in terms of Article 9 of Schedule I read with section 73 of Bihar Private Forest Act, 1947 mandates that until and unless

the manner and mode of assessing the damage and ascertaining a sum of money is not disclosed, the requisition send as well as certificate issued for a particular amount cannot be sustained as the certificate is in the nature of decree and the certificate officer must satisfy himself before issuing a certificate for the sum sought to be realized as due, is in order.

18. Punjab National Bank and Ors Vs. Surendra Prasad Sinha - 1992 AIR 1815 -

Section 3 of the Limitation Act, 1963- The rules of limitation are not meant to destroy the rights of the party. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continued to exist notwithstanding the remedy is barred by limitation. Though the right to enforce debt by the Judicial process is barred the right to debt remains. The creditors when he is in possession of adequate security the debt due could be adjusted from the security, in his possession and custody.

19. Sawar Mal Choudhary and Ors. Vs. State Bank of India and Ors AIR 1988 Pat 185- S. 3 (6), 60, 61, 62, 63 & Article 15 of Schedule I of The B & O PDR Act 1914 –

(i) Legislative competence of the State Legislature to add article 15 mentioning any money payable to State Bank of India etc. in Schedule I of the Act is upheld by virtue of entry 43 of Concurrent List III, as well as entries 11 A & 13 of list III itself

(ii) Answering to the question that the precondition of deposit of 40 percent of the certificate dues before entertainment of appeal u/s 60 and revision u/s 62 makes the remedy illusionary and ineffective, it was held that the 40 percent certificate amount deposits to be made a pre condition for entertaining appeal and revision under section 60 & 62 of the Act is a reasonable regulation on the right of appeal and revision, the right to appeal being a creature of the statute. It is clarified that where the certificate debtor has once made the deposit at the appellate state, there is no further impediment in his way of the same nature for preferring a revision.

20. Ramchandra Singh Vs. State of Bihar And Ors. 1987 (35) BLJR 178 -

Article 7 of Schedule I of Bihar and Orissa PDR Act - Held that under Article 7 of Schedule I the Collector can recover the agreed settlement amount from a settllee of that under PDR Act even in absence of duly executed lease deed, the certificate case is held maintainable.

21. Bhagwan Devi Banka and Ors. Vs. R. B. Sinha and Ors. 1986 (9) ECC 35, date of judgment 20/11/1985 –

Section 3(3),5,6 and 7 of Revenue Recovery Act, 1890 and Section 3 (6), 3(7), 4, 5,6, 51, 52 of B & O Public Demand Recovery Act – In view of the fact that section 7 and 10 of Revenue Recovery Act, 1890 – saves other local laws making it evident that the 1890 act is not exhaustive and section 10 lays down that where a Collector receives a certificate under this act from Collector of another state, the Certificate Officer under B & O Public Demand Recovery Act can proceed to realize the due amount

in terms of relevant entries made in schedule I read with section 3(6), section 5 and 6 if he is satisfied that the demand is recoverable and recovery is not barred by law. Upon service of a valid notice under section 7 of the Act the legal representatives of the certificate debtor can also be proceeded against after death of the certificate debtor but only to the extent they have inherited the property of the deceased in terms of section 51 and 52 of the act.

22. Messrs. Speedcrafts (Private) Limited Vs. The State of Bihar and others (1983 PLJR 43) –

Section 8 read with 46 of Bihar and Orissa Public Demand Recovery Act 1914 and section 29(1) of State Financial Corporation Act 1951 – The Sale of property by the corporation to liquidate its dues is a private sale and not an involuntary sale, therefore, the case is hit by provisions of section 8 of PDR Act and arrears dues of Sales tax are a charge upon the property.

Section 8 and section 46 of the PDR Act are to be read together and provisions of section 29 (4) of the State Financial Corporation Act do not prevail over it.

23. Nirendra Kumar Bose and Anr. Vs. District Magistrate and Ors. – AIR 1978 Pat. 241- Section 2,3,4 and 6 of Revenue Recovery Act, 1890-

A Certificate Officer i.e. Collector, Dumka in certificate foreign case registered on the requisition send by Collector, Delhi. After having issued order of attachment may proceed under relevant provisions of Bihar and Orissa PDR Act, 1914. However, in view of the provisions contained in section 2 (3), 3 (1) (2) (3), 4 and 6 of this act neither attachment of property of the defaulter nor belonging to the successor of the deceased certificate debtor can be attached and proceeded against unless the requisitioning Collector amends the certificate mentioning either the property details of the surety or names of the successors of certificate debtor.

24. R.B.H.M. Jude Mills, Katihar And… Vs. Certificate Officer, katihar And .. AIR 1967 SC 400-

Section 17 (a) and 32 of the PDR Act, 1914 – If any interest has accrued due and his outstanding, the certificate holder is entitled to relies it by executing the certificate. The certificate debtor cannot escape liability to pay the accrued interest by paying the principal amount of the certificate. His right to claim interest is given in section 17 and interest on the unpaid principal amount rungs from the date of certificate and the certificate holder is entitled to recover the interest in the execution proceeding. Section 32 lays down the mode of disposal of the proceeding of execution and the priorities to be observed in such disposal. Out of the proceeding of execution the certificate holder is entitled to payment on the amount of certificate, interest and coast.

25. Smt. Kavita Devi @ Kavita Dalmia Vs. The State of Jharkhand through the Deputy Commissioner, Giridih, 27th Feb. 2017 –

Section 6 (2) of the Bihar Public Encroachment Act, 1956 read with Section 80 (2) and Order XXXIX rule 1 & 2 CPC – The Trial Court in a suit filed with an application u/s 80 (2) for dispensing with the notice to the state under 80 (1) pressing an application of an injunction under order XXXIX rule 1 & 2 CPC after the public authorities proceeded against the petitioner u/s 6 (2) under Bihar Public Encroachment Act, 1956, adjourned the matter directing the plaintiff first to comply with section 80 (1) CPC without assigning any reason for the said order. The High Court exercising power under article 227 of the Constitution of India setting aside the impugned order directed the trial court to consider the application of the petitioner within three weeks after due notice and opportunity to the effected parties therein.

26. Nazhal Parween Vs. The State of Jharkhand & Anr-

Section 5 and 6 (2) of Bihar Public Land Encroachment Act, 1956 – Principle of natural justice and due and established procedure of law must be followed by the authority while serving notice upon the petitioner indicating date, time and place for appearance failing which the notice is fit to be quashed.

27. Kamal Kumar Singhania and Anr. Vs. State of Jharkhand and Ors. – 2003 (3) JCR 195 Jhr.–

Bihar Public Land Encroachment Act, 1956 – It is not open for the authorities to decide issues related to disputed questions of right and title in a land encroachment proceeding and agreed party should move before a civil court of competent jurisdiction for appropriate relief. Reliance placed on Bhookan Kalwar & Ors Vs. SDO Siwan and others AIR 1955 Pat 1.

28. Mahabir Mahto & Ors Vs. State of Jharkhand & Ors 27 August 2012-

Bihar Tenants Holdings (Maintenance of Records) Act 1973 – Discussing the entire ambit and scope of the Act it has been held that an application for mutation, obviously of the entries in the continuous Khatiyan and Tenant's ledger register cannot be claimed by a person having totally adverse interest to the person whose name is entered in the revenue record and, therefore, the application filed for the entry of the names of the appellants with a claim that there source of right is independent and is adverse to the respondents/writ petitioners itself, was not maintainable. Irrespective of the practice that has developed, legally speaking Anchal Adhikari (Circle Officer) has no jurisdiction to decide adverse claims, other than provided u/s 3 to 13 of the Act. The appropriate remedy for such cases is filing of a civil suit before a court of competent jurisdiction.

Copy of the judgment sent to State Law Commission, and The State government trough The Law Secretary so that they may examine the issues raised in para 34 of the judgment.

JHARKHAND HIGH COURT

TATA YODOGAWA LIMITED THROUGH ITS... VERSUS JHARKHAND STATE ELECTRICITY BOARD...

W.P.C. No. 3801 of 2013

Decided on 26 March, 2015

Bench : ***Hon'ble Mr. Justice Rongon Mukhopadhyay***

Tata Yodogawa Limited, a Company incorporated under the provisions of Companies Act, 1956, having its registered office at XLRI Campus, Circuit House Area (East), Post Box No. 103, Jamshedpur-831001, District-Singhbhum (East), and works at P.O. and P.S. Gamharia, District-Saraikella-Kharsawan, through its Company Secretary Sri Prashant Kumar, Son of Sri Ishwar Lal, Resident of 4-Bagmati Road, P.O. and P.S. Bistupur, Jamshedpur-831001, District-Singhbhum (East).

.....Petitioner

Versus

1. Jharkhand State Electricity Board through its Chairman having its office at Engineers Bhawan, HEC, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi. 2. The General Manager-cum-Chief Engineer, Singhbhum Area Electricity Board, Jharkhand State Electricity Board, Cooperative Bank Building, Bistupur, Jamshedpur, P.O. and P.S. Bistupur, District-Singhbhum East. 3. The Electrical Superintending Engineer, Electric Supply Circle, Adityapur, Jharkhand State Electricity Board, Jamshedpur, P.O. and P.S. Bistupur, District-Singhbhum East. 4. Chief Engineer (Commercial and Revenue) having its office at Engineers Bhawan, HEC, Dhurwa, P.O. P.S. Dhurwa, District-Ranchi-834004. 5. Jharkhand State Electricity Regulatory Commission, having its office at Jawan Bhawan, Main Road, P.O. G.P.O. P.S. Kotwali, District-Ranchi, Jharkhand. 6. The State of Jharkhand through Chief Secretary, having its office at Project Bhawan, HEC, P.O. and P.S. Dhurwa, District- Ranchi.

....Respondents

For the Petitioner : Mr. M.L. Verma, Sr. Advocate

: Mr. M.S. Mittal,. Sr. Advocate

For Respondent Nos. 1 to 4 : Mr. Ajit Kumar, Advocate

C.A.V. on 20.03.2015 Pronounced on 26/3/2015

Heard Mr. M.L. Verma, learned senior counsel for the petitioner and Mr. Ajit Kumar, learned counsel for Respondent Nos. 1 to 4 on I.A. No. 651 of 2015 and I.A. No. 1353 of 2015, which are being disposed of by separate orders.

I.A. No. 650 of 2015

In this interlocutory application, the petitioner has prayed for amendment in para 1B of the main writ application and consequently to add paras 30a, 30b and 30c after paragraph 30.

Para B as made in the main writ application is quoted hereunder:-

> *"For issuance of an appropriate writ (s), order(s) or Direction (s) or writ for a declaration that 1999 Induction Furnace Tariff is applicable from 06.04.2000 from the date on which it was published in the Gazette and continued till 31st March, 2002 in as much as in terms of letter dated 07.05.2001, the validity of said tariff was only up till 31.03.2002 and consequently from 01.04.2002 up till 31.12.2003, the erstwhile 1999 Tariff of the Bihar State Electricity Board would be applicable".*

It has been submitted by the learned senior counsel for the petitioner that Para B, as sought to be deleted and replaced by paragraph 1B, reads as follows:-

> *"For issuance of an appropriate writ (s), order(s) or Direction (s) or writ for a declaration that 1999 Induction Furnace Tariff is applicable from 06.04.2000 from the date on which it was published in the Gazette and continued till 6th May 2001 in as much as in terms of letter dated 07.05.2001, the said tariff was extended by the Bihar State Electricity Board only to areas falling with the territorial jurisdiction of the State of Bihar and not the areas falling within the State of Jharkhand since the said extension of the tariff was never adopted by the Jharkhand State Electricity Board nor it was published in the official gazette of the State of Jharkhand and consequently from 07.05.2001 up till 31.12.2003 the erstwhile 1999 Tariff of the Bihar State Electricity Board would be applicable.*

Learned senior counsel for the petitioner submits that while praying for amendment, as noted above, the petitioner is not taking any inconsistent plea rather a consistent plea has been made by the petitioner to the effect that in the original prayer B of the writ application, the same was with respect to the prayer that 1999 Induction Furnace Tariff is applicable from 6.4.2000 which is from the date on which it was published in the Gazette and continued till 31st March 2002 inasmuch as in terms of letter dated 7.5.2001, the validity of the said tariff was only up till 31.03.2002, whereas in the amendment, which has been sought to be made by the petitioner, the applicability of 1999 Induction Furnace Tariff was from 6.4.2000 till 6th May, 2001 as in terms of letter dated 7.5.2001, the said Tariff was extended by the Bihar State Electricity Board only to areas falling within the territorial jurisdiction of the State of Bihar and not the areas falling within the State of Jharkhand.

It has been submitted by the learned senior counsel for the petitioner that the amendment is basically with respect to applicability of 1999 Induction Furnace Tariff, as initially it was mentioned in prayer B of the main writ application the same has to be continued till 31st March 2002, whereas in the amendment sought for the same was to be continued till 6th May, 2001. Learned senior counsel for the petitioner submits that if the amendment, as sought for, is allowed, neither the nature of the case will change nor will there be any prejudice, which could be caused to the respondents. It has further been submitted that mere saying that prejudice has been caused will not suffice rather the respondents have to bring it on record or substantiate the said claim to show as to how prejudice will be caused if in case the amendment is allowed.

Learned counsel for the Respondents-Board-Mr. Ajit Kumar, has categorically stated that no reply is required on behalf of the respondents to the present interlocutory application and he will be arguing the case based on the point of law as also the factual aspects emanating from the pleadings made by the petitioner. Learned counsel for Respondent nos. 1 to 4 has submitted that the petitioner by seeking amendment to the prayer made in the writ application is trying to stall the proceedings with respect to realization of the dues from it. It has been submitted that the issue, which the petitioner is raising in the midst of the writ application was always available to the petitioner for the last 13 years but the petitioner never raised the plea and only with a view to delay the issue further, the present interlocutory application has been filed with a prayer for making an amendment in para B of the writ application, which according to the learned counsel for respondent nos. 1 to 4, is absolutely on frivolous and flimsy grounds. It has also been submitted that the matter has already been decided in the earlier writ application and reviving an issue, which has already been decided, is hit by the principle of constructive resjudicata and in such circumstances, the present interlocutory application is liable to be dismissed. It has also been submitted by the learned counsel for the respondents while referring to the order dated 2.5.2013, passed in CWJC No. 852 of 2000(R) that the petitioner's unit was categorized as HTS-II category of consumer and the tariff schedule, which was notified by the erstwhile Bihar State Electricity Board on 15th March, 2000 was made specifically applicable to Induction Furnaces of the consumer of the Board. Learned counsel for respondent nos. 1 to 4 further refers to paragraph 15 of the order passed in CWJC No. 852 of 2000 (R) as also to various other paragraphs of the said order most notably paragraphs 26, 27, 28, 33, 34, 35, 36 and 37 so as to suggest that the amendment which has been sought for by the petitioner was already the subject matter of CWJC No. 852 of 2000 (R) and in such circumstances the petitioner cannot be allowed to agitate the same subject matter over and over again. He, therefore, submits that since the issue has already been decided, the prayer of the petitioner is misconceived. Learned counsel for respondent nos. 1 to 4

further submits that the entire action of the petitioner is mala fide in view of the fact that the petitioner is now no more a consumer of respondent no. 1 and, therefore, on one pretext or the other, the petitioner is trying to stall the proceedings with respect to payment of the dues to the Respondent-Board. He also submits that even if assuming that the prayer, which has been made by the petitioner has not been raised earlier, it can seriously be assumed that the same has deliberately not been raised only to defeat the action of the respondent no. 1 in recovery of electricity dues, which is with the petitioner for a considerable length of time.

Controverting the arguments of learned counsel for the respondent nos. 1 to 4, learned senior counsel for the petitioner has submitted that the question of retrospectivity with respect to the date on which the said tariff is applicable was never an issue in CWJC No. 852 of 2000 (R) and the amendment, which has been sought for by the petitioner has never been debated before and as such it is submitted that constructive resjudicata will not apply in such circumstances. It has also been submitted by the learned senior counsel for the petitioner that the order passed in CWJC No. 852 of 2000 (R) clearly gives a direction to the respondent-Board to raise electricity bills against the petitioner for the remaining period on the basis of the instant tariff in question till they are replaced by any subsequent tariff as notified by the Jharkhand State Electricity Regulatory Commission and in such circumstances, it was submitted that the amendment, which has been sought for with respect to applicability of 1999 Induction Furnace Tariff till 6th May, 2001 was never an issue before the learned court.

After hearing the learned counsel for the parties and on going through the instant interlocutory application, it appears that the amendment, which has been sought for by the petitioner, is with respect to applicability of 1999 Induction Furnace Tariff inasmuch as in the main writ application, the said tariff was said to be applicable from 6.4.2000 and was valid up till 31.03.2002 and consequently from 1.4.2002 till 31.12.2003, erstwhile 1993 tariff of the Bihar State Electricity Board would apply whereas the amendment sought for is with respect to applicability of 1999 Induction Furnace Tariff from 6.4.2000 till 6th May, 2001 and consequently from 7.5.2001 till 31.12.2003, the erstwhile tariff of the Bihar State Electricity Board would be applicable. Since the issue at hand is intertwined and interlinked with the prayers and averments made in the main writ application and the arguments which have been advanced by learned counsel for the respective parties has tended to veer towards the contentious issues in the writ application, this Court has to make a careful scrutiny of the facts with respect to the amendment sought for by refraining from making any observation with respect to the main writ application.

Learned senior counsel for the petitioner in course of his argument has referred to the case of Rajesh Kumar Aggarwal and ors Vs. K.K Modi and ors, reported in (2006) 4 SCC 385, wherein it was held as follows:-

> ***"15.*** *The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.*
>
> ***18.*** *As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.*

20. *We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon'ble Judges of the Division Bench and as to whether the application does not appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the Trust. It was alleged that Respondent 1 is not only in exclusive possession of 57,942 shares of GPI and the dividend received on the said shares but has also been and is still exercising voting rights with regard to these shares and that he has used the Trust to strengthen his control over GPI. Therefore, the proposed amendment was sought in the interest of the beneficiaries and to sell the shares and have the proceeds invested in government bonds and/ or securities. A reading of the entire plaint and the prayer made thereunder -and the proposed amendment would go to show that there was no question of any inconsistency with the case originally made out in the plaint. The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. There is a plethora of precedents pertaining to the grant or refusal of permission for amendment of pleadings. The various decisions rendered by this Court and the proposition laid down therein are widely known. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The amendments sought for by the appellants have become necessary in view of the facts that the appellants being the beneficiaries of the Trust are not deriving any benefit from the creation of the Trust since 1991-92 and that if the shares are sold and then invested in government bonds/securities the investment would yield a minimum return of 10-12%. It was alleged by the appellants that Respondent 1 is opposing the sale in view of the fact that if the said shares are sold after the suit is decreed in favour of the appellants, he will be the loser and, therefore, it is solely on account of the attitude on the part of Respondent 1 that the appellants have been constrained to seek relief against the same."*

In the case of Revajeetu Builders and Developers Vs. Narayanaswamy And Sons and others, reported in (2009)10 SCC 84, it was held as follows:-

57. *In Suraj Prakash Bhasin v. Raj Rani Bhasin this Court held that: (SCC p. 653) "... liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment, that one distinct cause of action should not be substituted for another and that the subject-matter of the suit should not be changed by amendment."*

58. *The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the - determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.*

No prejudice or injustice to other party

59. *The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.*

63. *On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. *The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.*

The Hon'ble Supreme Court in the case of Revajeetu Builders and Developers (supra) indicated that application for amendment is a very serious judicial exercise and the Courts must not refuse bona fide honest, legitimate and necessary amendment.

Learned counsel for the respondent nos. 1 to 4 has referred to the case of Tata Yodogawa Limited Vs. Jharkhand State Electricity & Ors. reported in 2013 (3) JBCJ 561 (HC), which was for review of the order passed in CWJC No. 852 of 2000 R. Learned counsel for respondent nos. 1 to 4 has referred to paragraphs 5 & 6 of the said order to substantiate the argument that the amendment which is being sought to be brought on record by the petitioner was already considered and therefore the fact does not necessitate allowing of the amendment application of the petitioner. Learned senior counsel for the petitioner at this stage has also referred to paragraph 17 of the said order and has submitted that the amendment, which has been sought for by the petitioner has a direct bearing on the subsequent bills, which have been raised by respondent nos. 1 to 4 and in such circumstances there being a fresh cause of action, the same requires to be inserted in the main writ application to arrive at a just and correct conclusion.

As indicated above, the amendment, which has been sought for by the petitioner, is basically with respect to applicability of 1999 Induction Furnace Tariff, which according to the petitioner, continued till 6th of May, 2001. The amendment, which has been sought for by the petitioner, does not seem to change the nature of the case and that the same is imperative and necessary for a proper and effective adjudication of the case. Although, the learned counsel for the respondent nos. 1 to 4 has vehemently sought to project that the amendment as sought for is barred by constructive resjudicata but on perusal of the order passed in CWJC No. 852 of 2000 (R) and the subsequent order passed in review, reported in 2013 (3) JBCJ 561 (HC), the same does not indicate that the issue at hand had already been considered by this Court earlier. The amendment, which has been sought for, is with respect to rectified bills, which have been raised by the respondent no. 1 and which are under challenge in the original writ application and in such circumstances in order to sub serve the interest of justice, it would be necessary that the amendment application be allowed so that proper adjudication be made to the issue at hand.

Accordingly, as a consequence of the discussions made hereinabove, this application for amendment is allowed. The petitioner is directed to file an amended writ application within a period of 10 days from today.

I.A. No. 650 of 2015 is allowed and disposed of .

(Rongon Mukhopadhyay,J) I.A. No. 1353 of 2015 This interlocutory application has been filed by the petitioner for amendment in the main writ application in view of the subsequent developments, which have taken place during the pendency of the writ application and the amendment, which has been sought for is being reproduced hereunder:-

> **"32A** *That the following prayer may be added in para 1 and prayer of the writ petition as para 1(g) and prayer (g):-*
>
> **"g.** *For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the letter no. 07, dated 19.02.2015, which is a Notice under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 issued by the Certificate Officer (Electrical & Revenue), ID, Karandih, Jamshedpur, Saraikella-Kharsawan, whereby and whereunder the petitioner was informed that a Certificate for Rs.2,63,60,97,051/- due from the petitioner on account of energy charges and other allied dues has been filed in the office of the Certificate Officer under Sections 4, 5 and 6 of the Bihar and Orissa Public Demand Recovery Act, 1914 and by the said Notice, the petitioner has been restraint from alienating immovable properties or any part thereof and also if the petitioner removes or dispossess any part of immovable properties, the Certificate would be executed immediately".*

Accordingly, in view of the prayer, which has been sought to be amended by insertion of para 1(g), it has been prayed that after paragraph 63, sub paragraphs 63(a) to 63 (t), as mentioned in paragraph 32 of the instant application be added.

In the main writ application, the petitioner apart from the other prayers has also prayed for quashing of the bill dated 10.06.2013, which was raised for an amount of Rs.2,72,030,25445.70. It has been stated in the writ application that the petitioner's factory was set up in the year 1970 and had a contract demand of 12,500/- KVA and on 1.4.1979, the petitioner had reduced its contract demand to 10,500 KVA and entered into a fresh agreement with the Bihar State Electricity Board.

The Bihar State Electricity Board issued various tariff notifications from time to time and in the year 1993, a tariff notification was issued for all category of consumers, which was made effective from 1.7.1993. After coming into force of 1993 tariff, the consumers under various categories started being governed by the 1993 tariff and they were being charged according to the terms and conditions therein. The petitioner was also making payment of electricity bills raised on the basis of 1993 tariff and subsequently the Bihar State Electricity Board vide letter dated 24.09.1999 introduced a new tariff schedule for HT consumers having induction furnace. The bills having been raised on the basis of 1999 Induction Tariff for the period January-February 2000, the same was challenged by the petitioner as well as the applicability of tariff in CWJC No. 852 of 2000 R, which was decided against the petitioner vide judgement dated 2.5.2013. Pursuant to the judgment dated 2.5.2013, passed in CWJC No. 852 of 2000 R, rectified bills were issued by the Electrical Superintending Engineer vide letter no. 1583 dated 10.06.2013 for an amount of Rs.2,72,03,25,445.72. On receipt of aforementioned rectified bills, the petitioner preferred the present writ application. During pendency of the writ application, a notice was served upon the petitioner under Section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914 (The Act for short) vide letter no. 07 dated 19.02.2015, in which the petitioner was asked to make payment of Rs.2,63,60,97.051 on account of energy dues and other allied dues. On initiation of the certificate proceeding and after issuance of notice under section 7 of the Act, the petitioner has filed the instant application seeking amendment in order to challenge the letter no. 07 dated

19.02.2015 issued by the Certificate Officer (Electrical & Revenue) I.D. Karandih, Jamshedpur, Saraikella, Kharsawan.

Shri M.L. Verma, learned senior counsel for the petitioner, submits that vide letter dated 5th May, 2014, addressed by the petitioner to the G.M. cum Chief Engineer (Singhbhum), Jamshedpur Electrical Area Board, JSEB, Jamshedpur, it had been brought to the notice of the concerned authority enclosing the statements in support of the claim of the petitioner and thereby making a request to process the claim and immediately refund the excess amount of Rs.2,09,922.205/- to the petitioner. It has been submitted that instead of taking appropriate measures on the representation of the petitioner, a letter was issued by the Electrical Executive Engineer (C&R), Jamshedpur dated 15.12.2014, wherein a notice had been served upon the petitioner for payment of Rs.2,65,82,94490.00 within 15 days, failing which a certificate proceeding shall be initiated. The petitioner immediately thereafter advanced a representation dated 30.12.2014 requesting the author of the notice dated 15.12.2014 to withdraw the said notice and in the event the order of the Hon'ble Supreme Court is not complied with, steps may be taken for initiation of a contempt proceeding. Learned senior counsel for the petitioner, therefore, submits that representation filed by the petitioner bringing to the notice of the concerned authority the actual facts had fallen on deaf ears and it would be well nigh impossible for the petitioner to get justice at the hands of the respondents. It has also been submitted that considering the aforesaid scenario, no purpose will be served in appearing before the certificate proceeding and that the petitioner apprehends that even if any objection is filed to the notice under Section 7 of the Act, the same shall be rejected, which would entail the petitioner to prefer an appeal, to which 40% of the amount has to be deposited as a precondition. It has also been submitted by the learned senior counsel for the petitioner that it has been held in a catena of decisions that alternative remedy is not a bar in allowing the amendment application. In this context, he has referred to the case of Mardia Chemicals Ltd. and ors Vs. Union of India & Ors, reported in (2004) 4 SCC 311 as well as in the case of Dhampur Sugar Mills Ltd. Vs. State of U.P. & Ors., reported in (2007) 8 SCC 338 and in the case of Ram and Shyam Company Vs. State of Haryana & Ors, reported in (1985) 3 SCC 267.

Reference has also been made in the case of A.V.

Venkateswaran, Collector of Customs, Bombay, Appellant Vs. Ramchand Sobhraj Wadhwani and another, respondents, reported in AIR 1961 SC 1506.

It has further been submitted that the issue of initiation of the certificate proceeding and the challenge made in the main writ application to the rectified bills by the respondent is interlinked and intertwined and since the certificate proceeding is a consequence of the rectified bills raised, the amendment, which has been sought for by the petitioner for making a challenge to the certificate proceedings itself has a direct bearing on the outcome of the writ application and the same being an effecacious remedy available under the law, the petitioner cannot be allowed to take recourse to an alternative remedy by filing an objection before the certificate court. It has also been submitted that the petitioner undertakes to adhere to the provisions of Sections 8 and 9 of the Act and in such circumstances on allowing the amendment application the further proceedings of certificate case be stayed.

Learned counsel for the respondent nos. 1 to 4 -Mr. Ajit Kumar, has submitted that Bihar & Orissa Public Demand Recovery Act is a complete code in itself and the procedural aspects have been laid down in Sections 7, 8, 9, 10 and 11 of the said Act. It has, therefore, been submitted that since the Act itself guides the recovery of public demand and the petitioner has a remedy of filing an objection denying liability to make payment, the best course available to the petitioner in the circumstances is to take recourse by appearing in the certificate proceedings. Merely because issuance of notice under Section 7 of the Act is consequent to raising of rectified bills by the Board in terms of the order passed in CWJC No. 852 of 2000 R, the same cannot permit the petitioner to challenge the certificate proceedings itself before this Court. Learned counsel for the respondent nos. 1 to 4 on the question of alternative remedy available to the petitioner has referred to the case of United

Bank of India Vs. Satyawati Tondon & Ors., reported in (2010) 8 SCC 110 , Cicily Kallarackal Vs,. Vehicle Factory, reported in (2012) 8 SCC 524, CCT, Orissa and Ors. Vs. Indian Explosive Ltd., reported in (2008) 3 SCC 688, Bindesh Kumar Singh Vs. The State of Bihar & Ors., reported in 1995 (1) PLJR 86, The Tata Iron & Steel Company Ltd. Vs. The State of Bihar & Ors., reported in 1995 (2) PLJR 459 and Anwar Ali Vs. State of Bihar & Ors., reported in 2002 (4) PLJR 255.

Replying to the contentions of learned counsel for respondent nos. 1 to 4, learned senior counsel for the petitioner submitted that Section 60 (1) of the Act relates to an appeal and it has been envisaged therein that no appeal against an order passed under Section 10 of the Act shall be entertained unless the appellate authority is satisfied that the appellant has paid 40% of the amount determined under that section or such amount as the appellant admits to be due from him whichever is greater. Learned senior counsel for the petitioner, thus, submits that the petitioner itself is entitled for a refund and if the certificate case is decided against the petitioner preferring an appeal would burden the petitioner with a huge amount and in such circumstances the certificate proceedings be allowed to be challenged by making necessary amendments as sought for by the petitioner. Learned senior counsel for the petitioner has also suggested that Jharkhand State Regulatory Commission be directed to decide the issue of rectified bills as the petitioner at the cost of repetition submits that he does not apprehend fairness on the part of the respondent Board.

After hearing learned counsel for the parties in the instant interlocutory application, it is an admitted fact that vide letter no. 07 dated 19.02.2015, the petitioner was issued a notice for payment of Rs.2,63,6097,051.00 towards the energy dues and other allied dues. The main writ application has been preferred by the petitioner for quashing the bill dated 10.06.2013 raised for a sum of Rs.2,72,03,25,445.72, which was raised as a rectified bill in terms of the order passed by this Court on 2.5.2013 in CWJC No. 852 of 2000 (R). Much arguments have been advanced by the learned counsel for the parties in respect to the main writ application but the present amendment application has to be considered in the touchstone of the main writ application. It has been consistently argued by the learned senior counsel for the petitioner that since the issue in the main writ application and initiation of the certificate proceeding is interlinked, intertwined and intermingled, therefore, in such circumstances, the endeavour would be to arrive at a just and correct decision and it would be in the interest of justice that the amendment as sought for be allowed. The question would then arise as to whether during pendency of the writ application since a certificate proceeding has been sought to be initiated, the same can be brought within the fold of the main writ application and whether this Court can usurp the jurisdiction vested on the certificate officer under the Act. Learned senior counsel for the petitioner has in course of his argument relied on various judicial pronouncements, reference of which are being made herein below:-

In the case of Dhampur Sugar Mills Ltd. (supra), it was held as follows:-

> **"23** *As to alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be termed as "alternative", or "equally efficacious". Once a policy decision has been taken by the Government, filing of appeal is virtually from "Caesar to Caesar's wife", an "empty formality" or "futile attempt". The High Court was, therefore, right in overruling the preliminary objection raised by the respondents".*

In the case of Mardia Chemicals Ltd. and ors (supra), it was held as follows:-

> **"80** *4. In view of the discussion already held in this behalf, we find that the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down".*

In the case of Ram and Shyam Company (supra), it was held as follows:-

"9. *...An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clitch of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court".*

In the case of A.V. Venkateswaran, Collector of Customs, Bombay, Appellant (supra), it was held that two exceptions of the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court.

The common thread which runs through the first three judgements referred to by learned senior counsel for the petitioner are with respect to preferring an appeal, which as per the petitioner is an oppressive, onerous, arbitrary and uphill condition and in the context of the said judgments, much stress has been made that the petitioner will be faced with such situation wherein 40% of the amount has to be deposited as a pre-condition to the appeal.

Learned counsel for the Respondent-Board, on the other hand, has referred to various judgements, which are noted herein below:-

In the case of United Bank of India (supra), wherein it was held as follows:-

"43. *Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions -involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

45. *It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance*

> ***55.*** *It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection".*

In the case of Cicily Kallarackal (supra), it was held that once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India.

In the case of CCT, Orissa and Ors.(supra), it was held that the High Court seems to have completely lost sight of the parameters highlighted by this Court in a large number of cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for Assessment Year 1997-1998 and Assessment Year 1998-1999 in respect of ICI India Ltd. In any event the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside.

In the case of Bindesh Kumar Singh (supra) while considering the scope and ambit of the Public Demands Recovery Act, it was held as follows:-

> ***"14.*** *Sec. 9 of the Public Demands Recovery Act enables the certificate-debtor to file objection within the stipulated period denying his liability in whole or in part. Sec. 10 provides that the certificate officer in whose office the certificate is filed, shall hear the petition, take evidence (if necessary) and determine whether the Certificate Officer is liable for the whole or any part of the amount for which the certificate was signed and may set aside, modify or vary the certificate accordingly. A certificate proceeding is, no doubt, not as full-fledged as a suit. However, having regard to the provisions of Secs. 9 and 10 there cannot be any doubt that the Certificate Officer is fully empowered to go behind the certificate and after determining the liability of the certificate-debtor, to set aside, modify or vary the certificate. In that sense the position of the Certificate Officer is different from the executing court under the Civil Procedure Code, while the executing court cannot go behind the decree and it has to execute it as it is, the Certificate Officer is entitled to go behind it, even set aside modify or vary it. The proceeding before the certificate proceeding must, therefore, be held to be composite in nature. If it is open to him to determine the liability and allow the claim of the certificate-debtor either in whole or part it follows that it is also competent to ascertain and determine the actual liability of the certificate-debtor and in case of more than one certificate-debtor, to apportion the liability amongst them. I, therefore, do not find any substance in the argument that the certificate proceeding cannot be initiated in respect of an unascertained sum and that no proceeding having been taken under Chapter V of the Co-operative Act the impugned proceeding is bad. From perusal of Sec. 52 it is obvious that it is open to the society to take recourse to the proceeding under Chapter V, and thereafter, to levy certificate proceeding or to straightaway send requisition for instituting the certificate proceeding. They are alternative in nature and not exclusive to each other".*

in the case of Anwar Ali (supra), it was held that although there is some limitation of the Certificate Officer to decide all points but still when liability has been denied then if objection has been filed in proper form as per section 9 of the P.D.R. Act then the Certificate Officer can decide it after doing a proper investigation of the matter by giving opportunity to adduce evidence by both the parties and on production of proper documents.

The crux of the argument of learned counsel for the Respondent-Board is, therefore, that when an alternative remedy is already available to the petitioner, the proper recourse or remedy available to the petitioner would be to take steps in the certificate proceedings itself. As has been held in the case of Bindesh Kumar Singh (supra), the proceeding before the Certificate Officer is composite in nature. The Bihar & Orissa Public Demands Recovery Act is a complete code in itself, which empowers the Certificate Officer to go behind the certificate and on determining the liability of the certificate debtor to set aside, modify or vary the certificate. The petitioner has already an efficacious alternative remedy before the Certificate Officer and mere apprehension of the petitioner that proper adjudication will not be done by the Certificate Officer is a mere apprehension and only on the basis of such apprehension or a future cause of action, the petitioner cannot be permitted to redress its grievance in the present writ application itself bypassing the alternative remedy available to it under law. The discretion in considering the amendment application has to be exercised judiciously and when there already exists a forum, before whom, the petitioner can redress its grievances and the said forum having been bestowed with the power to go beyond the certificate and vary, alter or modify the certificate and without exhausting the alternative remedy available to the petitioner, the petitioner cannot be permitted to challenge the initiation of the certificate proceedings itself in the present writ application. This Court, as has been indicated above, is not empowered to usurp the jurisdiction of the certificate officer. The forum, which has been created by the statute can best be availed by the petitioner by filing objection before it taking all the grounds available to it before the Certificate Officer and in such circumstances when there is an alternative remedy available to the petitioner under law, the instant amendment application being I.A. No. 1353 of 2015 fails and the said amendment application is, accordingly, rejected.

Consequently, the prayer for stay of operation and implementation of Certificate Case No. 38 of 2015 as also the letter dated 19.02.2015 for stay is also rejected.

In the circumstances, I.A. No. 650 of 2015 succeeds, whereas I.A. No. 1353 of 2015 is hereby rejected.

The petitioner, as has been indicated in the order passed in I.A. No. 650 of 2015, is directed to file the amended writ application within a period of ten days from today.

(Rongon Mukhopadhyay,J) W.P.C. No. 3801 of 2013 List this case under the heading "For Admission" on 22.04.2015.

(Rongon Mukhopadhyay, J)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Bench : ***Hon'ble Mr. Justice Rongon Mukhopadhyay***

W.P.C. No. 3801 of 2013

Decided on 22.05.2015

Tata Yodogawa Limited, a Company incorporated under the provisions of Companies Act, 1956, having its registered office at XLRI Campus, Circuit House Area (East), Post Box No. 103, Jamshedpur-831001, District-Singhbhum (East), and works at P.O. and P.S. Gamharia, District-Saraikella-Kharsawan, through its Company Secretary Sri Prashant Kumar, Son of Sri Ishwar Lal, Resident of 4-Bagmati Road, P.O. and P.S. Bistupur, Jamshedpur-831001, District-Singhbhum (East).

... ..Petitioner

Versus

1. Jharkhand State Electricity Board through its Chairman having its office at Engineers Bhawan, HEC, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi. 2. The General Manager-cum-Chief Engineer, Singhbhum Area Electricity Board, Jharkhand State Electricity Board, Cooperative Bank Building, Bistupur, Jamshedpur, P.O. and P.S. Bistupur, District-Singhbhum East. 3. The Electrical Superintending Engineer, Electric Supply Circle, Adityapur, Jharkhand State Electricity Board, Jamshedpur, P.O. and P.S. Bistupur, District-Singhbhum East. 4. Chief Engineer (Commercial and Revenue) having its office at Engineers Bhawan, HEC, Dhurwa, P.O. P.S. Dhurwa, District-Ranchi-834004. 5. Jharkhand State Electricity Regulatory

Commission, having its office at Jawan Bhawan, Main Road, P.O. G.P.O. P.S. Kotwali, District-Ranchi, Jharkhand. 6. The State of Jharkhand through Chief Secretary, having its office at Project Bhawan, HEC, P.O. and P.S. Dhurwa, District-Ranchi. ... .Respondents

For the Petitioner	:	Mr. M.L. Verma, Sr. Advocate
	:	Mr. M.S. Mittal,. Sr. Advocate
For Respondent Nos. 1 to 4	:	Mr. Ajit Kumar, Sr. Advocate
For Respondent No. 5	:	Mr. Sudarshan Srivastava, Advocate

C.A.V. On 15.05.2015 Pronounced on 22/5/2015

Heard Mr. M.L. Verma, learned senior counsel for the petitioner,

Mr. Ajit Kumar, learned senior counsel for Respondent Nos. 1 to 4 and

Mr. Sudarshan Srivastava, learned counsel for respondent no. 5.

The present writ application has been filed by the petitioner with the following prayers:-

a) For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the Bill dated 10.06.2013 which is for a sum of Rs.2,72,03,25,445.72, which is allegedly a Bill which has been communicated vide letter no. 1583 dated 10.06.2013 by the Electrical Superintending Engineer (Respondent no. 3), being a rectified bill as a result of the order passed by the Hon'ble High Court dated 02.05.2013 in CWJC No. 852 of 2000 (R) and which also includes an amount of fuel surcharge for the period July, 1993 to August 1999 for a sum of Rs.5,92,84,086.72, though the said issue of fuel surcharge was not a subject matter of dispute in CWJC No. 852 of 2000 (R).

b) For issuance of an appropriate writ (s), order(s) or Direction (s) or writ for a declaration that 1999 Induction Furnace Tariff is applicable from 06.04.2000 from the date on which it was published in the Gazette and continued till 6th May, 2001 in as much as in terms of letter dated 07.05.2001, the said tariff was extended by the Bihar State Electricity Board only to areas falling within the territorial jurisdiction of the State of Bihar and not the areas falling within the State of Jharkhand since the said extension of the tariff was never adopted by the Jharkhand State Electricity Board nor it was published in the official gazette of the State of Jharkhand and consequently from 07.05.2001 up till 31.12.2003 the erstwhile 1993 tariff of the Bihar State Electricity Board would be applicable.

c) For issuance of an appropriate writ (s), order(s) or direction (s) for a direction upon the respondents to revise the impugned Bills in the manner as stated herein below and which is supported by the various Circulars, Tariffs as well as the judgments of this Hon'ble Court:

  i) The Bill on the basis of 1999 tariff schedule should be raised w.e.f. 06.04.2000 till 31.03.2002;

  ii) The bill for the month of April, 2000 has to be levied proportionately i.e. from 01.04.2000 till 05.04.2000, which should be levied on the 1993 tariff and subsequently on the basis of Induction Furnace Tariff.

  iii) Since the respondents have increased the contract demand from 10500 KVA to 19233 KVA w.e.f.16.04.2000 and consequently on account of increase in tariff, a new agreement has to be signed and, therefore, in terms of Clause 4(c) of the Agreement for the first 12 months, the demand charge has to be levied on the basis of what is recorded in the maximum demand indicated.

  iv) From January, 2004, the contract demand has to be treated as 10,500 KVA and 12,500 KVA from March, 2005 whereas, the respondents have treated contract demand of the petitioner to

be 19,233 KVA on the basis of 1999 Induction Furnace Tariff, which was notified on 06.04.2000 in the Official Gazette.

v) That from January, 2004 till April, 2010, whatever KVA, which has been recorded, has to be charged in terms of the Tariff order of 2004 and this issue is also fortified by a judgment of the Division Bench of this Hon'ble Court.

vi) That from May, 2010, a contract demand has been treated to be 14,524 KVA , which is without any basis and the bills should have been on the basis of 12,500 KVA.

vii) No delayed payment surcharge should have been levied because when the Bills itself are wrong and needs to be rectified/revised, there is no question of levying of delayed payment surcharge. The amount paid earlier by way of interim order passed in CWJC No. 852 of 2000 (R) has to be adjusted from the total demand.

d) For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the letter dated 22.06.2013, received by the petitioner on 24.06.2013, by which the Electrical Superintending Engineer has summarily dismissed the objections of the petitioner without any cogent reasons and false and frivolous assumptions.

The fact, which emanates from the averments made in the writ application is that the petitioner (Tata Yodogawa Limited) is having a Roll Manufacturing Unit at Gamharia in the district of Saraikella, Kharsawan. The petitioner is involved in manufacturing of Rolls, for which Induction Furnaces are used merely in conjunction with other types of Furnaces for manufacturing the said Rolls and is also used as an intermediate process in the manufacturing of Rolls. The foundry of melting set up consists of Heat Treatment Furnaces, Mould Drying Ovens, Roll Casting Facilities. The Machine Shop comprises of several heavy duty machine tools like Lathes, Grinding Machines and Milling Machines. The petitioner company had acquired the technology for manufacturing of Rolls from Yodogawa Steel Works Ltd., Japan and the detailed equipments selections and facilities were done under the Foreign Technical Collaboration. The manufacturing of Rolls started in 1970 and the petitioner company claims to be a leading supplier of quality Rolls to all integrated steel plants and defence establishments in India and a sizeable production is also exported outside. Initially, the petitioner had entered into an agreement in the year 1968 with the Bihar State Electricity Board (hereinafter referred to as BSEB for the sake of brevity) with the contract demand of 12500 KVA. A fresh agreement was entered into by the petitioner and BSEB on 1.4.1979 , wherein the Contract Demand was reduced from 12500 KVA to 10500 KVA. The BSEB with the approval of the State Government came out with a tariff as contained in Tariff Notification No. COM/TAR/1010/1993-430 dated 21.06.1993, which covered within its ambit all categories of consumers and also laid down the terms and conditions for supply of electricity to its consumers and which is commonly referred to as 1993 Tariff. Dispute arose between certain members of the Bihar Steel Manufacturers Association, who were basically manufacturers of ingots in their Induction Furnace and since allegations were levelled with respect to large scale theft of electricity, First Information Reports were instituted against those consumers and the electricity lines were also disconnected by the Board. To resolve the dispute, the members of the Bihar Steel Manufacturers Association held a meeting with the authorities of the Electricity Board, at which a consensus was arrived at for framing of tariff of such category of consumers, who were basically members of the said Association and consequent thereupon, the Secretary of BSEB issued a letter dated 24.09.1999, introducing a New Tariff Schedule for HT Consumers having Induction Furnace and the consumers of Induction Furnaces came within the purview of New Tariff Schedule with effect from 1.9.1999. The New Tariff Schedule of 1999 with respect to Induction Furnaces came to be known as High Tension Specified Services (HTSS) and it was made applicable to all consumers who were having a contract demand of 300 KVA and more for Induction Furnaces and the casting units having Induction Furnace of melting capacity of 500 K.G. or

below were excluded. The New Tariff Schedule of 1999 was published in the gazette on 6.4.2000. The BSEB had raised bills upon the petitioner on the basis of 1999 Induction Tariff for the period January & February-2000 and the bills as well as the applicability of Induction Tariff was the subject matter of a writ application being CWJC No. 852 of 2000 R. The writ application was finally decided by this Court on 2.5.2013, in which it was held as follows:-

*"**36.** In these circumstances therefore and the reasons discussed herein-above, the sole question raised for determination in the instant writ application is answered against the petitioner. It is accordingly held that the tariff schedule notified by the Bihar State Electricity Board vide annexure-5 dated 24thth September 1999 and the Gazette Notification dated 15thth March 2000 is applicable to the petitioner Unit as well. Accordingly, the petitioner is liable to pay the electricity Bills raised on the basis of the said tariff.*

***37.** For the reasons indicated herein-above, respondents would rectify the impugned Bills in question after carrying out necessary correction in the computation of the capacity of the induction furnaces of the petitioner based upon the measurement undertaken by it during physical inspection of the petitioner Unit within a period of six weeks. The petitioner would be liable to pay the outstanding Bills raised after rectification. It will also be liable to pay the delayed payment surcharge on the rectified Bill reckoned from 16thth March 2000 (Annexure-13) after adjustment of any amount deposited by it pursuant to the interim orders passed earlier till the same are paid. The petitioner cannot be absolved of the liability to pay delayed payment surcharge on the rectified Bill which is due to the respondents after the challenge to the applicability of the tariff to their Unit has failed. In view of what has been held herein above, the respondent Board would be entitled to raise electricity Bills against the petitioner for the remaining period thereafter on the basis of the instant tariff in question, till they are replaced by any subsequent tariff as notified by the Jharkhand State Electricity Regulatory Commission.*

***38.** Therefore, the challenge to the applicability of the tariff to the petitioner Unit raised in the present writ application fails. However, the writ petition is disposed of with the aforesaid observations and directions."*

Pursuant to the judgment dated 2.5.2013, passed in CWJC No. 852 of 2000R, the Electrical Superintending Engineer issued a letter no. 1583 dated 10.06.2013, enclosing the rectified bills amounting to Rs.2720325445.72, which also included an amount of Rs.59284086.72 kept in abeyance raised against fuel surcharge for the periods 7/1993 to 08/1999. The petitioner had filed an application for review of the judgment dated 2.5.2013, passed in CWJC No. 852 of 2000 R, which was, however, dismissed on 17.07.2013 with an observation that in case the petitioner is aggrieved by any such bill raised thereafter pursuant to the judgment in question that may be a fresh cause of action for the petitioner but cannot be a ground for seeking review. Having been unsuccessful in the matter of review of the order dated 2.5.2013, passed in CWJC No. 852 of 2000 R, the petitioner has sought to challenge the bills raised vide letter dated 10.06.2013 in the present writ application.

Mr. M.L. Verma, learned senior counsel for the petitioner, at the outset, has submitted that the issues with respect to the petitioner being a HTSS consumer as well as the issue of delayed payment surcharge , which have been decided in C.W.J.C. No. 852 of 2000 R are already the subject matter of an appeal and the said issues are being kept alive as and when the same is decided by this Court in LPA No. 217 of 2013. Learned senior counsel contends that the question on which amount the delayed payment surcharge has to be levied has to be decided as the respondents have whimsically calculated the electricity dues without considering the applicability of various tariffs for the various periods. The fountain head of raising the bills is the tariff but the Board has to first consider as to which tariff would apply to the petitioners and on what basis and for what period the said tariff would be made applicable.

It has been submitted that all along the petitioner's actual KVA recorded was much less than its contract demand and the fixation of contract demand based on clause 2 of 1999 Induction Furnace Schedule to 1993 tariff was notional, deemed and unrelated to the actual drawn. It has further been submitted by the learned senior counsel for the petitioner that the petitioner has not challenged the amount of the bill as such but the manner in which the bills have been raised by applying inapplicable tariff. Learned senior counsel further adds that the 1999 Induction Furnace Tariff had a deeming provision that for every ton of furnace, the load would be determined to be 600 KVA. It has been submitted that the respondents have billed the petitioner on the basis of 1999 schedule to 1993 tariff from January, 2004 up to March, 2013 and the respondents have raised the bills on the basis of 19233 KVA but as would be evident the actual KVA drawn is much less than the deemed contract demand of 19233 KVA. Submission has also been advanced by relying on the judgment passed in WPC No. 3647 of 2005 by submitting that the tariff was applicable till the month of March 2001 and even after January 2004 when the tariff issued by the Board came into existence, the Board continued to raise the bills on the basis of the deemed contract demand in terms of the 1999 Tariff Schedule to the 1993 tariff. It has been submitted that a fresh contract demand was entered into by the petitioner with the Board from February, 2005 for enhancement of load from 10500 KVA to 12000 KVA but while rectifying the bills from February, 2005, the same were raised on the basis of deemed and fixtional contract demand of 19,233 KVA in terms of 1999 Tariff Schedule to the 1993 tariff. Learned senior counsel, therefore, submits that after 1.1.2004, there is no way that any bill can be raised on the petitioner based on either the 1993 tariff of BSEB or 1999 Induction Tariff Schedule. The learned senior counsel has submitted that the respondent-Board has raised the bills by taking assistance of a tariff which is not in existence and which has become defunct after coming into existence of Jharkhand State Electricity Regulatory Commission. It has been submitted that the schedule of 1999 to 1993 tariff, as extended on 7.5.2001 was applicable to only the areas in the State of Bihar and since the same was never adopted by the State of Jharkhand or the respondent-Board, the same could never be made applicable to the consumers of electricity in the State of Jharkhand. The learned senior counsel for the petitioner has further stated that in view of clause 11.10.3 of Electricity Supply Code Regulation, 2005, it was incumbent upon the State-Board to give an opportunity of hearing to the petitioner in response to the representation submitted by the petitioner against the revised bills.

Mr. M.L. Verma, in this context has referred to the Judgement **1993(2) PLJR 527-Dumraon Textiles Limited Vs. The Bihar State Electricity Board & Ors.**, wherein it was held as follows:-

*"**19.** The Board being a public authority discharges Governmental function. A consumer depends upon the authorities of the Board for its day to day amenities which are essential for human existence, It is the State within the meaning of Article 12 of the Constitution of India. It is thus required to act fairly, judiciously and in accordance with the principles of natural justice. Its action thus must be fair and conform to the standards of public morality. Its officers cannot act arbitrarily or raise demand for substantial amount of money without affording opportunity of hearing to the consumer.".*

Learned senior counsel while assailing the certificate proceeding has submitted that the certificate proceeding which has been initiated is only with an object to frustrate the present writ application. He has also questioned the power of the certificate officer to decide the applicability of respective tariffs for the relevant periods while raising the bills. The certificate officer as has been submitted by the learned senior counsel for the petitioner, is acting in a haste and which has created apprehensions for the petitioner that proper adjudication will not be made by the certificate officer. Once the petitioner has invoked the writ jurisdiction, the certificate officer cannot decide an issue, which is within the domain of the writ Court. The certificate officer seems to have a bias and is not acting as would be expected from a quasi judicial authority.

Mr. Ajit Kumar, learned senior counsel for respondent nos. 1 to 4 has at the out set submitted that the letters patent appeal, which was preferred against the order dated 26.03.2015 by this Court in I.A. No. 1353 of 2015 was withdrawn, which in effect means that the order passed in I.A. No. 1353 of 2015 seeking amendment in the main writ application by including prayer for quashing of letter no. 07 dated 19.02.2015 being a notice under section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914 has been affirmed. He has further submitted that since the Certificate Officer is in seisin of the matter, it is best left open for the Certificate Officer to decide the issue in hand, moresoever in view of the fact that the petitioner has submitted itself to the jurisdiction of the Certificate Officer by filing a detailed objection in terms of Section 9 of the Bihar & Orissa Public Demand Recovery Act, 1914. Mr. Ajit Kumar,learned senior counsel , has also referred to the various provisions of Bihar & Orissa Public Demand Recovery Act, 1914, more notably the provisions related to the filing of certificate on requisition as dealt in Section 6 of the Act, service of notice and copy of certificate on certificate debtor in terms of section 7 of the Act, effect of service of notice of certificate as per Section 8 of the Act, filing of petition denying liability enumerated in section 9 of the Act and hearing and determining of such petition in terms of Section 10 of the Act. In referring to the aforesaid provisions of Bihar & Orissa Public Demand Recovery Act, 1914, the learned senior counsel has tried to highlight the fact that the Certificate Officer is fully empowered under the Act to hear the certificate debtor as also to consider the objection, if any, made by the certificate debtor and it has further been delegated with the power to determine as to whether the certificate debtor is liable for the whole or any part of the amount, for which the certificate was signed and has the jurisdiction to set aside, modify or vary the certificate accordingly. In such circumstances, as has been argued by the learned senior counsel for respondent nos. 1 to 4, this Court while deciding an issue sitting in writ jurisdiction under Article 226 of the Constitution cannot divest the powers of the Certificate Officer, who has been empowered thus under the Act and by usurping the jurisdiction of the certificate officer decide the issue itself. It has further been submitted that the statute itself has been enacted to decide certificate proceedings and there being a specialized forum for deciding the question as to whether the certificate, which has been filed raising the demand is within the precincts of various tariff prevalent for the period, in which the bills were raised, there appears no occasion for interfering in the said proceedings. It has also been urged that whatever arguments have been advanced on behalf of the petitioner have been taken by the petitioner in its objection filed before the Certificate Officer and there cannot be any parallel proceeding to decide the veracity, correctness or otherwise for the bills raised, which is under challenge in the present writ application and in view of the wide amplitude of powers vested upon the Certificate Officer under the statute, the entire dispute relating to raising of the bills can be properly appreciated by the Certificate Officer. The learned Senior Counsel further adds that umpteenth times, the petitioner had moved various forums and revised/rectified bills, which were raised and which is the subject matter of the present writ application was pursuant to the order dated 2.5.2013, passed in CWJC No. 852 of 2000R. It has been submitted that in fact after the order was passed in CWJC No. 852 of 2000R, the petitioner had preferred a review application being Civil Review No. 40 of 2013, in which after consideration of the entire aspects of the case and the review sought for by the petitioner, the same was dismissed. In fact, learned senior counsel for respondent nos. 1 to 4 adds that the issues, which have been raised by the petitioner in the present writ application, had mostly been considered in CWJC No. 852 of 2000 R as well as in Civil Review No. 40 of 2013 and since the issues in earlier proceedings and the present proceeding seems to overlap each other and the same having been decided by the Hon'ble Single Judge in the earlier round of litigation, the same cannot be re agitated and reopened as it would virtually result in sitting in appeal over the judgment of the Hon'ble Single Judge. It has also been submitted that the issue of fuel surcharge has also been decided against the petitioner in C.W.J.C. No. 2758 of 2000 R. The learned senior counsel also adds that without paying the electricity dues, the petitioner has

surrendered the electrical connection taken from the Board which further goes to show the conduct of the petitioner.

Replying to the contentions advanced by Mr. Ajit Kumar, learned senior counsel appearing for respondent nos. 1 to 4, it has been submitted that challenge to the bill has been raised for the first time in the present writ application and never before the rectified bills were an issue in any forum. It has further been submitted that the submission made by the respondents with respect to resjudicata and constructive resjudicata, the same has been repelled by this Court vide order dated 26.03.2015 while allowing I.A. No. 651 of 2015. Responding to the stand taken by the respondents that when the petitioner has submitted to the jurisdiction of the Certificate Officer, the writ application could not be entertained, it has been submitted that the certificate officer is proceeding speedily with an objection to pass an order before the issue in the present writ application is finally decided. Mr. M.L. Verma, learned senior counsel, further adds that the actual KVA recorded was much less than the contracted demand and therefore it is wholly fallacious and misleading on the part of the Board to suggest that the petitioner was trying to avail and utilize more load merely because the fixtional KVA had been fixed at a higher figure. So far as the issue of fuel surcharge, which has been raised by learned senior counsel for respondent nos. 1 to 4, it has been submitted that various consumers had raised the issue earlier and several interim orders were passed in their favour and the petitioner was not the sole consumer to have approached this Court challenging the fuel surcharge. It cannot be by any stretch of imagination concluded that the revised/rectified bills cannot be challenged merely on the ground that a certificate proceeding has been initiated. Moreover, as per learned senior counsel for the petitioner, the writ application was filed in 2013 and after expiry of a considerable long period of time, counter affidavit had been filed by the respondent nos. 1 to 4 and if in the meantime a certificate proceeding has been initiated , the same cannot cause any hindrance to this Court to decide the issue as to whether the rectified bills raised by the Board pursuant to the order passed in CWJC No. 852 of 2000 R was in terms of the tariff applicable from time to time. Learned senior counsel further adds that misleading arguments have been advanced by learned senior counsel for respondents nos. 1 to 4 that the petitioner had deliberately surrendered its electrical connection given by the Board while consuming electricity from another licencee-JUSCO inasmuch as the connection from JUSCO was taken in the year 2008, which was during the pendency of CWJC No. 852 of 2000 R and since the petitioner was not in need of the electricity being supplied by the Board, it had surrendered its connection.

Mr. Sudarshan Srivastava, learned counsel appearing for respondent no. 5, has submitted that the certificate officer is competent to decide as to whether the bills were raised in terms of the tariff applicable from time to time. It has further been submitted that once the amendment application preferred by the petitioner has been rejected by this Court and which has been affirmed in appeal, the said order having attained finality and the petitioner having submitted to the jurisdiction of the certificate officer, the issue raised by the petitioner can best be decided by the certificate officer. It has also been submitted that in terms of the provision of Bihar & Orissa Public Demand Recovery Act, the Certificate Officer is competent enough to decide the issues, which have been raised by the petitioner in the present writ application with respect to the applicability of the tariff on the revised/rectified bills. So far as the various legal issues, which have been raised by the petitioner, learned counsel for respondent no. 5 adds that whatever judgements have been relied upon the petitioner are binding on the certificate officer and he has to consider each and every aspect of the matter before coming to a final conclusion.

Before embarking on a threadbare discussion of the rival submissions advanced by the respective counsel, It would be necessary to consider at the very inception the judgements rendered by the Hon'ble Single Judge in WPC No. 852 of 2000 R and the subsequent order passed in Civil Review No. 40 of 213. The sole purpose of doing so is to arrive at such finding which would obliterate issues, which are overlapping and which have already been decided in CWJC No. 852 of 2000 and in Civil

Reivew No. 40 of 2013. The first issue would be whether the delayed payment surcharge (DPS) has been considered by the learned Single Judge or not. In CWJC No. 852 of 2000R, the question of DPS has been answered against the petitioner, which for the sake of reference, is quoted hereunder:-

"Petitioner cannot be absolved of the liability to pay delayed payment surcharge on the rectified bill, which is due to the respondents after the challenge to the applicability of the tariff to their Unit has failed".

In the review application by the petitioner, one of the grounds which were taken for review of the order dated 2.5.2013, in CWJC No. 852 of 2000 R is that the petitioner would be liable to pay delayed payment surcharge on the rectified bills raised after rectification reckoned from 16.03.2000. The basis for raising such plea was clause 16.2 of the 1993 tariff. However, this contention was negated and it was held thus:-

*"**15.** This Court, after answering the sole question raised by the writ petitioner in the negative, held that the instant tariff schedule is applicable to the petitioner's unit and in such circumstances the petitioner is liable to pay the bills raised under the said tariff schedule dated 24.9.1999. The petitioner was under an obligation to pay the impugned bills and then protest. If the petitioner would have succeeded in its challenge to the impugned bills, whether whole or part of it, it would have been entitled to refund of the same with interest. Since, the petitioner had been enjoying the stay granted earlier for the last 13 years in respect of the impugned bills in question, this Court in order to ensure that no parties suffer because of operation of the stay during the pendency of the writ application, in the facts and circumstances, considered it proper and equitable to direct that the petitioner would be liable to pay delayed payment surcharge on the rectified bills raised after correction of the computation error to be reckoned from the date of impugned bill dated 16.3.2000 after the challenge to the applicability of the tariff to their Unit has failed.*

In such circumstances, the contention of the petitioner is a re agitation of the same issue, which has already been decided and which is the subject matter of the appeal filed by the petitioner against the order dated 2.5.2013, passed in CWJC No. 852 of 2000 R and this Court is not empowered to reopen the said issue.

Much stress has been laid by learned senior counsel for the petitioner that various judgments on the issue point to the fact that the rectified bills which have been raised by the Respondent Board is not in accordance with the tariff applicable from time to time. The learned senior counsel has also relied upon the various judgments which are noted here in below:-

In the case of M/s Vimal Deep Steel Pvt. Ltd. Vs. Jharkhand State Electricity Board through its Chairman (WPC No. 3517 of 2010) and Bharat Ingots & Steel Pvt. Ltd., Jamshedpur Vs. Jharkhand State Electricity Board (WPC No. 3647 of 2005, it has been held that with effect from 1.1.2004 , the tariff of 1999 and 2001 has no application in the territory of State of Jharkhand because by that time, the Jharkhand State Electricity Regulatory Commission had already issued tariff which is applicable in the State of Jharkhand and thereby the bills raised by the JSEB had been quashed. In WPC No. 3647 of 2005, it was held that the tariff issued by the BSEB on 7.5.2001 is not applicable in the State of Jharkhand and the JSEB has no power to raise bill on the basis of aforesaid tariff.

Similar was the judgment rendered by this Court in WPC No. 3304 of 2008 (Jharkhand State Electricity Board & Another Vs. M/s Lord Balaji Manufacturing Steel Pvt. Ltd. & Ors.).

Learned senior counsel for the petitioner has also relied upon the judgements rendered in the case of M/s Vikromatic Steel Pvt. Ltd. Vs. JSEB & Ors., reported in (2003) 4 JCR 247, Kanoria Chemicals & Industries Vs. U.P. State Electricity Board & Ors., reported in (1997) 5 SCC 772, Kusumam Hotels Pvt. Ltd. Vs. Kerala State Electricity Board & Ors., reported in (2008) 13 SCC 213, Uptron India Ltd. Vs.

Shammi Bhan & Anr., reported in (1988) 6 SCC 538 and LPA No. 466/2010 with LPA No. 465/2010 (JSEB & Ors. Vs. M/s Laxmi Business and Cement Company Pvt. Ltd. The judgments, which have been relied upon by the learned senior counsel for the petitioner, are an effort to show that the rectified bills, which have been raised by the respondent Board was not in accordance with the tariffs applicable from time to time. The petitioners have already filed their objection in the certificate proceedings. Since the certificate officer is in seisin of the matter, it can make a meticulous examination and the bills which the petitioner contends should have been raised in terms of the tariff applicable from time to time which the certificate officer is not precluded from doing so as in terms of Section 10 of the Bihar & Orissa Public Demand Recovery Act, which envisages that the certificate officer after hearing and after taking evidence, if necessary, determines whether the certificate debtor is liable for the whole or any part of the amount, for which the certificate was signed and may set aside, modify or vary the certificate accordingly.

It is a settled principle of law that a quasi judicial authority discharging quasi judicial function in exercise of the statutory power is entitled to discharge his function in light of his own independent perspective. When a statutory authority is vested with the power to determine such questions as in the present writ application, the final determination by the said authority is a necessity at the first instance. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complimentary to the principles of natural justice which the quasi judicial authorities are bound to observe. While considering any issue before it which is affecting rights of the parties, the quasi judicial authorities are required to consider each and every aspect of the issue at hand and on consideration is required to pass a reasoned order. Such order as has been held by the Hon'ble Supreme Court in the case of Kranti Associates Pvt. Ltd. & Anr. Vs. Masood Ahmed Khan & Ors., reported in (2010) 9 SCC 496, which I quote "must not be like the inscrutable face of sphinx". Moreover, the Bihar & Orissa Public Demand Recovery Act, 1914 is a complete code in itself vesting the Certificate Officer with a wide amplitude of power to determine whether the certificate debtor is liable for the whole or any part of the amount, for which the certificate was signed and may set side, modify or vary the certificate accordingly. The Bihar & Orissa Public Demand Recovery Act in its inbuilt provision has protected the certificate debtor to the extent of filing objections and the Certificate Officer is duty bound to consider the objections and may take evidence if necessary and thereafter decide on the issue finally. The statute provides for determination of the certificate claim and when different hierarchies providing Forums in relation to passing of an order as also appellate or original order by no stretch of imagination can a higher authority interfere with the independence, which is the basic feature of any statutory scheme involving adjudicatory process. The petitioner having subjected itself to the certificate proceedings by filing objections and taking various steps before the said authority, it is open for the petitioner to raise all its points before the Certificate Officer, who shall consider the same and thereafter pass necessary orders.

In view of the alternative Forum, to which the petitioner has subjected itself for adjudication, this Court in writ jurisdiction would be reluctant to consider the issue with respect to the rectified bills, as has been raised by the petitioner in this application.

Accordingly, I do not find any merit in this application, which is, hereby, dismissed.

I.As., if any, pending are disposed of.

(Rongon Mukhopadhyay,J)

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IN THE HIGH COURT OF JHARHAND AT RANCHI

M/S SANJEEV TRADING COMPANY...
VERSUS
JHARKHAND STATE URJA VIKAS NIGAM...

L. P. A. No. 245 of 2014

Bench : ***The Hon'le Mr. Justice Virender Singh, Chief Justice***
The Hon'ble Mr. Justice D.N.Patel

M/s Sanjeev Trading Company through its proprietor Sri Sanjeev Arora son of Sri Binod Kumar Arora, Resident of West Market Road, Upper Bazar, Ranchi, PO- G.P.O., PS-Kotwali, District- Ranchi … … Appellant

Versus

1. Jharkhand State Urja Vikas Nigam Limited through its Secretary, PO- Dhurwa, PS- Jgarnathpur, District-Ranchi 2. Jharkhand State Electricity Distribution Company through its Secretary, PO- Dhurwa, PS- Jagarnathpur, District- Ranchi 3. The Electrical Superintending Engineer, Electric Supply Circle, Ranchi, PO- Dhurwa, PS- Jagarnathpur, District- Ranchi 4. The Electrical Executive Engineer, Electric Supply Division, Ranchi West, Badri Bhawan, Ratu Road, Ranchi, PO- Hehal, PS- Sukhdeo Nagar, District- Ranchi 5. The Assistant Electrical Engineer, Electric Supply Sub-Division, Ratu Chatti, PO- Hehal, PS- Sukhdeo Nagar, District- Ranchi 6. The State of Jharkhand … … Respondents

For the Appellant : Mr. Rajeev Ranjan Tiwary, Advocate

For the Respondents : M/s Ajit Kumar, Saket Upadhyay & Shishir Suman, Advocates.

Order No. 08: **Dated 04.12.2014**

Per D. N. Patel, J.

1. The writ petition being W.P.(C) No. 2504 of 2014 was preferred by the appellant (original petitioner) for quashing Letter No. 1563/E.S.E./Ranchi dated 25th April, 2014, issued by the Electrical Superintending Engineer, Electric Supply Circle, Ranchi, whereby, he was refused to be provided fresh electricity connection, mainly for the reason that a sum of Rs.43,03,394/- plus Rs. 28,794/- towards the consumption of electricity is due on the same premises. This writ petition preferred by this appellant, has been dismissed by the learned single Judge vide order dated 27th June, 2014.

Therefore the Letters Patent Appeal has been preferred by the appellant (original petitioner).

2. ***FACTUAL MATRIX:***

- The premises, in question, where this appellant (original petitioner) is seeking fresh electricity connection, is a coldstorage - commercial premises. This cold-storage is having two chambers, plant room, generator room and two sorting verandah.
- This premises has been obtained by this appellant (original petitioner) on lease for three years and the rent is Rs.15,00,000/- per year, which is subject to increase by 15% after three years. The lessor is Bihar State Cooperative Marketing Union Ltd. whereas the lessee is the present appellant (original petitioner). The said lease agreement has been entered in between the parties on 29th January, 2014 (Annexure 1 to the memo of Letters Patent Appeal).
- Earlier, the lease was given to one Sri Chandra Shekhar Prasad Singh, who has not paid the electricity dues amounting to Rs.43,03,394/- and Rs.28,794/-, after using the same for running the cold-storage.

- Said Sri Chandra Shekhar Prasad Singh was issued the bill dated 22nd October, 2009 along with final assessment order dated 20th September, 2009, but, he has not paid the said amount to the respondent-Electricity Company and filed a writ petition bearing W.P.(C) No. 5593 of 2009 for quashing the final assessment dated 20th September, 2009 and the bill dated 22nd October, 2009. This writ petition bearing W.P.(C) No. 5593 of 2009 was withdrawn by Sri Chandra Shekhar Prasad Singh on 8th August, 2014 and the respondents have started taking all steps, including the proceedings for auction of the premises, in question, so that the dues of the respondents can be recovered from Sri Chandra Shekhar Prasad Singh.
- The electricity supply of the cold-storage, in question, has been disconnected since long, on account of non-payment of energy charges as also other charges. There was also a case of theft of energy. Delayed payment surcharge is also upon the property, in question.
- The dues of electricity can be recovered as a land revenue and there can also be a recovery of the dues under Bihar & Orissa Public Demand Recovery Act, especially under Section 18 thereof. Thus, the dues are attached with the property and can be recovered as a land revenue.

3. *ARGUMENTS CANVASSED ON BEHALF OF THE APPELLANT:*

- This appellant (original petitioner) is a separate legal entity, who can sue or can be sued.
- This appellant (original petitioner) is in no way connected with the earlier defaulter viz. Sri Chandra Shekhar Prasad Singh.
- Reliance has been placed upon a decision rendered by Hon'ble Supreme Court in the case of Isha Marbles v. Bihar State Electricity Board & ors., as reported in (1995) 2 SCC 648.
- This appellant (original petitioner) is legally entitled to get the electricity connection and is ready and willing to pay the charges of electricity consumption and all such other incidental charges, for getting electricity connection.
- In the judgment of the learned single Judge it has been observed that this appellant (original petitioner) is an agent of Bihar State Cooperative Marketing Union Ltd. (lessor) to run and manage the cold-storage, but, this is incorrect, as the present appellant is a lessee of the lessor and not the agent.
- The aforesaid aspects of the matter have not been properly appreciated by the learned single Judge and hence, the judgment and order passed by the learned single Judge in W.P. (C) No. 2505 of 2014 dated 27th June, 2014 deserves to be quashed and set aside and the letter issued by the Electrical Superintending Engineer, Electric Supply Circle, Ranchi, may be quashed and set aside, by allowing the instant Letters Patent Appeal and the writ petition, preferred by this appellant (original petitioner).

4. *ARGUMENTS CANVASSED ON BEHALF OF THE RESPONDENTS:*

- The premises, in question, is a cold-storage - commercial premises, which is consuming lot of electricity. The lessor viz. Bihar State Cooperative Marketing Union Limited, has given the premises, in question, on lease, initially to one Sri Chandra Shekhar Prasad Singh, who never paid the dues of electricity, as stated herein above to the tune of Rs.43,03,394/- and Rs.28,794/-. Thereafter, notice was issued to the said Sri Chandra Shekhar Prasad Singh, assessment was made and the final assessment order is dated 20th September, 2009 and the bill was also finalized and was issued on 22nd October, 2009. Instead of depositing the aforesaid amount, Sri Chandra Shekhar Prasad Singh filed a writ petition bearing W.P.(C) No. 5593 of 2009 before this Court, which was ultimately withdrawn by the said petitioner (Sri Chandra Shekhar Prasad Singh) on

8th August, 2014. However, the respondents-Electricity Company has not started any proceeding for recovery of the amount. Meanwhile, the property, in question, has been given on lease by the lessor to the present appellant (original petitioner) and as there are dues on the premises, in question, the electricity connection has not been given to the premises, in question.

- As per Clause 1 of the agreement between the lessor and lessee, which is at Annexure 1 to the memo of Letters Patent Appeal, the lessee is an agent of the lessor.
- As per Clause 10 of the agreement between lessor and lessee (appellant), the lessee is bound to pay timely all electric consumption or other charges and the lessee shall not leave any amount to be paid on this account on the date of expiry of the lease. Further, at the end of every month, the proof of payment of electricity bill will be produced before the lessor and the lessor shall have option to realize the unpaid bills or other liabilities thereon.
- As per several Clauses of the lease deed, the electricity dues are to be paid by the lessee and if the same are not paid, the lessor can recover the same. The dues upon the premises, in question, with interest etc. is more than Rs.50,00,000/- and, therefore, the electricity connection, which has been disconnected since long, has not been revived by the respondents-Electricity Company, till the electricity dues are paid, vide letter dated 25th April, 2014 (Annexure 3 to the memo of Letters Patent Appeal), which was under challenge in the writ petition and, thus, no error has been committed by the learned single Judge in appreciating these contentions of the respondents.
- As per the definition of the word "consumer" and as per Section 2(15) of the Electricity Act, 2003, the owner of the premises is also covered by the word "consumer" and, therefore, both lessor as well as lessee are responsible for payment of electricity consumed charges and, therefore also, unless the dues are paid either by the lessee or by the lessor, no fresh connection can been given for the very same coldstorage – the premises, in question.
- The dues of electricity consumption charges can also be recovered as an arrear of land revenue, even by auctioning the premises, in question. Thus, the dues are attached with the property, if not paid by the person/body concerned. The dues can also be recovered under the provisions of Bihar & Orissa Public Demand Recovery Act, 1914, especially as per Section 18 to be read with Section 3(6) and with Clause No. 9-A of Schedule I to the Act, 1914.
- Relying upon a decision, rendered by Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam v. DVS Steels and Alloys Private Limited & ors., as reported in (2009) 1 SCC 210, it is submitted that the distributor of the electricity can stipulate in the terms, subject to which it would supply electricity. It can stipulate, as one of the conditions for supply, that the arrears or dues in regard to the supply of electricity made to the premises when it was in occupation of the previous owner or occupant, should be cleared before the electricity supplied is restored to the premises or a fresh connection is provided to the premises. In the facts of the present case also, there is a condition of the distributor of electricity that unless the earlier dues are paid, there shall be no restoration of the electricity nor shall there be any fresh connection to the same premises. This aspect of the matter has been properly appreciated by the learned single Judge and hence, this Letters Patent Appeal may not be entertained by this Court.

5. ***REASONS:***

(i) It appears that the premises in question, is a cold-storage, which is a commercial premises. The lessor of the said premises is Bihar State Cooperative Marketing Union Ltd., which had given initially the premises, in question, to one Sri Chandra Shekhar Prasad Singh, on lease. This lessee was given electricity connection, who consumed sizable quantity of electricity for running the cold-storage, without paying the electricity consumption charges and ultimately, the electricity

connection was disconnected by the respondents. Necessary notices were issued to him. Thereafter, final assessment order was passed against the said lessee on 20th September, 2009 and thereafter, the final bill was issued to him on 22nd October, 2009. This amount was not paid by the said lessee and he preferred W.P.(C) No. 5593 of 2009 before this High Court, which was ultimately withdrawn by the said lessee on 8th August, 2014. The amount of electricity consumption charges is at Rs.43,03,394/- and at Rs.28,794/-.

(ii) Thereafter, the same lessor viz. Bihar State Cooperative Marketing Union Ltd. has given the very same premises viz. the cold-storage to another lessee, who is the present appellant (original petitioner). Still the dues are unpaid and, therefore, electricity connection has not been given to the new lessee for the same cold-storage and the notice was issued by the respondents that unless the earlier dues are paid, no electricity connection will be given. This letter was issued by the respondents on 25th April, 2014, which was challenged by the present appellant (original petitioner) before this Court by way of a writ petition and the same having been dismissed, the present appeal has been preferred.

(iii) Thus, it appears that sizable amount towards electricity consumption charges has remained unpaid and, therefore, the electricity connection has not been given. The argument canvassed by the learned counsel for the appellant is that he is not concerned with the earlier defaulter nor the earlier electricity was consumed by this appellant and, therefore, he is not liable to make payment of the earlier. This attractive argument is not accepted by this Court, mainly for the reasons that:

(a) The respondents-Electricity Company is wholly owned, managed and controlled by the State Government and, therefore, it is an instrumentality of the State Government. In fact, it is one of the departments of the State Government, but, only for the administrative convenience, it has been separated as Electricity Company. The dues of the respondents are public dues, which can be recovered as an arrears of land revenue and, therefore, the dues are connected with the property, if the defaulter is not making payment of the dues.

(b) The earlier lessee, namely, Sri Chandra Shekhar Prasad Singh, had not paid the dues of electricity, which has accumulated to the tune of Rs.43,03,394/- plus Rs.28,794/- (as mentioned in the letter of the respondents dated 25th April, 2014, which was challenged in the writ petition). If the dues are not paid by the earlier lessee, automatically the dues can be recovered by auction of the said premises.

(c) It is also the duty of the consumer to make payment of the electricity dues. The word "consumer" is defined under Section 2(15) of the Electricity Act, 2003 and the definition of the word "consumer" reads as under:

> *"2. Definitions.- In this Act, unless the context otherwise requires,-*
>
> *xxx xxx xxx*
>
> *(15) consumer means any person who is supplied with electricity " " for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be." (emphasis supplied)*

In view of the aforesaid definition, the consumer includes the occupier of the premises as well as the owner of the premises. In the facts of the present case, it includes both, the lessee and the lessor (the occupier and the owner of the premises, in question).

(d) Whenever any governmental dues are not paid by any person, it can always be recovered from the property, either by sale of the property or sale of the lease hold rights for the remaining period of lease, Here, as stated above, "consumer" includes the owner of the premises, which is lessor in this case, namely, Bihar State Cooperative Marketing Union Ltd. Its property viz. the cold-storage, in question, can be auctioned by the respondents-Electricity Company, if the dues towards the consumption of electricity are not paid.

(e) If the arguments of the learned counsel for the appellant (original petitioner) is accepted, then every time some lessee will come into picture, will consume sizable electricity for running cold-storage, will not pay the electricity dues and will run away as a defaulter. Thereafter, the claver lessor will lease out the very same property to a second lessee, who will also consume sizable electricity, will not pay the huge electricity consumed charges and will run away as a defaulter, as a second lessee and again the lessor will give on lease the very same property to a third lessee and similar will be the modus operandi for the third lessee also. He will also consume sizable electricity, will not pay the electricity consumed charges and will run away as a defaulter and again the forth lessee will enter into the very same premises. Thus, the electricity will be consumed continuously for the very same premises and one by one the defaulter will run away and a lot of public money will remain unpaid. This situation cannot be allowed where rule of law is prevailing. Supply of electricity is sale of goods. Seller (supplier of electricity) can always stipulate as a condition of sale, that earlier dues for supply of electricity to the same premises, must be cleared. Such condition of sale of electricity is not under challenge. It is not contended that such condition is arbitrary or unreasonable. Therefore, the argument canvassed by the learned counsel for the appellant (original petitioner) is not accepted by this Court.

(iv) The respondents-Electricity Company has a condition for re-connection of the electricity or for grant of fresh electricity connection for the premises, in question, that the earlier dues for the premises, in question, has to be paid. This condition is a valid condition, as has been held by Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam v. DVS Steels and Alloys Private Limited & ors. (supra), paragraph nos. 11, 12, 13, 14 and 15 whereof read as under:

"11. *The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary.*

12. *But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before*

the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

13. *A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor.*

14. *We do not find anything unreasonable in a provision enabling the distributor/supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/ occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.*

15. *In this case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid pro rata. They were justified in making the demand. Therefore, it cannot be said that the collection of Rs 8,63,451 from the first respondent was illegal or unauthorised. It is relevant to note that when the said amount was demanded and paid, there was no injunction or stay restraining the appellant from demanding or receiving the dues." (emphasis supplied)*

In view of the aforesaid decision, if there is any arrears of the electricity charges, to be paid by the previous owner/occupant, it should be cleared by the subsequent owner or occupant and thereafter only, the electricity can be restored or fresh electricity connection can be given.

(v) The electricity dues can also be recovered under the provisions of Bihar & Orissa Public Demand Recovery Act, especially as per Section 18 thereof. In the facts of the present case, the earlier lessee, namely, Sri Chandra Shekhar Prasad Singh, who is a defaulter, was given necessary notices. Assessment order was passed on 20th September, 2009. Thereafter, the bill was also issued on the basis of the assessment order on 22nd October, 2009, but, instead of making payment of the said dues, the said lessee, namely, Sri Chandra Shekhar Prasad Singh had preferred a writ petition before this Court bearing W.P.(C) No. 5593 of 2009 and ultimately the said writ petition was withdrawn by the said lessee-writ petitioner-Sri Chandra Shekhar Prasad Singh on 8th August, 2014. In fact, immediately steps should have been taken by the respondents- Electricity Company for recovery of the said amount, but, they have yet not started the recovery process, which is

legally known as "certificate case". The respondents-Electricity Company should have shown indulgence, as quick actions are required, otherwise the lessor of the premises, in question, will give fresh lease to another lessee, as has happened in this case, and the new lessee will demand the new electricity connection.

(vi) It ought to be kept in mind by the respondents11 Electricity Company that the electricity dues are public dues, which ought to be recovered as early as possible. During the course of argument, learned counsel for the respondents has submitted that in several cases, huge amount of electricity dues have not been recovered by the respondents and the figure of un-recovered amount is more than Rs.10,000,00,00,000/- (rupees ten thousand crores). It ought to be kept in mind by the Government Companies, especially Public Utility Service Providers that the dues of these Public Utility Service Providers must be recovered at the earliest. Too much lethargic approach on the part of these Public Utility Service Providers may tantamount to conspiracy e.g. huge amount running into several lakhs if not recovered by the Electricity Company, which is wholly owned by the Government, or e.g. Municipalities etc., in connivance with the defaulters, for a longer time, may tantamount to conspiracy, which leads to not only civil liability, but, also may tantamount to an offence.

We, therefore, direct the respondents to file an affidavit as to who are the defaulters in the State of Jharkhand of nonpayment of electricity charges (for consumption of electricity, for non-payment of surcharge, for non-payment of electricity taxes etc.). A table will be prepared as under, in the affidavit to be filed by the Chairman of respondent no.1:

Sl. No.	Name of defaulter person/sole proprietor/ partnership firm/ company	Since when dues are unpaid	Principal amount to be paid	Interest if any charged	What actions initiated by Ele. Company for recovery of unpaid dues	Is there any litigation pending before any authority/ tribunal/ arbitrator/ court? Number of said litigation and name of authority/ tribunal/ arbitrator/court where the matter is pending	Is there any stay for recovery of dues? If yes, date of order.	Whether Ele. Company has preferred any review/ modification or appeal/ petition against stay granted.

This Affidavit shall be treated as a material for the Public Interest Litigation, by this Court.

The affidavit shall be filed on or before 31st January, 2015.

Registrar General of this Court is directed to place the affidavit to be filed in the aforesaid manner along with copy of the order of this Court in this Letters Patent Appeal, so that upon looking to the affidavit, this Court may take suo motu cognizance of Public Interest Litigation.

6. In the aforesaid peculiar facts of the present case viz. the agreement between the Electricity Service Provider and the new consumer, unless the dues are paid, no re-connection or new connection will be given. Moreover, looking to the fact that the word "consumer", as defined in Section 2(15) of the Electricity Act, 2003, includes the lessee as well as lessor and also looking to the peculiar facts of the present case that the electricity dues can be recovered as an arrear of land revenue and also looking to the special facts of the present case that the public dues of the respondents-Electricity Company can be recovered under Section 18 of the Bihar & Orissa Public Demand Recovery Act and further, looking to Clauses 1, 9 and 10 of the lease agreement between the lessor and the lessee, it makes the present case different from the facts of the case, mentioned in Isha Marble (supra) and hence, the appellant is

not entitled to the relief of quashing the letter of Electrical Executive Engineer, Electric Supply Circle, Ranchi dated 25th April, 2014 (Annexure 3 to the memo of Letters Patent Appeal).

7. Thus, we see no error committed by the learned single Judge in appreciating the aforesaid facts, reasons and judicial pronouncements. The learned single Judge has rightly dismissed the writ petition being W.P.(C) No. 2505 of 2014 and, thus, we see no reason to deviate from the conclusions, arrived at by the learned single Judge. Therefore, there being no substance in this Letters Patent, the same is hereby dismissed.

(Virender Singh, C.J.)
(D.N. Patel, J.)

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

BHAGWATI PRASAD AGARWALA... VERSUS STATE OF JHARKHAND

W.P (T) No. 1967 of 2013

With

W.P (T) No. 1964 of 2013

With

W.P (T) No. 1968 of 2013

Bench : ***Hon'ble Mrs. Justice R. Banumathi, Chief Justice,***
Hon'ble Mr. Justice Amitav K. Gupta

Decided on 31st, July, 2014

Bhagwati Prasad Agarwala, Engineering Works Private Limited, Pakur Petitioner In W.P(T) No.1967/2013 Ravi Engineering Works, Partnership Firm, Through its Partner Raj Kumar Agarwala Petitioner In W.P (T) No. 1964/2013 Vishal Industries, Partnership Firm, Through its Partner Ravi Kumar Agarwal Petitioner In W.P (T) No. 1968/2013
Versus
The State of Jharkhand & Others Respondents In All Cases

For the Appellant/Petitioner : M/s. Binod Poddar, Senior Advocate, Darshana Poddar Mishra, Piyush Poddar, Amrita Sinha, Vikas Pandey

For the Respondents :M/s. Ajit Kumar, AAG, Kumar Sundaram, JC to AAG

C.A.V On 24th July, 2014 **Pronounced On 31st July, 2014**

R.Banumathi,C.J

These writ petitions are filed interalia (i) for quashing the demand notices of taxes payable under Jharkhand Sales Tax Act and Central Sales Tax Act for the periods 2001-02 to 2005-06; (ii) for quashing the Certificate Cases initiated on the basis of the requisitions for a Certificate for realization of dues for various periods and (iii) for directing the respondents not to realize the alleged dues and other reliefs.

2. Though the writ petitioners are three different companies, the Directors/persons in control of all three writ petitioner-companies are one and same and since identical issues are involved, all the three writ petitions were taken up together and shall stand disposed of by this common judgment. For proper appreciation of the contentious points and for convenience, the facts of W.P (T) No.1967/2013 are referred.

3. The petitioner was served with demand notices under Section 13(4) of the Bihar Finance Act, 1981 for the period from 2001-02 to 2005-06. The case of the petitioner is that after receipt of the demand notices, the petitioner applied for certified copies of the assessment orders and of the entire ordersheets to enable the petitioner to avail its statutory right of filing appeal/revision in accordance with the provisions of the Bihar Finance Act, but the respondents till date have not supplied certified copies of the assessment orders despite filing of the appropriate application for obtaining certified copies of the assessment orders and sending reminders. The petitioner and its Directors received notices dated 14.3.2011 under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (for short PDR Act) in connection with Certificate Case No.3/2010-11 initiated on the basis of the requisition for a

certificate by the 2nd respondent for realization of the alleged dues of Rs.1,09,25,649/-. On receipt of the aforesaid notice under Section 7 of the PDR Act, the petitioner filed his objections under Section 9 of the PDR Act on 18.4.2011, interalia, praying to drop the aforesaid certificate proceedings for the reasons mentioned therein and the certificate proceeding is pending. According to the petitioner, there is liquidation/winding up proceedings pending against the petitioner in the Calcutta High Court in Company Petition No.314/2007 and vide order dated 2.2.2013, the Calcutta High Court passed the order of winding up. Under these circumstances, the petitioner has filed this writ petition for quashing the demand notices and also the certificate proceeding, which is pending.

4. Learned Senior Counsel, Mr.B.Poddar, contended that the assessment orders were passed and copy of the assessment orders were not supplied and therefore, the notices of demand issued are liable to be quashed. Learned Senior Counsel submitted that even though the petitioner filed application for obtaining certified copies of the assessment orders on 30.8.2007 (Annexure – 3 series), the certified copies of the assessment orders and of the ordersheets were not furnished and as per Rule 29 of the Bihar Sales Tax Rules, without the certified copies of the assessment orders, the petitioner could not file appeal and as such, the petitioner has not been able to file appeal for the last seven years. Learned Senior Counsel further contended that the various notices of demand were ante-dated so as to make it appear that the assessment orders were passed within the stipulated time of four years as contemplated under Section 24 of the Bihar Finance Act.

5. Learned Additional Advocate General, Mr.Ajit Kumar, submitted that the demand notices were served upon the petitioner way back in the year 2006-07 or subsequently on relevant dates which were duly received by the petitioner and after lapse of so many years, the plea of the petitioner that he was not provided with the certified copies of the assessment orders cannot stand on any ground since the petitioner could have preferred appeal within 45 days from the date of service of demand notices as provided under the law. It was contended that the petitioner did not comply with the requirements of obtaining certified copies of the order by making application as prescribed under Rule 49 of the Bihar Sales Tax Rules and therefore, the petitioner cannot complain of non-furnishing of certified copy of the assessment orders. Taking us through the various provisions of the PDR Act, learned Additional Advocate General submitted that the said Act is a self-contained one containing mechanism to deal with the redressal of the grievance and the petitioner, having appeared in the certificate proceedings, cannot bye-pass the statutory provisions of the PDR Act by invoking writ jurisdiction.

6. Upon consideration of the submissions, the following points arise for determination in these writ petitions:-

(i) Whether the petitioner is entitled to invoke the writ jurisdiction on the ground that the certified copies of the assessment orders and complete ordersheets have not been furnished to the petitioner; and

(ii) Without availing the statutory remedy available under Bihar and Orissa Public Demand Recovery Act, 1914, whether the petitioner can challenge the demand notices and Certificate Proceedings by invoking the writ jurisdiction.

7. Without availing the statutory remedy available under the Bihar Sales Tax Act and the PDR Act, the petitioner has invoked the writ jurisdiction, challenging the demand notices and also Certificate Case No.3/2010-11 initiated for realization of the dues. For proper appreciation of the contentious pointed raised, we may usefully refer to the details of the assessment, date of institution, date of proceedings, date of order and date of demand notices and the date of receipt and amount involved and outstanding dues payable by the writ petitioner in W.P(T) No.1967/2013.

W.P.(T) 1967/2013 Bhagwati Prasad Agarwala Certificate Case No. 3/2010-11

Amount Rs. 1,09,25,649/-

Date of Institution	Date of Proceeding	Appeared	Date of order	Date of Demand Notice	Date of receiving
Financial Year 2001-02					
04.09.2004	27.01.2006 28.02.2006 18.03.2006	18.03.2006	18.03.2006	22.03.2006	30.08.2007
Financial Year 2002-03					
27.01.2006	28.02.2006 24.05.2006	20.06.2006	20.06.2006	20.06.2006	30.08.2007
Financial Year 2003-04					
04.09.2004		03.12.2007	03.12.2007	14.12.2007	11.12.2008
Financial Year 2004-05					
27.01.2006	19.08.2006 28.09.2007	25.02.2009	25.02.2009	25.02.2009	28.08.2009
Financial Year 2005-06					
27.01.2006	07.02.2006 17.02.2006 18.03.2006 20.09.2006	25.02.2009	25.02.2009	25.02.2009	28.08.2009

W.P.(T) No. 1967 of 2013

Financial year 2001-02			
	Tax Assessed	Tax Deposited	Outstanding dues
JST	Rs.6,44,455/-	Rs.1,96,254/-	Rs.4,48,201/-
CST	Rs.28,62,842/-	Rs.5,62,564/-	Rs.23,00,278/-
Financial year 2002-03			
JST	Rs.3,86,743.81	Nil	Rs.3,86,744/-
CST	Rs.9,13,290.85	Rs.2,00,000/-	Rs.7,13,290.85
Financial year 2003-04			
JST	Rs.6,01,026.72	Rs.17,624/-	Rs.5,83,402.72
CST	Rs.7,03,700/-	Rs.54,579/-	Rs.6,49,121/-
Financial year 2004-05			
JST	Rs.28,69,022.07	Rs.2,34,018/-	Rs.26,35,004.07
CST	Rs.21,46,688.65	Rs.1,31,098/-	Rs.20,15,590.65
Financial year 2005-06			
JST	Rs.5,70,600.13	Nil	Rs.5,70,600.13
CST	Rs.4,73,018.90	Nil	Rs.4,73,018.90

8. By perusal of the averments in the counter-affidavit, date of initiation of the assessment proceedings and various notices of demand served upon the petitioner, it is seen that the petitioner appeared in the assessment proceedings and subsequently did not appear and pursue the matter. In so far as the assessment relating to the financial year 2001-02, the first notice bearing no.658 dated 4.9.2004 was

issued to the petitioner. As per Section 16(1) and 16(5) of the Bihar Finance Act, 1981, the petitioner is required to file its returns within the time prescribed therein. In view of non-filing of returns, an amount of Rs.7,50,059.99 was levied upon the petitioner under Section 16(8) for non-filing of returns and under Section 16(9) for non-payment of admitted tax. Since the amount was not paid, the Department filed certificate case in compliance of the provisions of Section 27 of the Bihar Finance Act in Certificate Case No.2/2003. In Certificate Case No.2/2003, order was passed on 25.11.2004 directing the petitioner to pay the amount of Rs.7,50,059.99. Challenging the said order dated 25.11.2004 and also the certificate proceedings, the petitioner filed W.P(C) No.167/2005 and vide order dated 22.12.2008, the writ petition was dismissed by the High Court on the ground that since the petitioner has alternative remedy of appeal which is efficacious, he may avail the remedy of appeal for redressal of his grievance, if so advised. During the pendency of the said writ petition, in the assessment proceedings for the financial year 2001-2002, notices were issued to the petitioner and the petitioner filed Hazri on 18.3.2006 and the assessment order was passed on the same day, i.e. on 18.3.2006. As pointed out earlier in the Tabular Column, demand notice Nos.545, 546 dated 22.3.2006 (Annexure – I/1, I/2) were issued and the same were received by the petitioner on 30.8.2007. As against the said assessment order/demand notices, the petitioner had not preferred any appeal as stipulated under Section 45 of the Bihar Finance Act.

9. Section 45 of the Bihar Finance Act provides right of appeal to any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him or a person objecting to an order penalty passed against him or an order passed under Section 27 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorized in this behalf. As per Rule 29 of the Bihar Sales Tax Rules, an appeal under Section 45 shall be in Form XVIII in case of an appeal against an order of assessment or an order imposing penalty and the memorandum of appeal shall be accompanied by:-

(i) a certified copy of the order appealed against and the notice of demand, if any, served upon the appellant; and

(ii) in case of an appeal against assessment, a receipt showing deposit into the Government Treasury of at least 20 percentum of the tax assessed or such amount of tax as the appellant may admit to be due from him, whichever is greater.

10. The grievance of the petitioner is that he was not served with the certified copy of the various assessment orders and therefore, the petitioner could not prefer appeal. The petitioner, therefore, seeks for quashing the demand notices as the 2nd respondent has not supplied certified copies of the assessment orders for the aforesaid period despite filing of appropriate applications (vide Annexure – 3 series - challans) for obtaining certified copies of the assessment orders.

11. Even at the outset, it is to be pointed out that though the petitioner appeared in the assessment proceedings, the petitioner did not bother to apply for the certified copies of the assessment orders for the years 2001-2002 immediately after passing of the assessment order on 18.3.2006. As pointed out above, demand notices dated 22.3.2006 (2001-2002), 20.6.2006 (2002-2003) were served upon the petitioner on 30.8.2007 and only thereafter on 30.8.2007, the petitioner seemed to have submitted application for issuance of certified copy of the assessment order for 2001-02 and 2002-03. Likewise for the financial years, 2003-2004, 2004-05 and 2005-06, demand notices were served on the petitioner on 11.12.2008 and 28.8.2009 and the petitioner filed application for obtaining certified copy of the assessment orders on 6.1.2009 and 30.10.2007 respectively. The petitioner on 7.12.2009, 9.8.2010 and 7.12.2010 in its letter-head paper sent reminders to the authorities for supply of certified copy of the assessment orders and complete order sheets for the period from 1994-1995, 1995-1996, 1996-97, 1997-1998, 1998-1999, 2001-2002 to 2005-2006. The grievance of the petitioner is that in spite of

filing of application for issuance of the certified copy of the assessment orders and sending reminders, the same were not supplied to the petitioner and therefore, in this writ petition, learned Senior Counsel sought for a direction to the respondents for supply of the certified copies of the assessment orders to the petitioner and also sought for grant of liberty to the petitioner to challenge the assessment orders in accordance with law so as to enable the petitioner to pursue the statutory remedy.

12. The respondents have submitted that certified copies of the assessment orders could not be supplied since the petitioner had not filed application for obtaining the certified copies in the prescribed Form, i.e. Board's Miscellaneous Form No.124 and the application was not in the prescribed format. Board's Miscellaneous Form No.124 has been annexed in the counter-affidavit, as per which the person concerned, for obtaining certified copy, has to fill up various columns thereon, interalia, furnishing details of the case of proceeding in which such paper is to be found or was filed; ordinary searching fee deposited in court fee stamp; extra searching fee deposited in court fee in stamp; name of officer or department where the paper in question is to be found etc. and other details. Annexure 3 series are stated to be the challans for filing copy application for obtaining certified copies of the assessment orders. No material has been produced to show that the application for obtaining certified copies of the assessment orders were filed in the prescribed form/Board Miscellaneous Form No.124. Annexure 3 series - challans - are filed for showing that applications were filed for obtaining certified copies of the assessment orders for the period 2001-02 to 2005-06. But the petitioner has sent reminders on 7.12.2009, 9.8.2010 and 7.12.2010 stating that the petitioner requires certified copies of the assessment order for the periods 1994-95 to 2005-06. When the petitioner has not filed appropriate application in the prescribed Form No.124 for obtaining certified copies of the assessment order, the Department cannot be blamed for non-supply of the certified copies of the assessment orders.

13. It is pertinent to point out that while the petitioner was pursuing writ petition, W.P(C) No.167/2005, the petitioner did not seem to have been diligent in pursuing his application for certified copies of the assessment orders. When there is delay and laches on the part of the petitioner, the Court will be loath to come to the aid of such person. Challenging the certificate proceeding and having not filed appropriate application in the prescribed Form, the petitioner cannot plead for showing indulgence. In fact, W.P(C) No.167/2005 was dismissed on 22.12.2008 giving liberty to the petitioner to avail the statutory remedy of appeal for redressal of its grievance. Having not availed the statutory remedy of appeal, the petitioner cannot turn around and challenge the notices of demand on the ground that the certified copies of the assessment orders were not issued to him and the petitioner was not able to avail of the statutory remedy of appeal. Therefore, the petitioner cannot seek for a direction upon the respondents to issue certified copies of the assessment orders to pursue the statutory remedy of appeal.

14. Section 24 stipulates period of limitation for completion of the assessment proceedings. As per Section 24, except a proceeding under sub-section (5) of Section 17, Section 18 and sub-section (1) of Section 19, no proceeding for assessment of the tax payable by a dealer in respect of any period shall be initiated and completed except before expiry of four years from the expiry of such period.

15. Drawing our attention to the various dates, learned Senior Counsel submitted that for the financial year 2001-02, the assessment order is said to have been passed on 18.3.2006 and the demand notice was issued on 22.3.2006, whereas the demand notice is said to have been received by the petitioner only on 30.8.2007 and therefore, it is contended that it must be deemed that the order of assessment dated 18.3.2006 and the date of demand notice dated 22.3.2006 were ante-dated and that the same was passed without giving an opportunity of hearing to the assessee. It is further submitted that from the financial year 2001-02 – four year period expired on 31.3.2006, whereas the assessment order is said to have been passed just on the verge of expiry of four years on 18.3.2006 and the demand notice is said to have been received by the petitioner on 30.8.2007 beyond the stipulated period of four years

and thus, an inference has to be drawn that the date of assessment order was antedated. It was also submitted that the date of order of assessment regarding financial year 2002-03 was dated 20th June, 2006 and that the same was said to have been received by the petitioner on 30.8.2007, which would also lead to an inference that the assessment orders of the proceedings were ante-dated. In support of his contention, learned Senior Counsel placed reliance on [1994] 93 STC 406(SC) (State of Andhra Pradesh v. Khetmal Parekh) and also on the decision of the Division Bench of this Court in W.P(T)1006/2010 (M/s.MECON Limited v. The State of Jharkhand& Ors.). In the said case State of Andhra Pradesh v. Khetmal Parekh, an assessment order passed in September, 1969 was sought to be revised by the Deputy Commissioner under Section 20(2) of the Andhra Pradesh General Sales Tax Act, 1957 and he passed an order prejudicial to the assessee and the order was said to have been made in January, 6, 1973 but it was served after the expiry of four years from the date of the assessment order, on the assessee on November, 21, 1973, 10½ months later and there was no explanation by the Deputy Commissioner why the service of the order was so delayed. In such facts and circumstances of the case, Hon'ble Supreme Court held that there was no explanation by the Deputy Commissioner as to why the service of the order was so delayed. Likewise, in the facts and circumstances of the case and also upon perusal of the records in M/s.MECON Limited, the Division Bench of this Court followed the judgment of Hon'ble Supreme Court rendered in [1994] 93 STC 406(SC).

16. The case on hand is clearly distinguishable on facts. As pointed out earlier, challenging the order of the Deputy Commissionercum District Certificate Officer dated 25.11.2004 demanding payment of Rs.7,50,059.99 relating to the financial year 2001-02, the petitioner has filed W.P(C) No.167/2005 and the said writ petition was pending for quite some time. In view of the pendency of the said writ petition, the Department might have waited to pass final order of assessment in assessment proceedings from 2001-02. Therefore, the case on hand cannot be said to be a case of non-explained delay for not earlier passing the assessment order and issuing notice of demand upon the petitioner only on 22.3.2006.

17. According to the respondents, on the basis of the aforesaid demand notices after adjusting the payments already made by the petitioner, several reminders were issued and served upon the petitioner to deposit the rest amount but the petitioner did not pay the amount. It was, therefore, necessary to initiate certificate case against the petitioner by the Deputy Commissioner of the Commercial Taxes, Pakur. After adjusting the several payments made by the petitioner, requisition for certificate was issued to the Certificate Officer, Pakur and the Certificate Officer issued notice under Section 7 of the PDR Act dated 14.3.2011 to the Directors of the petitioner-companies for realization of the alleged dues of Rs.1,09,25,649/-. By perusal of the proceedings of the Certificate Officer, Pakur (Annexure – 4/15), it is seen that by the order dated 14.3.2011, the Certificate Officer issued notice under Section 7 of the PDR Act, giving a period of 30 days to the petitioner-company to file objection. On the date of hearing on 18.4.2011 before the Certificate Officer, the counsel for the petitioner stated that the petitioner is not satisfied with the assessment done by the Department. In the subsequent proceedings before the Certificate Officer, learned counsel for the petitioner appeared and took adjournment for filing objection. In Certificate Case No.3/2010, the petitioner also filed detailed objection under Section 9 of the PDR Act raising all the contentious points and also stating about the Company Petition filed in the Calcutta High Court and prayed for dropping of the certificate proceeding. Challenging the certificate proceeding in Certificate Case No.3/2010, earlier the petitioner and the petitioners in the other writ petitions also filed W.P(C) No.6254/2011, W.P(C) No.6314/2011 and W.P(C) No.6270/2011 and the same were lingering on file for about two years. On 19.3.2013 the petitioner sought permission to withdraw these writ petitions on the ground that sales tax demand notices were not under challenge in the writ petitions, rather certificate proceeding itself has been challenged. On such representation, the writ petitions were dismissed as withdrawn giving liberty to the petitioner to challenge the demand notices and in pursuance of the aforesaid liberty, the present writ petitions are filed.

18. Section 6 of the PDR Act provides that on receipt of any such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, stating that the demand is due and shall cause the certificate to be filed in his office. Section 7 stipulates service of notice and copy of certificate on certificate debtor. Section 9 provides that the certificate12 debtor may, within the prescribed period, file a petition in the prescribed form denying his liability in whole or in part. Section 10 casts statutory obligation upon the Certificate Officer to hear a petition, take evidence (if necessary) and determine whether the certificate-debtor is liable for the whole or in part of the amount for which certificate was signed and may set aside, modify or vary the certificate accordingly. Thus, Section 10 contemplates hearing and determination of such petition. Section 60 provides for filing of appeal, form, procedure etc. in the appellate jurisdiction. Perusal of Section 60(1) makes it clear that against the original order passed by the Certificate Officer under the PDR Act, an appeal lies to the Collector. For filing appeal, the appellant has to deposit forty percent of the amount determined or such amount as the appellant admits to be due from him, whichever is greater. As per proviso to Section 60, no appeal against the order passed under Section 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid 40% of the amount determined under that Section or such amount as the appellant admits to be due from him, whichever is greater.

19. For realization of the amount of Rs.1,09,25,649/-, Certificate Case No.3/2010 has been initiated. In the certificate proceedings, the petitioner has also filed detailed objections under Section 9 of the PDR Act. In terms of Section 10, it is for the Certificate Officer to hear the matter on merits and determine the petition. When the PDR Act stipulates a complete mechanism for hearing and determination of the petition and also filing of appeals, the writ court cannot entertain the writ petition, bypassing the efficacious alternative remedy available under the statute.

20. In [(1983) 2 SCC 433] (Titaghur Paper Mills Co. Ltd. v. State of Orissa), Hon'ble Supreme Court considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of assessment passed by the competent authority under the Central Sales Tax Act, 1956 and negatived the same by the following observations:-

*"**11.** Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."*

21. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433 were reiterated in [(1985) 1 SCC 260] (Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others) in the following words:

"**3.** *… ..Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill- suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take*

judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

The same principle was enunciated in various decisions in (2001) 6 SCC 569 (Punjab National Bank v. O.C.Krishnan), (2008) 3 SCC 688 (CCT v. Indian Explosives Ltd.) and [(2010) 8 SCC 110] (United Bank of India v. Satyawati Tondon and Others).

22. Thus, if the party is aggrieved by the order of the Certificate Officer, it is always open to him to pursue the remedy of appeal as per the provisions of Section 60 of the PDR Act. In our considered view, the petitioners have filed the writ petitions circumventing the procedures of the Bihar and Orissa Public Demands Recovery Act, 1914 and the provisions of the appeal thereon and by invoking the writ jurisdiction, the petitioners are directly trying to agitate the issues based on facts and on consideration of evidence. When efficacious alternative remedy is available to the petitioners, no relief can be granted to the petitioners in these writ petitions.

23. The contention of the petitioner is that since the Company Petition/winding up proceeding is pending against the petitioner in Calcutta High Court, vide Company Petition No.314/2007 and the company has been ordered to be wound up in accordance with the provisions of the Companies Act, 1956, vide order dated 2.2.2013 and the Court directed the Official Liquidator to take possession and charge of the assets of the petitioner-company, the Department cannot initiate any proceedings for recovery of the tax due and therefore, the petitioner seeks for a direction that the remedy of the revenue lies before the Company Court where the winding up petition is pending.

24. The order of winding up of the petitioner company is subsequent to the initiation of the certificate proceedings. In fact, the petitioner, in objection under Section 9 of the PDR Act, has also indicated about the pendency of the winding up petition. It is for the petitioner to bring to the notice of the Certificate Officer regarding the winding up order passed on 2.2.2013 and merely on the ground of pendency of the winding up petition, the certificate proceedings cannot be quashed.

25. It must be remembered that the certificate proceeding is initiated by the State for recovery of its tax along with interest/penalty under the Bihar and Orissa Public Demands Recovery Act, 1914 contains a detailed mechanism for redressal of the grievance of the petitioner by hearing the matter and also by filing of appeal. Such statutory procedure cannot be circumvented by entertaining writ petition under Article 226 of the Constitution of India. To entertain such writ petition would have serious adverse impact on the right of the State to recover its huge outstanding dues and therefore, the writ petition is liable to be dismissed.

26. In so far as other writ petitions, W.P(T) No.1968/2013 and W.P(T) No.1964/2013, are concerned, the point involved is one and same (except the Company Petition for winding up) and only the orders of assessment and the amount and the date of notices vary. In W.P(T) No.1968/2013 (Vishal Industries) the requisition for the certificate was for an amount of Rs.20,15,823/- in Certificate Case No.04/2010 for the financial years 2001-02, 2003-04, 2002-03, 2004-05, 1997-98 and 2005-06. In W.P(T) No.1964/2013 (Ravi Engineering Works), the requisition for the certificate was for an amount of Rs.21,80,422.58 in Certificate Case No.02/2010 for the financial years 1994-95, 1995-96,1996-97, 1997-98, 2001-02, 2002-03, 2003-04, 2004-05, 1998-99 and 2005-06. Therefore, those two writ petitions, W.P(T) No.1968/2013 and W.P(T) No.1964/2013, are also liable to be dismissed.

In the result, all three writ petitions are dismissed.

(R.Banumathi, CJ)
(Amitav K.Gupta,J)

JHARKHAND HIGH COURT

VISHAL INDUSTRIES THROUGH ITS... VERSUS COMERCIAL TAXES

W.P (T) No. 1967 of 2013

With

W.P (T) No. 1964 of 2013

With

W.P (T) No. 1968 of 2013

Bench : ***Hon'ble Mrs. Justice R. Banumathi, Chief Justice,***
Hon'ble Mr. Justice Amitav K. Gupta

Decided on 31 July, 2014

Bhagwati Prasad Agarwala, Engineering Works Private Limited, Pakur Petitioner In W.P(T) No.1967/2013 Ravi Engineering Works, Partnership Firm, Through its Partner Raj Kumar Agarwala Petitioner In W.P (T) No. 1964/2013 Vishal Industries, Partnership Firm, Through its Partner Ravi Kumar Agarwal Petitioner In W.P (T) No. 1968/2013
Versus
The State of Jharkhand & Others Respondents In All Cases

For the Appellant/Petitioner : M/s. Binod Poddar, Senior Advocate, Darshana Poddar Mishra, Piyush Poddar, Amrita Sinha, Vikas Pandey

For the Respondents :M/s. Ajit Kumar, AAG, Kumar Sundaram, JC to AAG

C.A.V On 24th July, 2014 **Pronounced On 31stJuly, 2014**

R.Banumathi,C.J

These writ petitions are filed interalia (i) for quashing the demand notices of taxes payable under Jharkhand Sales Tax Act and Central Sales Tax Act for the periods 2001-02 to 2005-06; (ii) for quashing the Certificate Cases initiated on the basis of the requisitions for a Certificate for realization of dues for various periods and (iii) for directing the respondents not to realize the alleged dues and other reliefs.

2. Though the writ petitioners are three different companies, the Directors/persons in control of all three writ petitioner-companies are one and same and since identical issues are involved, all the three writ petitions were taken up together and shall stand disposed of by this common judgment. For proper appreciation of the contentious points and for convenience, the facts of W.P (T) No.1967/2013 are referred.

3. The petitioner was served with demand notices under Section 13(4) of the Bihar Finance Act, 1981 for the period from 2001-02 to 2005-06. The case of the petitioner is that after receipt of the demand notices, the petitioner applied for certified copies of the assessment orders and of the entire ordersheets to enable the petitioner to avail its statutory right of filing appeal/revision in accordance with the provisions of the Bihar Finance Act, but the respondents till date have not supplied certified copies of the assessment orders despite filing of the appropriate application for obtaining certified copies of the assessment orders and sending reminders. The petitioner and its Directors received notices dated 14.3.2011 under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (for short PDR Act) in connection with Certificate Case No.3/2010-11 initiated on the basis of the requisition for a

certificate by the 2nd respondent for realization of the alleged dues of Rs.1,09,25,649/-. On receipt of the aforesaid notice under Section 7 of the PDR Act, the petitioner filed his objections under Section 9 of the PDR Act on 18.4.2011, interalia, praying to drop the aforesaid certificate proceedings for the reasons mentioned therein and the certificate proceeding is pending. According to the petitioner, there is liquidation/winding up proceedings pending against the petitioner in the Calcutta High Court in Company Petition No.314/2007 and vide order dated 2.2.2013, the Calcutta High Court passed the order of winding up. Under these circumstances, the petitioner has filed this writ petition for quashing the demand notices and also the certificate proceeding, which is pending.

4. Learned Senior Counsel, Mr.B.Poddar, contended that the assessment orders were passed and copy of the assessment orders were not supplied and therefore, the notices of demand issued are liable to be quashed. Learned Senior Counsel submitted that even though the petitioner filed application for obtaining certified copies of the assessment orders on 30.8.2007 (Annexure - 3 series), the certified copies of the assessment orders and of the ordersheets were not furnished and as per Rule 29 of the Bihar Sales Tax Rules, without the certified copies of the assessment orders, the petitioner could not file appeal and as such, the petitioner has not been able to file appeal for the last seven years. Learned Senior Counsel further contended that the various notices of demand were ante-dated so as to make it appear that the assessment orders were passed within the stipulated time of four years as contemplated under Section 24 of the Bihar Finance Act.

5. Learned Additional Advocate General, Mr.Ajit Kumar, submitted that the demand notices were served upon the petitioner way back in the year 2006-07 or subsequently on relevant dates which were duly received by the petitioner and after lapse of so many years, the plea of the petitioner that he was not provided with the certified copies of the assessment orders cannot stand on any ground since the petitioner could have preferred appeal within 45 days from the date of service of demand notices as provided under the law. It was contended that the petitioner did not comply with the requirements of obtaining certified copies of the order by making application as prescribed under Rule 49 of the Bihar Sales Tax Rules and therefore, the petitioner cannot complain of non-furnishing of certified copy of the assessment orders. Taking us through the various provisions of the PDR Act, learned Additional Advocate General submitted that the said Act is a self-contained one containing mechanism to deal with the redressal of the grievance and the petitioner, having appeared in the certificate proceedings, cannot bye-pass the statutory provisions of the PDR Act by invoking writ jurisdiction.

6. Upon consideration of the submissions, the following points arise for determination in these writ petitions:-

(i) Whether the petitioner is entitled to invoke the writ jurisdiction on the ground that the certified copies of the assessment orders and complete ordersheets have not been furnished to the petitioner; and

(ii) Without availing the statutory remedy available under Bihar and Orissa Public Demand Recovery Act, 1914, whether the petitioner can challenge the demand notices and Certificate Proceedings by invoking the writ jurisdiction.

7. Without availing the statutory remedy available under the Bihar Sales Tax Act and the PDR Act, the petitioner has invoked the writ jurisdiction, challenging the demand notices and also Certificate Case No.3/2010-11 initiated for realization of the dues. For proper appreciation of the contentious pointed raised, we may usefully refer to the details of the assessment, date of institution, date of proceedings, date of order and date of demand notices and the date of receipt and amount involved and outstanding dues payable by the writ petitioner in W.P(T) No.1967/2013. W.P.(T) 1967/2013 Bhagwati Prasad Agarwala Certificate Case No. 3/2010-11 Amount Rs. 1,09,25,649/-

Date of Institution	Date of Proceeding	Appeared	Date of order	Date of Demand Notice	Date of receiving
Financial Year 2001-02					
04.09.2004	27.01.2006 28.02.2006 18.03.2006	18.03.2006	18.03.2006	22.03.2006	30.08.2007
Financial Year 2002-03					
27.01.2006	28.02.2006 24.05.2006	20.06.2006	20.06.2006	20.06.2006	30.08.2007
Financial Year 2003-04					
04.09.2004		03.12.2007	03.12.2007	14.12.2007	11.12.2008
Financial Year 2004-05					
27.01.2006	19.08.2006 28.09.2007	25.02.2009	25.02.2009	25.02.2009	28.08.2009
Financial Year 2005-06					
27.01.2006	07.02.2006 17.02.2006 18.03.2006 20.09.2006	25.02.2009	25.02.2009	25.02.2009	28.08.2009

W.P.(T) No. 1967 of 2013

Financial year 2001-02			
	Tax Assessed	Tax Deposited	Outstanding dues
JST	Rs.6,44,455/-	Rs.1,96,254/-	Rs.4,48,201/-
CST	Rs.28,62,842/-	Rs.5,62,564/-	Rs.23,00,278/-
Financial year 2002-03			
JST	Rs.3,86,743.81	Nil	Rs.3,86,744/-
CST	Rs.9,13,290.85	Rs.2,00,000/-	Rs.7,13,290.85
Financial year 2003-04			
JST	Rs.6,01,026.72	Rs.17,624/-	Rs.5,83,402.72
CST	Rs.7,03,700/-	Rs.54,579/-	Rs.6,49,121/-
Financial year 2004-05			
JST	Rs.28,69,022.07	Rs.2,34,018/-	Rs.26,35,004.07
CST	Rs.21,46,688.65	Rs.1,31,098/-	Rs.20,15,590.65
Financial year 2005-06			
JST	Rs.5,70,600.13	Nil	Rs.5,70,600.13
CST	Rs.4,73,018.90	Nil	Rs.4,73,018.90

8. By perusal of the averments in the counter-affidavit, date of initiation of the assessment proceedings and various notices of demand served upon the petitioner, it is seen that the petitioner appeared in the assessment proceedings and subsequently did not appear and pursue the matter. In so far as the assessment relating to the financial year 2001-02, the first notice bearing no.658 dated 4.9.2004 was issued to the petitioner. As per Section 16(1) and 16(5) of the Bihar Finance Act, 1981, the petitioner is required to file its returns within the time prescribed therein. In view of non-filing of returns, an amount of Rs.7,50,059.99 was levied upon the petitioner under Section 16(8) for non-filing of

returns and under Section 16(9) for non-payment of admitted tax. Since the amount was not paid, the Department filed certificate case in compliance of the provisions of Section 27 of the Bihar Finance Act in Certificate Case No.2/2003. In Certificate Case No.2/2003, order was passed on 25.11.2004 directing the petitioner to pay the amount of Rs.7,50,059.99. Challenging the said order dated 25.11.2004 and also the certificate proceedings, the petitioner filed W.P(C) No.167/2005 and vide order dated 22.12.2008, the writ petition was dismissed by the High Court on the ground that since the petitioner has alternative remedy of appeal which is efficacious, he may avail the remedy of appeal for redressal of his grievance, if so advised. During the pendency of the said writ petition, in the assessment proceedings for the financial year 2001-2002, notices were issued to the petitioner and the petitioner filed Hazri on 18.3.2006 and the assessment order was passed on the same day, i.e. on 18.3.2006. As pointed out earlier in the Tabular Column, demand notice Nos.545, 546 dated 22.3.2006 (Annexure - I/1, I/2) were issued and the same were received by the petitioner on 30.8.2007. As against the said assessment order/demand notices, the petitioner had not preferred any appeal as stipulated under Section 45 of the Bihar Finance Act.

9. Section 45 of the Bihar Finance Act provides right of appeal to any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him or a person objecting to an order penalty passed against him or an order passed under Section 27 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorized in this behalf. As per Rule 29 of the Bihar Sales Tax Rules, an appeal under Section 45 shall be in Form XVIII in case of an appeal against an order of assessment or an order imposing penalty and the memorandum of appeal shall be accompanied by:-

(i) a certified copy of the order appealed against and the notice of demand, if any, served upon the appellant; and

(ii) in case of an appeal against assessment, a receipt showing deposit into the Government Treasury of at least 20 percentum of the tax assessed or such amount of tax as the appellant may admit to be due from him, whichever is greater.

10. The grievance of the petitioner is that he was not served with the certified copy of the various assessment orders and therefore, the petitioner could not prefer appeal. The petitioner, therefore, seeks for quashing the demand notices as the 2nd respondent has not supplied certified copies of the assessment orders for the aforesaid period despite filing of appropriate applications (vide Annexure - 3 series - challans) for obtaining certified copies of the assessment orders.

11. Even at the outset, it is to be pointed out that though the petitioner appeared in the assessment proceedings, the petitioner did not bother to apply for the certified copies of the assessment orders for the years 2001-2002 immediately after passing of the assessment order on 18.3.2006. As pointed out above, demand notices dated 22.3.2006 (2001- 2002), 20.6.2006 (2002-2003) were served upon the petitioner on 30.8.2007 and only thereafter on 30.8.2007, the petitioner seemed to have submitted application for issuance of certified copy of the assessment order for 2001-02 and 2002-03. Likewise for the financial years, 2003- 2004, 2004-05 and 2005-06, demand notices were served on the petitioner on 11.12.2008 and 28.8.2009 and the petitioner filed application for obtaining certified copy of the assessment orders on 6.1.2009 and 30.10.2007 respectively. The petitioner on 7.12.2009, 9.8.2010 and 7.12.2010 in its letter-head paper sent reminders to the authorities for supply of certified copy of the assessment orders and complete order sheets for the period from 1994-1995, 1995-1996, 1996- 97, 1997-1998, 1998-1999, 2001-2002 to 2005-2006. The grievance of the petitioner is that in spite of filing of application for issuance of the certified copy of the assessment orders and sending reminders, the same were not supplied to the petitioner and therefore, in this writ petition, learned Senior Counsel sought for a direction to the respondents for supply of the certified copies of the assessment orders to

the petitioner and also sought for grant of liberty to the petitioner to challenge the assessment orders in accordance with law so as to enable the petitioner to pursue the statutory remedy.

12. The respondents have submitted that certified copies of the assessment orders could not be supplied since the petitioner had not filed application for obtaining the certified copies in the prescribed Form, i.e. Board's Miscellaneous Form No.124 and the application was not in the prescribed format. Board's Miscellaneous Form No.124 has been annexed in the counter-affidavit, as per which the person concerned, for obtaining certified copy, has to fill up various columns thereon, interalia, furnishing details of the case of proceeding in which such paper is to be found or was filed; ordinary searching fee deposited in court fee stamp; extra searching fee deposited in court fee in stamp; name of officer or department where the paper in question is to be found etc. and other details. Annexure 3 series are stated to be the challans for filing copy application for obtaining certified copies of the assessment orders. No material has been produced to show that the application for obtaining certified copies of the assessment orders were filed in the prescribed form/Board Miscellaneous Form No.124. Annexure 3 series - challans - are filed for showing that applications were filed for obtaining certified copies of the assessment orders for the period 2001-02 to 2005-06. But the petitioner has sent reminders on 7.12.2009, 9.8.2010 and 7.12.2010 stating that the petitioner requires certified copies of the assessment order for the periods 1994-95 to 2005-06. When the petitioner has not filed appropriate application in the prescribed Form No.124 for obtaining certified copies of the assessment order, the Department cannot be blamed for non-supply of the certified copies of the assessment orders.

13. It is pertinent to point out that while the petitioner was pursuing writ petition, W.P(C) No.167/2005, the petitioner did not seem to have been diligent in pursuing his application for certified copies of the assessment orders. When there is delay and laches on the part of the petitioner, the Court will be loath to come to the aid of such person. Challenging the certificate proceeding and having not filed appropriate application in the prescribed Form, the petitioner cannot plead for showing indulgence. In fact, W.P(C) No.167/2005 was dismissed on 22.12.2008 giving liberty to the petitioner to avail the statutory remedy of appeal for redressal of its grievance. Having not availed the statutory remedy of appeal, the petitioner cannot turn around and challenge the notices of demand on the ground that the certified copies of the assessment orders were not issued to him and the petitioner was not able to avail of the statutory remedy of appeal. Therefore, the petitioner cannot seek for a direction upon the respondents to issue certified copies of the assessment orders to pursue the statutory remedy of appeal.

14. Section 24 stipulates period of limitation for completion of the assessment proceedings. As per Section 24, except a proceeding under sub-section (5) of Section 17, Section 18 and sub-section (1) of Section 19, no proceeding for assessment of the tax payable by a dealer in respect of any period shall be initiated and completed except before expiry of four years from the expiry of such period.

15. Drawing our attention to the various dates, learned Senior Counsel submitted that for the financial year 2001-02, the assessment order is said to have been passed on 18.3.2006 and the demand notice was issued on 22.3.2006, whereas the demand notice is said to have been received by the petitioner only on 30.8.2007 and therefore, it is contended that it must be deemed that the order of assessment dated 18.3.2006 and the date of demand notice dated 22.3.2006 were ante-dated and that the same was passed without giving an opportunity of hearing to the assessee. It is further submitted that from the financial year 2001-02 - four year period expired on 31.3.2006, whereas the assessment order is said to have been passed just on the verge of expiry of four years on 18.3.2006 and the demand notice is said to have been received by the petitioner on 30.8.2007 beyond the stipulated period of four years and thus, an inference has to be drawn that the date of assessment order was ante- dated. It was also submitted that the date of order of assessment regarding financial year 2002-03 was dated 20th June, 2006 and that the same was said to have been received by the petitioner on 30.8.2007, which would

also lead to an inference that the assessment orders of the proceedings were ante-dated. In support of his contention, learned Senior Counsel placed reliance on [1994] 93 STC 406(SC) (State of Andhra Pradesh v. Khetmal Parekh) and also on the decision of the Division Bench of this Court in W.P(T)1006/2010 (M/s.MECON Limited v. The State of Jharkhand& Ors.). In the said case State of Andhra Pradesh v. Khetmal Parekh, an assessment order passed in September, 1969 was sought to be revised by the Deputy Commissioner under Section 20(2) of the Andhra Pradesh General Sales Tax Act, 1957 and he passed an order prejudicial to the assessee and the order was said to have been made in January, 6, 1973 but it was served after the expiry of four years from the date of the assessment order, on the assessee on November, 21, 1973, 10½ months later and there was no explanation by the Deputy Commissioner why the service of the order was so delayed. In such facts and circumstances of the case, Hon'ble Supreme Court held that there was no explanation by the Deputy Commissioner as to why the service of the order was so delayed. Likewise, in the facts and circumstances of the case and also upon perusal of the records in M/s.MECON Limited, the Division Bench of this Court followed the judgment of Hon'ble Supreme Court rendered in [1994] 93 STC 406(SC).

16. The case on hand is clearly distinguishable on facts. As pointed out earlier, challenging the order of the Deputy Commissioner- cum District Certificate Officer dated 25.11.2004 demanding payment of Rs.7,50,059.99 relating to the financial year 2001-02, the petitioner has filed W.P(C) No.167/2005 and the said writ petition was pending for quite some time. In view of the pendency of the said writ petition, the Department might have waited to pass final order of assessment in assessment proceedings from 2001-02. Therefore, the case on hand cannot be said to be a case of non-explained delay for not earlier passing the assessment order and issuing notice of demand upon the petitioner only on 22.3.2006.

17. According to the respondents, on the basis of the aforesaid demand notices after adjusting the payments already made by the petitioner, several reminders were issued and served upon the petitioner to deposit the rest amount but the petitioner did not pay the amount. It was, therefore, necessary to initiate certificate case against the petitioner by the Deputy Commissioner of the Commercial Taxes, Pakur. After adjusting the several payments made by the petitioner, requisition for certificate was issued to the Certificate Officer, Pakur and the Certificate Officer issued notice under Section 7 of the PDR Act dated 14.3.2011 to the Directors of the petitioner-companies for realization of the alleged dues of Rs.1,09,25,649/-. By perusal of the proceedings of the Certificate Officer, Pakur (Annexure - 4/15), it is seen that by the order dated 14.3.2011, the Certificate Officer issued notice under Section 7 of the PDR Act, giving a period of 30 days to the petitioner-company to file objection. On the date of hearing on 18.4.2011 before the Certificate Officer, the counsel for the petitioner stated that the petitioner is not satisfied with the assessment done by the Department. In the subsequent proceedings before the Certificate Officer, learned counsel for the petitioner appeared and took adjournment for filing objection. In Certificate Case No.3/2010, the petitioner also filed detailed objection under Section 9 of the PDR Act raising all the contentious points and also stating about the Company Petition filed in the Calcutta High Court and prayed for dropping of the certificate proceeding. Challenging the certificate proceeding in Certificate Case No.3/2010, earlier the petitioner and the petitioners in the other writ petitions also filed W.P(C) No.6254/2011, W.P(C) No.6314/2011 and W.P(C) No.6270/2011 and the same were lingering on file for about two years. On 19.3.2013 the petitioner sought permission to withdraw these writ petitions on the ground that sales tax demand notices were not under challenge in the writ petitions, rather certificate proceeding itself has been challenged. On such representation, the writ petitions were dismissed as withdrawn giving liberty to the petitioner to challenge the demand notices and in pursuance of the aforesaid liberty, the present writ petitions are filed.

18. Section 6 of the PDR Act provides that on receipt of any such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, stating that the demand is due and shall cause the certificate to be filed in his office. Section

7 stipulates service of notice and copy of certificate on certificate debtor. Section 9 provides that the certificate- debtor may, within the prescribed period, file a petition in the prescribed form denying his liability in whole or in part. Section 10 casts statutory obligation upon the Certificate Officer to hear a petition, take evidence (if necessary) and determine whether the certificate-debtor is liable for the whole or in part of the amount for which certificate was signed and may set aside, modify or vary the certificate accordingly. Thus, Section 10 contemplates hearing and determination of such petition. Section 60 provides for filing of appeal, form, procedure etc. in the appellate jurisdiction. Perusal of Section 60(1) makes it clear that against the original order passed by the Certificate Officer under the PDR Act, an appeal lies to the Collector. For filing appeal, the appellant has to deposit forty percent of the amount determined or such amount as the appellant admits to be due from him, whichever is greater. As per proviso to Section 60, no appeal against the order passed under Section 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid 40% of the amount determined under that Section or such amount as the appellant admits to be due from him, whichever is greater.

19. For realization of the amount of Rs.1,09,25,649/-, Certificate Case No.3/2010 has been initiated. In the certificate proceedings, the petitioner has also filed detailed objections under Section 9 of the PDR Act. In terms of Section 10, it is for the Certificate Officer to hear the matter on merits and determine the petition. When the PDR Act stipulates a complete mechanism for hearing and determination of the petition and also filing of appeals, the writ court cannot entertain the writ petition, by- passing the efficacious alternative remedy available under the statute.

20. In [(1983) 2 SCC 433] (Titaghur Paper Mills Co. Ltd. v. State of Orissa), Hon'ble Supreme Court considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of assessment passed by the competent authority under the Central Sales Tax Act, 1956 and negatived the same by the following observations:-

> *"**11.** Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."*

21. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433 were reiterated in [(1985) 1 SCC 260] (Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others) in the following words:

> *"**3.** .....Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill- suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution*

are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

The same principle was enunciated in various decisions in (2001) 6 SCC 569 (Punjab National Bank v. O.C.Krishnan), (2008) 3 SCC 688 (CCT v. Indian Explosives Ltd.) and [(2010) 8 SCC 110] (United Bank of India v. Satyawati Tondon and Others).

22. Thus, if the party is aggrieved by the order of the Certificate Officer, it is always open to him to pursue the remedy of appeal as per the provisions of Section 60 of the PDR Act. In our considered view, the petitioners have filed the writ petitions circumventing the procedures of the Bihar and Orissa Public Demands Recovery Act, 1914 and the provisions of the appeal thereon and by invoking the writ jurisdiction, the petitioners are directly trying to agitate the issues based on facts and on consideration of evidence. When efficacious alternative remedy is available to the petitioners, no relief can be granted to the petitioners in these writ petitions.

23. The contention of the petitioner is that since the Company Petition/winding up proceeding is pending against the petitioner in Calcutta High Court, vide Company Petition No.314/2007 and the company has been ordered to be wound up in accordance with the provisions of the Companies Act, 1956, vide order dated 2.2.2013 and the Court directed the Official Liquidator to take possession and charge of the assets of the petitioner-company, the Department cannot initiate any proceedings for recovery of the tax due and therefore, the petitioner seeks for a direction that the remedy of the revenue lies before the Company Court where the winding up petition is pending.

24. The order of winding up of the petitioner company is subsequent to the initiation of the certificate proceedings. In fact, the petitioner, in objection under Section 9 of the PDR Act, has also indicated about the pendency of the winding up petition. It is for the petitioner to bring to the notice of the Certificate Officer regarding the winding up order passed on 2.2.2013 and merely on the ground of pendency of the winding up petition, the certificate proceedings cannot be quashed.

25. It must be remembered that the certificate proceeding is initiated by the State for recovery of its tax along with interest/penalty under the Bihar and Orissa Public Demands Recovery Act, 1914 contains a detailed mechanism for redressal of the grievance of the petitioner by hearing the matter and also by filing of appeal. Such statutory procedure cannot be circumvented by entertaining writ petition under Article 226 of the Constitution of India. To entertain such writ petition would have serious adverse impact on the right of the State to recover its huge outstanding dues and therefore, the writ petition is liable to be dismissed.

26. In so far as other writ petitions, W.P(T) No.1968/2013 and W.P(T) No.1964/2013, are concerned, the point involved is one and same (except the Company Petition for winding up) and only the orders of assessment and the amount and the date of notices vary. In W.P(T) No.1968/2013 (Vishal Industries) the requisition for the certificate was for an amount of Rs.20,15,823/- in Certificate Case No.04/2010 for the financial years 2001-02, 2003-04, 2002-03, 2004-05, 1997-98 and 2005-06. In W.P(T) No.1964/2013 (Ravi Engineering Works), the requisition for the certificate was for an amount of Rs.21,80,422.58 in Certificate Case No.02/2010 for the financial years 1994-95, 1995- 96,1996-97, 1997-98, 2001-02, 2002-03, 2003-04, 2004-05, 1998-99 and 2005-06. Therefore, those two writ petitions, W.P(T) No.1968/2013 and W.P(T) No.1964/2013, are also liable to be dismissed.

In the result, all three writ petitions are dismissed.

(R.Banumathi, CJ)
(Amitav K.Gupta,J)

❑❑❑

JHARKHAND HIGH COURT

M/S.HINDALCO INDUSTRIES LTD.
VERSUS
UNION OF INDIA & ORS.

W.P. (C) No. 153 of 2007

Decided on 20 December, 2012

Bench : ***Hon'ble Mr. Justice Aparesh Kumar Singh***

An application under Article 226 of the Constitution of India

M/s. Hindalco Industries Limited ...Petitioner
Versus
Union of India & others ....Respondents.

For the Petitioner : M/s. Dipankar Gupta, Sr. Advocate, Shahid Rizvi, Ananda Sen and Ranjan Kumar, Advs.

For the State of Jharkhand : M/s. Anil Kumar Sinha, A.G. and Shamim Akhtar, S. C. Mines, Arvind Kumar Mehta, J.C. to S.C.Mines & Bhupal Krishna Prasad, J.C. to S.C.Mines.

For the Respondent no. 1 : Mr. Md. Faijur Rahman, C.G.C., U.O.I.

C.A.V. ON 04.10.2012 **PRONOUNCED ON. 20/12/2012**

Aparesh Kumar Singh, J

The petitioner has sought for quashing of the entire certificate proceedings being Certificate Case no. 17 GR/2006-07 pending before respondent no. 4, the Certificate Officer (Mines), South Chhotanagpur Anchal, Doranda, Ranchi after calling for the records of the same from the concerned office of respondent no. 4. The petitioner has also challenged the order dated 18th December, 2006 being order no. 579/DDM passed by the Certificate Officer (Mines) in the said case whereby he has kept the certificate case pending while directing the petitioner to deposit 50% of the certificate amount with respondent no. 2 and further directed the petitioner to furnish a Bank Guarantee for the rest 50% of the certificate amount.

The petitioner has also sought for a declaration that in view of the Mineral Concession Rules, 1960 and the Mines and Minerals (Development & Regulation) Act, 1957, (hereinafter referred as MMDR Act, 1957), he is not liable to pay royalty on vanadium sludge which comes out as impurities while processing Alumina at their plaint at Renukoot, Uttar Pradesh. Consequently, the petitioner has also sought for a direction holding the entire certificate proceeding as illegal and without jurisdiction.

The brief facts of the case as stated on behalf of the petitioner are being stated hereunder: The petitioner, M/s. Hindalco Industries Ltd. holds mining leases in the district of Gumla, Lohardaga and Latehar in the State of Jharkhand for mining Bauxite. Bauxite Ore is found 2 to 6 meters below the thick soil and after removing the overburden it is mined in run of mine condition (ROM) and is recovered. According to the petitioner, he pays full royalty on the mined Bauxite to the State of Jharkhand at the rate prescribed under M.M.D.R., Act, 1957. The entire Bauxite Ore in ROM condition after payment of appropriate royalty is transported by the petitioner to its processing plant at Renukoot Sonebhadra (U.P.). As per Indian Bureau Mines, the major chemical constituent of mineral Bauxite is AL203 (Alumina) and other chemical constituents are compounds of silicon, iron and titanium. There are other small quantities of chemical compounds called contaminants which includes V205 (vanadium pentoxide), amongst many other contaminants of which the presence of vanadium pentoxide is less than 1%.

At the alumina plant of the petitioner in Renukoot, Bauxite Ore is processed by a process known as "Bayer's Process". It is stated that in the first stage in the said process some chemicals are separated in the form of "red mud". At the next stage alumina is extracted leaving behind impurities in sludge form small quantities of V205 "vanadium pentoxide" or sludge of vanadium pentoxide" which in common parlance is referred to as vanadium sludge or sludge of vanadium. Therefore, according to the petitioner, vanadium sludge comes into an existence for the first time at the Hindalco Processing plant at Renukoot as a waste product containing impurities and is not mined as such. The petitioner has relied upon a report of the Jawaharlal Nehru Aluminum Research Development and Designs Centre, an Autonomous Body under Ministry of Mines, Government of India, that vanadium sludge is not a mineral. The said vanadium sludge is then sold by Hindalco.

It is the case of the petitioner that in the year 2002 the respondents authorities of the State of Jharkhand demanded royalty on vanadium sludge. The same was challenged before the Allahabad High Court which stayed the demand on payment of 50% and a Bank Guarantee of the balance 50% which the petitioner complied under protest. Subsequently, further interim demands were also raised and complied under protest. It is stated that the petitioner itself furnished information regarding quantities of vanadium sludge produced and sold by Hindalco and the sale price thereof on being asked by the respondent authorities.

The present cause of action arose on account of a demand of royalty in the year 2006 on vanadium sludge at the rate of 10%, calculated as a residuary item in the Second Schedule to 1957 Act amounting to Rs. 48,48,245.00 with interest. It is stated on behalf of the petitioner that the Respondents-State has also categorically stated in its counter affidavit that the demand was raised on vanadium sludge extracted and sold at the processing plant of Hindalco at Renukoot in U.P. which is also evident from the demand made.

The petitioner in the aforesaid background has raised the contention in the present writ application that the respondents are not entitled to raise demand of royalty on vanadium sludge, which is obtained after processing of Bauxite and recovery of alumina. Learned Senior Counsel for the petitioner, Mr. Dipankar Gupta has relied upon the provisions of the M.M.D.R Act, 1957 as also the provisions of Mines Act, 1952, to explain the concept of royalty and the meaning of the definition of mineral. As per the petitioner, royalty is charged under Section 9 of the Act, 1957 on minerals, which is quoted hereunder:

> *"Section 9: Royalties in respect of mining leases.- (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any [mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral."*
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> *"Section 9(2): The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub- lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."*

The petitioner also relies upon Section 9(2) in view of the fact that the lease of the petitioner was granted after commencement of 1957 Act. By referring to the provisions of Section 9, it is submitted that royalty is to be charged upon any mineral removed or consumed from the leased area as per the rates prescribed in the Second Schedule of the Act, which is chargeable only on mineral. It is submitted that all items in the Second Schedule are minerals either in metal form or ore form. It is further submitted that even in order to fall under the residuary Item no. 51 the substance has to be mineral, if the material is not mineral then no royalty can be levied on the same. In order to substantiate the aforesaid contention, learned counsel for the petitioner submits that vanadium sludge is not a mineral and royalty cannot be charged on the same. For the aforesaid purpose, learned counsel for the petitioner has relied upon the provisions of Mines Act, 1952. Section 2(jj), which is being quoted hereunder:

"Section 2(jj): "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum)"

Section 3(a) of 1957 Act, provides that "mineral" includes all minerals except mineral oil. It is further submitted that the definition of mineral as provided in the Mines Act, 1950 which is a cognate Act will apply to the definition of minerals in 1957 Act as it is an inclusive definition. It is further submitted that mineral is a substance which is obtained from the earth and has been judicially interpreted.

Learned counsel for the petitioner has relied upon the judgments rendered by Hon'ble Supreme Court of India in the case of Ichchapur Industrial Cooperative Society Ltd.-Vs.- Competent Authority, Oil & Natural Gas Commission and another reported in 1997(2) SCC 42 Para 20 and in the case of V.P.Pithupitchai and another-Vs.-Special Secretary to the Govt. of T.N. reported in 2003(9) SCC 534 Paras 10 and 11 thereof.

According to the petitioner, since mineral is a substance which is obtained from the earth by mining and they are found on or in the earth crust and forms part thereof, vanadium sludge is not a mineral since it does not form portion of earth's crust and cannot be recovered by a process of mining, as such no royalty can be imposed thereupon and the demands are illegal and bad.

The second limb of the petitioner's argument is that since royalty has been paid to the Respondent-State of Jharkhand on the entire Bauxite Ore mined before removal to Renukoot in U.P., the levy of royalty on the residuary material after processing of Bauxite will amount to double levy. In support of the aforesaid contention, it is also submitted that since vanadium sludge is obtained as residuary mixture of impurities and contaminants after processing at Renukoot in the petitioner's company in U.P. beyond the leased hold area, the respondents authorities of the State of Jharkhand cannot demand royalty on the vanadium sludge, as the petitioner has been paying royalty on the entire ROM Bauxite, which means on all the constituents of Bauxite. Any levy on constituents of Bauxite will amount to double levy on the same mineral. It is further submitted that since the constituents/contaminants of the ROM Bauxite Ore are separated at a plant outside the leased area at Renukoot in U.P. it is legally impermissible to demand royalty on such constituents such as vanadium sludge. Therefore, according to the petitioner, the demand on a part when the whole has already been subject to levy is unsustainable in law.

The third ground to assail the demand of royalty in the impugned certificate proceedings are that the impugned levies are contrary to the express provisions of Rule 64(B)(2) of the Minerals Concession Rules, 1960. Rule 64(B)(2) is being quoted hereunder:

"Rule 64(B) (2): Charging of royalty in case of minerals subjected to processing.- (1) In case processing of run-of-mine is carried out within the leased area, then, royalty shall be chargeable on the processed mineral removed from the leased area.

2. In case run-of-mine mineral is removed from the leased area to a processing plant which is located outside the leased area, then, royalty shall be chargeable on the unprocessed run-of-mine mineral and not on the processed product."

It is submitted in support of the aforesaid ground that it is the admitted position in the present case that ROM Bauxite is removed from the leased area in Jharkhand to a processing plant located outside the leased area i.e. in U.P. and vanadium sludge is a constituent of the processed product.

Therefore, as per Rule 64(B)(2) royalty cannot be charged on the vanadium sludge as such the demand of royalty is bad and illegal.

Learned senior counsel for the petitioner in support of his challenge to the impugned proceedings also submitted that vanadium sludge is a product classified under the heading "Allied and chemical industries" of the Central Excise Tariff Act, 1985 and is not a mineral and as such royalty cannot be levied. As per the

petitioner, under Chapter 28 of the Central Excise Tariff Act, the Central Excise Board has clarified that vanadium sludge is classifiable under the Heading no. 2841.90 of the said Act as Salt of Oxometallic or Peroxometallic Acid. Learned counsel for the petitioner in support of the aforesaid contention submitted that vanadium sludge cannot be termed as a mineral because it is a complex salt of sodium vandate, sodium phosphate, sodium fluoro-vanadate etc. and part of the oxalate. Relying upon the expert opinion of the Jawaharlal Nehru Aluminum Research Development and Designs Centre, Ministry of Mines, it is submitted that Bauxite is not the natural ore mineral for vanadium. As such vanadium sludge is a manufactured product and excise duty is paid on it and therefore no demand of royalty can be raised on vanadium sludge.

Learned counsel for the petitioner has also submitted that such raising of demand of royalty may lead to various inconsistencies such as when Bauxite Ore is sold by the petitioner on ROM condition to a purchaser, who takes it away to processing plant outside the State. In such circumstances no royalty can be levied on the purchaser. However, since the Bauxite Ore contains several chemicals and contanimus, it is inconceivable that royalty can be levied on all other components separately.

Learned Advocate General appearing on behalf of the State of Jharkhand has raised serous objection to the challenge to the certificate proceedings by the petitioner. Learned Advocate General has submitted that the present case is covered by the decision of the Hon'ble Patna High Court in the case of Hindustan Copper Limited-Vs.- State of Bihar & others in C.W.J.C. No. 2727 of 1996 (R). It is submitted that in the said case, several other minerals like gold, silver, nickel, solenium and tellurium were extracted along with copper by the petitioner-M/s. Hindustan Copper Limited from the leased area granted to it. Hindustan Copper Ltd. had challenged the levy of royalty on mineral such as solenium and tellurium in the aforesaid case before the Patna High Court. The Division Bench of the Patna High Court rejected the contention of the said company that no royalty can be demanded on the aforesaid minerals on the ground that they are independent minerals and no license of mining is granted to extract them independently. It was held that the said Company was paying royalty on gold, silver and nickel, which were extracted with copper as per Second Schedule of the M.M.D.R Act and/or all other minerals, which were not specified in the said Schedule are covered under Item no. 52 residuary item. Therefore, the demand of royalty of solenium and tellurium has to be sustained. In the instant case, according to the learned counsel for the State the royalty is being charged on the vanadium under the residuary Clause of Item no. 52 at the rate of 10% although subsequently in the year 2009 by virtue of an amendment to the Second Schedule Vanadium has been independently included as a mineral at Entry 47. According to the learned counsel for the Respondents-State under the definition of Section 3(a) of the Act, 1957 minerals includes all minerals except minerals oils and under Rule 69(2) of Mineral Concessions Rules, 1960 Vanadium has been declared to be a associate mineral. It is the contention of the Respondents-State that the petitioner has categorically admitted in its statements made in reply that vanadium sludge is obtained during processing of Bauxite for extraction of aluminum and sold by the petitioner. Learned counsel for the Respondents-State, therefore, submits that the petitioner has himself admitted that vanadium sludge is being sold for profit and as such anything which is extracted from the earth for profit is subject to payment of demand of royalty to the owner of the lease i.e. the Sate.

Learned counsel for the respondent has relied upon the definition of mineral as given in Stroud's Judicial Dictionary in support of the aforesaid contention.

Learned Advocate General has relied upon the judgment delivered by Hon'ble Supreme Court of India in the case of Som Datt Builders Limited -Vs.- Union of India reported in (2010) 1 SCC 311 paragraphs 5 to 12 and 23 and the judgment in the case of M/s. Banarsi Dass Chadha and Brothers-Vs.- Lt. Governor, Delhi Administration & others reported in 1978(4) SCC page 11.

Based upon the aforesaid decision of the Hon'ble Supreme Court of India, it is submitted that word "Mineral" has no definite meaning but has a variety of meanings depending upon the context of its use.

It is further submitted that the term "mineral" has been judicially construed many a time in widest possible amplitude and sometimes accorded its narrow meaning. Its precise meaning in a given case has to be fixed with respect to the particular context. The word "Mineral" has not been circumscribed by a precise scientific definition; it is not a definite term. In judicial interpretation of the expression mineral variety of tests and principles have been propounded; their application has not been uniform. Paragraph 23 of the opinion of the Apex Court in the case of Som Dutt Builders Ltd., which has been relied upon by the learned Advocate General is being quoted hereinbelow:

Paragraph 23 : A survey of various decisions referred to hereinabove would show that there is wide divergence of meanings attributable to the word "mineral" and that in judicial interpretation of the expression "mineral" variety of tests and principles have been propounded; their application, however, has not been uniform. Insofar as dictionary meaning of the word "mineral" is concerned, it has never been held to be determinative and conclusive. The word 'mineral' has not been circumscribed by a precise scientific definition; it is not a definite term. The proposition that the minerals must always be subsoil and that there can be no minerals on the surface of the earth has also not found favour in judicial interpretation of the word "mineral".

The term "mineral" has been judicially construed many a time in widest possible amplitude and sometimes accorded a narrow meaning. Pithily said, its precise meaning in a given case has to be fixed with reference to the particular context."

In support of the aforesaid contention learned counsel for the State therefore submits that since vanadium sludge is being sold for profit after extraction of Bauxite Ore by the petitioner, it is liable to pay royalty on the same.

Learned counsel for the State has relied upon the provisions of Rule 64(C) of the Mineral Concession Rules to submit that the vanadium sludge is in the nature of tailing/rejects obtained from the leased area and sold for consumption. Therefore, they shall be liable for payment of royalty. Rules 64(C) is also being quoted hereunder:

Rule 64(C) : Royalty on tailings or rejects.- On removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty. Provided that in case so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty."

Learned counsel for the Respondents-State has also relied on the report of the National Metallurgical Laboratory which is Annexure-B and the report of the Indian Bureau of Mines Annexure-G to the I.A. No. 265 of 2011 and submitted that these experts reports categorically point out that vanadium is present in Bauxite and can also be recovered from the vanadium sludge from red mud during production of alumina. The report of the Indian Bureau of Mines, Government of India also shows that significant quantities on vanadium have been found in Bauxite Ore and production of vanadium sludge was reported by different alumina plants including that of the petitioner-Hindalco with 18.2.% V205. The production of vanadium sludge has been shown in the form of a chart from the petitioner's Unit at Renukoot apart from other than companies shown in the said chart.

Learned counsel for the State therefore submits that vanadium sludge thus produced is being sold for profit by the petitioner's Unit and is covered under the expanded definition of mineral as refered to hereinabove. The petitioner cannot escape the demand of royalty on such vanadium sludge, which forms part of the Bauxite Ore extracted from the mines under the lease hold area allotted to the petitioner within the State of Jharkhand. Learned counsel for the Respondents-State, therefore, submits that in the matter of expert opinion the courts would not readily interfere.

Learned counsel for the Respondents-State has also vehemently submitted that the petitioner has straightaway come before this Court under Article 226 of the Constitution of India against an interim order passed in a

certificate proceeding by passing the alternative remedy available to it under Bihar & Orissa Public Demand Recovery Act, 1914. It is further submitted that the petitioner has full opportunity to raise all such points of law and facts in support of his contention before the Certificate Officer under Section 9 of the B.P.D.R Act, 1914 now adopted by Jharkhand by raising his objection. It is further submitted that the certificate proceeding has not yet been concluded and thereafter also the petitioner has a remedy of appeal under section 60 of the said Act, 1914. In similar circumstances, the Hon'ble Supreme Court of India in the case of Central Coal Fields Ltd. -Vs.- State of Jharkhand & others reported in 2005(7) SCC 492 upheld the decision of the learned Single Jude and Division Bench of this Court whereby the Appellant-Central Coal Fields Ltd. had been directed to invoke the remedy of appeal under the Act, 1914, in a case where the Appellant-Central Coal Fields Ltd had challenged the certificate proceedings for realization of surface rent by the Respondents- State. Learned Advocate General for the respondents state has relied upon para 10 of the said judgment in support of his contention wherein the Hon'ble Supreme Court has upheld the observation of the Division Bench of this Court that powers of the Appellate Authority under the Bihar & Orissa Public Demand Recovery Act, 1914 are very wide and the appellant may raise all contentions including contention as to the jurisdiction of the State Government and/or its officers in initiating certificate proceedings against the Company. It is submitted on behalf of the Respondents-State that the petitioner should be relegated to alternative remedy available under the P.D.R Act, 1914 as it is avoiding the payment of huge amount of royalty which are under realization and subject to interim stay by this Court since the year 2007. learned counsel for the Respondents-State submits that in such circumstances the state had preferred Interlocutory Application for vacation of the stay earlier granted to the petitioner in the instant case.

Learned Senior Counsel appearing on behalf of the petitioner, in his reply, has refuted the contention of the Respondents-State. Learned counsel for the petitioner submits that the reliance of the State upon Rule 64(C) is wholly misplaced and in the present case Rule 64(b) (2) of the Mineral Concession Rules 1960 are squarely applicable. In support of his contention he has also relied upon the judgment of Hon'ble Supreme Court in the case of National Mineral Development Corporation Ltd.-Vs.- State of M.P. and another reported in (2004) 6 SC 281, wherein the meaning and definition of tailing and rejects have been dealt with. It is further contended that under provisions of Rule 64(C) tailings are part of ore that are regarded too poor to be treated further and "rejects" have also similar connotation being part of the ore. These substances still were minerals although of poor quality and if disposed of later will attract levy of royalty. For the applicability of Rule 64 (C) the materials have to be dumped as not for sale which is not the case here. Learned counsel for the petitioner has also distinguished the decision of the Hon'ble Patna High Court rendered in the case of Hindustan Copper Ltd. -Vs.- State of Bihar (Supra) by submitting that in the said case the minerals solenium and tellurium were mined as minerals along with copper whereas in the present case vanadium sludge is not a mineral and has not been mined along with Bauxite Ore. It is submitted that in the said circumstances, the Hon'ble Patna High Court held that the Petitioner-Hindustan Copper was liable to pay demand of royalty on such independent minerals extracted in addition to copper in a case where the company had paid royalty on Gold, Silver, Nickel, but refused to pay royalty on solenium and tellurium, which were also minerals.

In reference to the reliance of the State on Rule 69 of the Minerals Concession Rules and Item no. 47 of the Second Schedule, it is contended that vanadium is a mineral or associated mineral, learned counsel for the petitioner categorically submits that the argument is wholly misplaced as there is no doubt that vanadium is a mineral. However, the issue in the present writ application is whether royalty is payable on vanadium sludge. According to the petitioner, the reference of associated minerals under Rule 69(ii) is also misplaced as the concept of associated mineral is in different contexts of the extent of allotment of area under Section 6 of the MMDR Act, 1957, wherein rule 6(a) clearly says that enumerated minerals mentioned in Rule shall be the group of associated minerals for the purpose of section 6 of the 1957 Act. Section 6 of 1957 act limits the maximum area for which prospecting license or a mining lease may be granted in respect of any minerals or

prescribed group of associated minerals. The vanadium sludge is not at all associated with mineral bauxite and such contention is totally irrelevant.

The petitioner's counsel also submitted that reliance upon the judgment in the case of Som Datt Builders Limited -Vs.- Union of India reported in (2010) 1 SCC 311 and in the case of V.P.Pithupitchai and another-Vs.- Special Secretary to the Govt. of T.N.reported in 2003(9) SCC 534 by the respondents are wholly misplaced as these cases turn on the interpretation of the minor minerals defined in Section 3(e) of 1957 Act and the powers of the Central Government in relation thereto. It is submitted on behalf of the counsel for the petitioner that reliance upon the test report of National Metallurgical Laboratory and Indian Mineral Year Book 2003 published by the Indian Bureau of Mines does not help in setting to rest the issues involved in the present case as the test report shows V205 contained in the Bauxite Ore is less than 1% as has already submitted by the petitioner, on the basis of the report of the Jawaharlal Nehru Aluminum Research Development and Design Centre (Annexure-1 to the writ application.). The issue involved in the present writ application is whether vanadium sludge, is subject to royalty and not vanadium.

Lastly senior counsel for the petitioner has also contested the stand of the Respondent State in relation to the plea of alternative remedy available being available to the petitioner in the said certificate proceeding under PDR Act, 1914 itself by relying upon the judgments in the case of L. Hirday Narain-Vs.- Income Tax Officer, Barelilly reported in AIR 1971 SC 33 para 12 and in the case of Whirlpool Corporation Vs. Registrar of Trade Marks Mumbai and others reported in AIR 1999 SC 22 Paras 20 and 21 by Hon'ble Supreme Court of India.

I have heard learned counsel for the parties at length. The petitioner herein has come before this Court for quashing of the interim order dated 18th December, 2006, passed by the Certificate Officer (Mines), whereby the petitioner has been directed to deposit 50% of the certificate amount with respondent no.2 and further directed it to furnish a Bank Guarantee for the rest 50% of the certificate amount while keeping the certificate case pending. The petitioner has also sought quashing of the entire certificate proceeding in Certificate Case No. 17 GR/2006-7, pending before respondent no. 4. He has also sought for a declaration i.e. it is not liable to pay royalty on Vanadium Sludge. The petitioner while seeking the aforesaid reliefs has raised a number of grounds stating that he pays royalty on the entire amount of Bauxite Ore extracted in (ROM) condition from the mines located to the State of Jharkhand. After the Bauxite Ore is transported to its processing plant at Renukoot Sonebhadra (U.P.) while processing Bauxite Ore through a process known as "Bayer's Process", alumina is extracted. Vanadium Sludge is left behind as impurity, which is not a mineral as per the report of Jawaharlal Nehru Aluminum Research Development & Designs Centre. According to the petitioner, Vanadium Sludge not being a mineral, is not subject to payment of royalty.

The respondents have, however, chosen to levy royalty on the Vanadium Sludge sold by Hindalco Industries Ltd. The State of Jharkhand had earlier also demanded royalty on Vanadium Sludge, which was challenged before the Allahabad High Court and an interim order was passed, by which the demand was stayed on payment of 50% and a Bank Guarantee of the balance 50% which the petitioner has complied under protest.

The petitioner has relied upon the provisions of the M.M.D.R Act, 1957, specifically Section 9 and the Second Schedule attached thereto and tried to substantiate its contention that Vanadium Sludge contains small quantities of Vanadium Pentoxide, which is not a mineral and therefore not subject to royalty. The petitioner has also relied upon the judgments rendered by Hon'ble Supreme Court of India in the case of Ichchapur Industrial Cooperative Society Ltd. -Vs.- Competent Authority, Oil & Natural Gas Commission and another reported in 1997(2) SCC 42 and in the case of V.P.Pithupitchai and another reported in 2003(9) SCC 534 in support of his contention. The petitioner has also relied upon the provisions of Rule 64(b)(2) of the Mineral Concession Rules, 1960, to submit that when run-of-mine (ROM) mineral is removed from the leased area to a processing plant outside the leased area, then, royalty shall be chargeable on the unprocessed run-of-mine mineral and not on the processed product.

According to the petitioner, Vanadium Sludge has been treated to be an excisable item under the Central Excise Tariff Act, 1985, and, therefore, it being a manufactured product, no payment of royalty can be raised on it. Based upon these and other submissions, the petitioner challenged the certificate proceeding and the interim order passed therein as illegal and wholly without jurisdiction. More over according to him, as the petitioner cannot be made to pay double levy on the entire Bauxite Ore over which royalty has been earlier charged and paid.

The Respondents-State has strongly contested the aforesaid grounds as per their submissions which have already been recorded hereinabove. As per their contentions, the definition of mineral as judicially construed is in the widest possible amplitude and sometimes accorded its narrow meanings which in each case has to be fixed with reference to a particular context. According to the State, issues like the present one have also been considered in a Division Bench Judgment of the Patna High Court in the case of Hindustan Copper Limited-Vs.- State of Bihar and others, where the lessee-petitioner was held to be liable to pay royalty on minerals which were extracted apart from copper, for which only the lease was granted. According to them, the National Metallurgical Laboratory and the report of the Indian Bureau of Mines categorically point out that Vanadium is present in Bauxite and can also be recovered from Vanadium Sludge from red mud during production of alumina relying upon wide meaning of mineral attached to it. It is their submission that when Vanadium Sludge is being sold for profit after extraction of Bauxite Ore, it is liable to pay royalty on same. Even otherwise, it is the contention of the State that when the Vanadium Sludge is sold for consumption, it is subjected to payment of royalty under Rule 64(C). In the matter of report of experts, this Court should be sloth to interfere in these issues. As per the State whether vanadium sludge is a mineral or not depends upon report of experts determined on issues of fact and this court should not entertain the same in extra ordinary jurisdiction. It is the strong contention of the Respondents- State that the petitioner in any case has come before this Court against an interim order passed in certificate proceeding by avoiding the alternative remedy available to it under the Bihar & Orissa Public Demand Recovery Act, 1914, now adopted by Jharkhand. The petitioner has full opportunity to raise all the points of law and fact in support of his contention before the Certificate Officer under the provisions of the said Act through his objection and thereafter he has further remedy of appeal under Section 60 of the Act, 1914.

Learned counsel for the Respondents-State submits that in such circumstances the Hon'ble Supreme Court of the India in the case of Central Coal Fields Ltd. (Supra) relegated the appellants Central Coal Fields Ltd. to invoke the forum of appeal under the Act of 1914. As such the writ petition is not maintainable under Article 226 of the Constitution of India, the petitioner having avoided the alternative remedy available to it.

Admittedly, the Certificate Case No. 17 GR/06-07 is pending before the Certificate Officer (Mines) South Chhotanagpur Anchal,Doranda, Ranchi, respondent no. 4. The petitioner has appeared there and filed a detailed objection, which is contained as Annexure-13 to the present writ application.

The petitioner has raised all the grounds as has been raised herein involving questions of fact as well of law in his objection filed under Section 9 of the Act of 1914 before the Certificate officer. The petitioner has while doing so also sought opportunity to produce evidence oral as well as documentary before the certificate officer in support of his contention while objecting to the realization of the demand of royalty levied on vanadium sludge as aforesaid.

However, it appears that the Certificate Officer has without dealing with the objection straightaway issued the order dated 18th December, 2006 (Annexure-15), directing the petitioner to deposit 50% amount of royalty and furnish a Bank Guarantee for rest of 50% of the demand. The interim order passed by the Certificate Officer without considering the objection filed by it, is not in accordance with law under P.D.R Act, 1914. It appears that in similar circumstances, in the case of Central Coal Fields Ltd. -Vs.-State of Jharkhand and others reported in 2005(7) SCC 492, the appellant-Central Coal Fields Ltd. had come initially challenging the interim order passed by the Circle Officer directing the appellant-Company to deposit the demand for

realization of surface rent by the Respondents- State of Jharkhand. The said demand was challenged on behalf of the appellant-C.C.L on the ground that the State Government had no jurisdiction to do so as under Section 10 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. The land as well as the rights over the land stood vested in the Central Government and the State Government had no right, title or interest in the land or rights over such land and no proceeding for recovery of rent could be effected nor any charge could be levied by the State Government from the appellants. In such circumstances, in the first round of litigation, the interim order passed by the Certificate Officer was set aside by the learned Single Judge and the Certificate Officer was directed to dispose of the objection filed by the Company by passing an appropriate order, in accordance with law. The Certificate Officer, however, rejected the objection and held the company liable to pay rent. The said Appellant-Company aggrieved by the said order preferred a writ petition being CWJC No. 2535 of 2000. The said writ petition was dismissed by the learned Single Judge by observing that it was not disputed that the order had been passed by the Certificate Officer against which the Appellant-Company could file an appeal under the Bihar & Orissa Public Demand Recovery Act, 1914. The Company thereafter filed a Letters Patent Appeal against the order passed by the learned Single Judge, which was also dismissed upholding the order of the learned Single Judge and the Division Bench also observed that under Section 60 of Public Demand Recovery Act, 1914, the right of appeal was unfettered and the jurisdiction of appellate forum is plenary and unbound. The Appellant- CCL challenged the same before the Hon'ble Supreme Court in Civil Appeal no. 5151 of 2005 and another analogous cases.

The contention of the appellant company was that Division Bench of the High Court could not have dismissed the Letters Patent Appeal on the ground of alternative remedy as a question of jurisdiction had been raised, which went to the root of the proceeding and ought to have been decided by the High Court. In those circumstances, the Hon'ble Supreme Court of India upheld the decision of the learned Single Judge as well as Division Bench by holding that it cannot be said that the learned Single Judge and the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail the alternative remedy of filing an appeal.

The Hon'ble Supreme Court further observed that the powers of the Appellate Authority under the Bihar & Orissa Public Demand and Recovery Act, 1914 are very wide and the appellant may raise all contentions including the contention as to the jurisdiction of the State Government and/or its officer in initiating certificate proceedings against the Company.

In that view of the matter, the Appellant-Company was granted liberty to approach the Appellate Authority by filing appeals under P.D.R Act, 1914. Relevant paragraphs 10 & 11 of the opinion of Hon'ble Supreme Court of India as delivered by Hon'ble C.K.Thakker, J. reported in (2005) 7 SCC 492, are quoted hereinbelow:

> *"Para 10: Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be disposed of by making certain observations. It is no doubt true that according to the appellant Company the certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914, in view of the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalization) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar and Orissa Public Demands Recovery Act, 1914 and the appellant Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated 17.11.1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of the Coking Coal Mines (Nationalization) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant Company. In view of the above*

position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals. Those orders, therefore, do not suffer from any infirmity. As observed by the Division Bench, the powers of the Appellate Authority under the Bihar and Orissa Public Demands Recovery Act, 1914 are very wide and the appellant may raise all contentions including the contention as to the jurisdiction of the State Government and/or its officers in initiating certificate proceedings against the Company. Regarding the earlier decision in National Coal Development Corpn. the High Court was right in observing that the contention regarding alternative remedy was neither raised nor considered nor a finding had been recorded thereon. In view of the said fact also it would be appropriate if the appellant Company is granted liberty to approach the Appellate Authority by filing appeals and the Bihar and Orissa Public Demands Recovery Act, 1914.

Para 11 : Since the appellant Company had filed petitions, intra- court appeals and the appeals in this Court, it would be in the interest of justice and we direct, that if appeals under the Bihar and Orissa Public Demands Recovery Act, 1914 are filed within a period of two months from today, the Appellate Authority will entertain them without raising any objection as to limitation. The Appellate Authority will hear the parties and decide the appeals in accordance with law as expeditiously as possible preferably within three months from filing of the appeals without being influenced in any manner by the observations made by the learned Single Judge, the Division Bench or by us in the present appeals. We may clarify that we are disposing of the appeals upholding the preliminary objection of the State Government regarding availability of alternative remedy of appeals and we may not be understood to have expressed any opinion one way or the other on merits and all contentions of all parties are kept open."

The Hon'ble Supreme Court of India in the recent judgment delivered in the case of United Bank of India -Vs.-Satyawati Tondon and others reported in (2010) 8 SCC page 110, observed that where it is open to the aggrieved petitioner to obtain redress in the manner provided by a statute, the High Court will not permit entertaining a petition under Article 226 of the Constitution of India and the machinery created under statute to be passed. It also observed that in the matters of recovery of taxes, cess, fees etc. the High Court should be extremely careful, circumspect in exercise of its discretion where the petitioner can avail effective alternative remedy by filing application, appeal and revision and that the particular legislation contains a detailed mechanism for redressal of his grievance. In the instant case as already observed by Hon'ble Supreme Court in the case of Central Coal Fields Ltd. (Supra), the powers of the authorities under the Public Demands Recovery Act are very wide and it can also entertain contentions as to the jurisdiction of the State Government and its officers in initiating certificate proceeding against the company. There is no reason why the petitioner should also be not relegated to invoke remedy available to him before the Certificate Officer where he has appeared already and filed detailed objection under Section 9 of the Act, 1914.

The objection filed under Section 9 of the Act of 1949 is pending before the Certificate Officer. The petitioner appears to have raised all such grounds of law and facts as has been raised herein, before the Certificate Officer as would appear from a perusal of the objection petition filed under Section 9 of the Act ,which is at Annexure-13 to the writ application. The issue whether Vanadium Sludge is mineral or not is also dependant upon determination of issues of fact being contested by the rival parties.

In the present case, the Certificate Officer without deciding the objection of the Petitioner-Company as under Section 9, has straightaway proceeded to pass an interim order directing it to deposit 50% of the amount and rest by way of a Bank Guarantee, which is contrary to the provisions of the P.D.R Act, 1914. The Certificate Officer has to adjudicate and determine the liability after consideration of the objection of the petitioner and the claim of the rival parties. The impugned order dated 18th December,2006, cannot be sustained in law and it is accordingly set aside. The Certificate Officer, respondent no. 4 is directed to consider the objection filed

by the petitioner under Section 9 of P.D.R Act, 1914, pending before him, as expeditiously as possible without being influenced in any manner by observations made hereinabove. It is further clarified that while upholding the preliminary objection of the State Government regarding availability of alternative remedy, it may not be understood that this court has exercised any opinion one way or the other on merits and all contentions of all parties are kept open. In the facts and circumstances of the case, for the aforesaid reasons this writ petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

Consequently, the I. A. No. 571 of 2011 and I.A. No. 753 of 2010 are also disposed of.

(Aparesh Kumar Singh, J)

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SUPREME COURT OF INDIA

CENTRAL COALFIELDS LTD
VERSUS
STATE OF JHARKHAND & ORS

Appeal (Civil) 5451 of 2005

Decided on 1 September, 2005

Bench: ***Hon'ble Mr. Justice C.K. Thakker, Hon'ble Mr. Justice P.K. Balasubramanyan***

Central Coalfields Ltd. ...Petitioner
Versus
State of Jharkhand & Ors. ...Respondent

JUDGMENT

J U D G M E N T (Arising out of S.L.P (c) No. 6374 of 2002) WITH CIVIL APPEAL NOS. 5454 and 5452./2005 (Arising out of SLP (c) Nos. 6422 & 6465 of 2002)

C.K. Thakker, J.

Special leave granted.

The present appeals arise out of common judgment and order passed by the High Court of Jharkhand, Ranchi on January 25, 2002 in Letters Patent Appeal Nos. 462, 472 and 473 of 2001. By the said order, the Division Bench of the High Court dismissed intra court appeals filed by the appellant herein confirming the orders passed by the learned Single Judge.

To appreciate the controversies raised in the present group of appeals, few facts in the first matter (Central Coal Fields Limited v. State of Jharkhand & Others) may be noted.

The appellant Central Coal Field Limited ('Company' for short) is a Government Company within the meaning of Section 617 of the Companies Act 1956 having its registered office at Darbhanga, Ranchi. It is one of the subsidiary companies of Coal India Limited. The Company owns various coal mines in Districts Hazaribagh, Giridih, Palamou and Ranchi. The Company is carrying on business in extracting, selling and distributing coal. It is the case of the Company that for the purpose of mining activities, it acquired land through Central Government for mining purposes under the Coal Bearing Areas (Acquisition and Development) Act, 1957. It is also asserted by the Company that it acquired rights over colliery and mining area by virtue of Coal Mines (Nationalisation) Act, 1973.

According to the Company, Section 3 of the said Act provides that on the appointed day, the right, title and interest of the owners in relation to coal mines specified in the Schedule "shall stand transferred to and shall vest absolutely in the Central Government free from all encumbrances". In view of the aforesaid provision as also Section 10 of Coal Bearing Areas (Acquisition and Development) Act, 1957, the land as well as the rights over the land stood vested in the Central Government and the State Government thereafter had no right, title or interest in the land or rights over such land and no proceedings for recovery of rent could be effected nor any charge could be levied by the State Government from the appellant. In spite of clear legal position, Certificate Proceedings against the appellant for realization of surface rent for mining areas in possession of the Company were initiated by the Certificate Officer (Mines), Dhanbad. The Company, therefore, objected to those proceedings by filing objections on June 12, 1991, inter alia contending that the proceedings were against Sections 9 and 9A of the Mines and Minerals (Regulation and Development) Act, 1957. It was also

contended that the Bihar & Orissa Public Demands Recovery Act, 1914 would not apply to the case and proceedings were, therefore, required to be dropped.

Ignoring valid objections of the Company, an interim order was passed by the Certificate Officer directing the appellant-Company to pay an amount of Rs.78,16,712/-. According to the appellant-Company, even the Central Government was of the view that the State Government had no such power which is clear from the letter dated February 12, 1999, addressed by the Director of Mines and Coal, Government of India to the Chief Secretary, Government of Bihar, Patna. The appellant-Company stated that the interim order dated February 2, 1999 was passed without considering the objections filed by it and without giving an opportunity of being heard. A petition was, therefore, filed being CWJC No. 651 of 1999 (R). The learned Single Judge allowed the petition by an order dated September 20, 1999, set aside the order of the Certificate Officer and directed him to dispose of the objections filed by the Company by passing an appropriate order in accordance with law. The Certificate Officer, however, rejected the objections and held the Company liable to pay rent and accordingly an order was passed on June 08, 2000.

Being aggrieved by the said order, the appellant preferred a Writ Petition being CWJC No. 2535 of 2000. The learned Single Judge, after hearing the parties, dismissed the petition observing that it was not disputed that order had already been passed by the Certificate Officer against which the appellant-Company could file an appeal as provided under the Bihar & Orissa Public Demands Recovery Act, 1914. The Court also observed that the Appellate Authority would consider the question as to delay in filing the appeal, which had occurred as the appellant-Company had approached the High Court.

The Company filed Letters Patent Appeal against the order passed by the learned Single Judge. It was argued on behalf of the Company that the learned Single Judge was not right in dismissing the appeal on the ground of availability of alternative remedy particularly when the point was concluded by a decision of Division Bench in Managing Director, National Coal Development Corporation Limited v. State of Bihar & Others, AIR 1984 Patna 280. Dismissing the appeal and upholding the order of learned Single Judge, the Division Bench observed that Section 60 of the Bihar & Orissa Public Demands Recovery Act, 1914 went to suggest that the right of appeal was "unfettered" and the jurisdiction of the appellate forum "plenary and unbound". Whether the appellant was or was not liable to pay surface rent or lease money could be decided by the Appellate Authority. The Authority could also consider the basic question as to maintainability of Certificate Proceedings, but it could not be said that the learned Single Judge had committed an error of law in dismissing the petition on the ground of availability of alternative remedy. Regarding the decision of the Division Bench in National Coal Development Corporation, the Court observed that the contention as to availability of alternative remedy was not raised in that case. Accordingly, the Letters Patent Appeal was also dismissed. The appellant has challenged the said order.

We have heard learned counsel for the parties.

The learned counsel for the appellant strenuously urged that the demand made by the State Government for payment of surface rent in a coal bearing mining area and initiation of proceedings for taking coercive steps for recovery of such rent were not sustainable in the light of the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957 as also the Coal Mines (Nationalisation) Act, 1973. It was also contended that in view of the decision of the Division Bench in National Coal Development Corporation holding that the State Government had no authority to demand surface rent, the High Court ought not to have dismissed the petitions/letters patent appeals on the ground of alternative remedy. In any case, when the question of jurisdiction had been raised, the High Court ought to have decided it, as it would go to the root of the proceedings. It was, therefore, submitted that the impugned orders are required to be set aside by remanding the matters to the High Court to be decided in accordance with law.

The learned counsel appearing for the State Government, on the other hand, supported the orders passed by the High Court. He submitted that the points which have been argued before this Court were urged before the High Court and the High Court held that in the light of statutory provisions, the appellant was bound to avail of the alternative remedy. Regarding earlier decision of the Division Bench, the High Court rightly observed that the point as to availability of an alternative remedy was never raised. No fault, therefore, can be found against the impugned orders and the appeals deserve to be dismissed.

Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be disposed of by making certain observations. It is no doubt true that according to the appellant- Company the Certificate Proceedings could not have been initiated under the Bihar & Orissa Public Demands Recovery Act, 1914, in view of the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957, Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar & Orissa Public Demands Recovery Act. 1914 and the appellant- Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated November 17, 1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of Coking Coal Mines (Nationalisation) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant-Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant-Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals. Those orders, therefore, do not suffer from any infirmity.

As observed by the Division Bench, the powers of the Appellate Authority under the Bihar & Orissa Public Demands Recovery Act, 1914 are very wide and the appellant may raise all contentions including the contention as to the jurisdiction of the State Government and/or its officers in initiating Certificate Proceedings against the Company. Regarding the earlier decision in National Coal Development Corporation, the High Court was right in observing that the contention regarding alternative remedy was neither raised nor considered nor a finding had been recorded thereon. In view of the said fact also it would be appropriate if the appellant-Company is granted liberty to approach the Appellate Authority by filing appeals under the Bihar & Orissa Public Demands Recovery Act, 1914. Since the appellant-Company had filed petitions, intra court appeals and the appeals in this Court, it would be in the interest of justice and we direct, that if appeals under the Bihar & Orissa Public Demands Recovery Act, 1914 are filed within a period of two months from today, the Appellate Authority will entertain them without raising any objection as to limitation. The Appellate Authority will hear the parties and decide the appeals in accordance with law as expeditiously as possible preferably within three months from filing of the appeals without being influenced in any manner by the observations made by the learned Single Judge, the Division Bench or by us in the present appeals. We may clarify that we are disposing of the appeals upholding the preliminary objection of the State Government regarding availability of alternative remedy of appeals and we may not be understood to have expressed any opinion one way or the other on merits and all contentions of all parties are kept open.

For the foregoing reasons, the appeals are disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.

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JHARKHAND HIGH COURT

SITA RAM AGARWAL AND ORS.
VERSUS
STATE OF JHARKHAND AND ORS.

W.P. (C) Nos. 4190, 4192, 4269, 4274, 4299, 4302 and 4321 of 2004

Decided on 01 October, 2004

Bench : ***Hon'ble Mr. Justice M.Y. Eqbal, J.***

Sita Ram Agarwal and ors.
Versus
State of Jharkhand and ors.

ORDER

M.Y. Eqbal, J.

1. In all these writ petitions the petitioners have challenged the validity of the notices issued to them in various certificate proceedings under Section 7 of the Bihar and Orissa Public Demand Recovery Act (shortly 'the said Act) for realization of rent of the shops in occupation of the petitioners. The petitioners have raised a pure question of law as to whether the Certificate Officer has any authority or jurisdiction to issue notices under Section 7 of the said Act without complying the mandatory requirements of law.

2. The petitioners are carrying on business in the open market in the shops allotted to them in the Principal Market Yard. Hazaribagh. The rent of the shops was time to time enhanced and for the recovery of rent respondent No. 3, the Secretary. Agricultural Produce Market Committee, Hazaribagh filed requisitions before the Certificate Officer-cum-Executive Magistrate, Sadar. Hazaribagh and on tile basis of the requisition certificate cases were instituted. The Certificate Officer, on receipt of the records and on deposit of Court fee by the certificate holder, issued notices under Section 7 of the said Act.

3. Mr. J.K. Pasari, learned counsel appearing on behalf of the petitioners sub-milled that no certificate, as required under Sections 5 and 6 of the said Act, was ever served upon the petitioners. According to the learned counsel a certificate, as required in Form I, has not even been prepared and signed by the Certificate Officer. learned counsel submitted that in absence of mandatory compliance of the provisions of the Act the certificate proceedings are vitiated in law and the notices issued by the Certificate Officer are wholly without jurisdiction.

4. Mr. V.P. Singh, learned counsel appearing on behalf of the Market Committee, on the other hand, submitted that rent of the shops were time to time enhanced and the validity of the enhancement of rent has been affirmed by this Court, Learned counsel submitted that even if notices were issued without serving certificate in Form I, the same being a procedural error and irregularity, the certificate proceedings cannot vitiate and the notices cannot be quashed.

5. On 30.8.2004 when these cases were taken-up for admission this Court directed the State counsel to produce the records of the certificate cases and pursuant to that the records of the certificate cases were produced on 13.9.2004. From perusal of the certificate cases it transpires that no certificate in Form I was signed by the Certificate Officer before issuance of notices under Section 7 of the said Act. As a matter of fact, no certificate in Form I was prepared and signed by the Certificate Officer and the same are not on records.

6. Mrs. Sheela Prasad. learned G.P. IV very fairly admitted that certificate in Form I was not prepared before issuance of notices under Section 7 of the said Act.

7. Section 5 of the said Act provides that when any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form. Every such requisition shall be signed and verified in the prescribed manner. Section 6 of the said Act casts a mandate on the Certificate Officer to record his satisfaction with regard to the fact that the demand is recoverable and shall sign the certificate in the prescribed form. The reason is that once a certificate is issued by the Certificate Officer in exercise of powers conferred by this section, it becomes a decree. It is well settled that signing of certificate by the Certificate Officer is not an empty formality. The Certificate Officer is expected to apply his mind and may sign the certificate on receipt of the requisition but only after being satisfied that the demand is recoverable by a certificate proceeding,

8. The proposition of law has been well settled by a Division Bench of the Patna High Court as far back as in 1958 in the case of Nageshwar Prasad Singh v. Rai Bahadur Kashinath Singh, 1958 (VI) BLJR 820. Their lordships observed as follows :

'It is abundantly clear, therefore, that the proper filing of the certificate, namely, the proper filling-up of the form and the signing of the same by the Officer concerned is an essential condition to give the Collector or the Certificate Officer the jurisdiction to issue a certificate under the Act, in my judgment the provisions contained in Section 4 read with Form No. 1 of Schedule II appendix, are mandatory in the sense that the legislature intended that, if a certificate had to be issued under the Act, which had the force of a decree of a Court of law, that certificate must conform to the requirements of section and the form, otherwise the certificate cannot be said to be in accordance with the provisions of the Act. The principle is well settled that, if a thing is ordered by the legislature to be done in a particular manner, that thing must be done in that particular manner, and. if it is not done in the manner laid down by the law, it is invalid and of no effect - See Howard v. Bodington, Bowman v. Blythe, Gifford v. The Bury Town Council. The Liverpool Borough Bank v. Turner, Jolly v. Handcock and Nussenmanjee Pestonjee v. Meer Mynoondeen Khan. It is equally well established that, if a certain power granted to a public officer to be exercised in a particular manner or form is not exercised in the particular manner or form, it is invalid and without jurisdiction. Vide Sutherland's Statutes and Statutory Construction, 3rd Edition. Volume 3, page 100.

There can be no doubt that the provisions of the Public Demands Recovery Act have given power to the public officer concerned to issue a certificate having the force of a decree of a Court of law and that certificate should be couched in forms prescribed by the statute and, therefore, the provisions contained in the Act must be construed strictly and the public officer mentioned therein must conform to the form prescribed.

To the like effect is the statement made in Maxwell on the Interpretation of Statutes. Tenth Edition page 376, where it is stated.'

9. Their Lordships further observed :

'The net result of having considered all these cases is that the Certificate Officer must meticulously apply his mind to filing the certificate and filing in the columns and blanks correctly and in appending his certificate in the form prescribed and that the filling in of the forms is a matter of substance and is imperative, to give the certificate the force of a decree of Court of law, and if it is found that the certificate officer had not applied his mind at all and that some of the blank spaces were not filled-up, or were incorrectly filled-up, the document so prepared and filed is not a certificate under the Public Demand Recovery Act. In the present case, the name of the certificate holder is given as 'Emperor', and it is obvious that debt due. namely the arrears of cess (collected by the Collector and payable to the

District Board) were not debts due to the Emperor and, therefore, the Emperor was not the certificate holder.

The certificate officer did not fill-up the blanks in the certificate portion of the form, and the name of the certificate debtor did not at all appear in the certificate or in the tabulr form above the certificate. The name of the certificate debtor is. however, found on the back of the page, and one does not know as to when that name was written out on the back of the page. Even if it is supposed that the name of the certificate holder was given on the back of the certificate form, that would show without any doubt that the certificate officer, while giving his certificate under his signature on the first page, did not at all apply his mind as to whether the form was properly and correctly filled-up, in that view of the matter, in my opinion, it must be held. as was held in the Privy Council case (1LR 23 Cal 775), that the certificate proceedings in this case were wholly invalid and that the Court below has rightly held that he sale held in execution of such a certificate was bad in law and must be set aside. The Courts must exact from the Collector or the Certificate Officer, under the Public Demand Recovery Act due performance of his duties under the Act and forms must be duly filled in and not in a slovenly fashion, and if the forms are not properly filled up, the officer concerned acts without jurisdiction, it must, therefore, be held that the sale was invalid and must be set aside.'

10. Now coming back to the instant case, as noticed above, before issuance of notices under Section 7 of the Act admittedly the Certificate Officer did no record his satisfaction by meticulously examining the demand of the certificate holder and without signing the certificate in Form I, issued notices to the petitioners under Section 7 of the said Act, I have, therefore, no hesitation in holding that the impugned notices issued under Section 7 of the said Act are wholly without Jurisdiction and the same must be quashed.

11. For the aforesaid reasons these writ applications are allowed and the impugned notices are quashed. The Certificate Officer may act on the requisition sent by the concerned respondent only after complying the mandatory requirements of the provisions of the said Act.

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JHARKHAND HIGH COURT

INDIAN IRON AND STEEL CO. LTD.
VERSUS
STATE OF JHARKHAND

2003 (4) JCR 515 Jhr

Decided on 20 August, 2003

Bench: ***Hon'ble Mr. Justice S.J. Mukhopadhaya***

Indian Iron And Steel Co. Ltd.
versus
State Of Jharkhand

JUDGMENT

S.J. Mukhopadhaya, J.

1. In this case, the petitioner has challenged the entire certificate proceeding including the demand notice dated 7th February, 2003 issued under Sections 4 and 6 of the Bihar & Orissa (Public Demand) Recovery Act, 1914 (for short P.D.R. Act) in connection with Certificate Case No. 17/02-03 as was pending before the Certificate Officer (Mines), Dhanbad and to command the respondents not to take any coercive steps against it or its employees in connection with the aforesaid certificate case No. 17/02-03.

During the pendency of the writ petition, the Certificate Officer passed final order in Certificate Case No. 17/02-03, as contained in Memo No. 204 dated 7th March, 2003, whereby and whereunder, the objection raised by the petitioner has been rejected and petitioner has been directed to pay the certificate amount by 13th March. 2003. The aforesaid final order dated 7th March, 2003 has also been challenged by the petitioner by tiling a petition (LA. No. 524/2003) for amendment of prayer.

2. According to the petitioner, it is a Government Company within the meaning of Section 617 of the Companies Act engaged in manufacturing Steel and Irons, as such holds several Coalmines by way of ownership/lease. The Coalmines of petitioner are situated within the district of Dhanbad in Jharkhand, as also in adjacent State of West Bengal. Chasnala Colliery and Jitpur Colliery are two captive Coalmines which fall within the State of Jharkhand. The coal extracted by the petitioner from the aforesaid two captive Coalmines, after washing, are sent to its Steel Plant at Burnpur in the district of Burdwan, West Bengal where it produces Iron and Steel.

3. Admittedly, the petitioner is liable to pay royalty under Section 9 of the Mines and Minerals (Regulation & Development) Act, 1957, on the coal extracted and removed/consumed by the petitioner. Under Rule 64(A) of the Mineral Concession Rules, 1960, the State Government is empowered to charge 24% interest on the dues of royalty, if the same is not paid within sixty days from the date fixed for payment by the State Government.

The petitioner had been paying royalty as per law upto February, 2002, but abruptly stopped making payment from March, 2002. The amount of royalty was calculated to Rs. 3,87,94,065/- for the period March, 2002 to November, 2002 and the petitioner Company was served with notice by the State of Jharkhand. But the royalty amount with interest which came to Rs. 4,49,45,439/- having not paid, the Certificate Case No. 17/02-03 was initiated at the instance of the District Mining Officer, Dhanbad, State of Jharkhand.

4. The petitioner had not disputed the certificate amount for recovery of royalty with interest, but it filed objection under Section 9 of the P.D.R. Act on 27th February, 2003 and requested for suspension of the certificate proceeding on the ground that the petitioner Company has been declared sick under the Sick Industrial Companies Act, 1985 (for short S.I.C.A. 1985). However, the certificate . proceeding having not suspended, this writ petition was preferred.

5. Mr. M.M. Banerjee, learned counsel for the petitioner submitted that the petitioner Company has been declared siek by the Board of Industrial and Financial Reconstruction (for short BIFR) vide its proceeding dated 17th August, 1994, as per S.I.C.A. 1985. It being a Sick Industrial Company, within the meaning of Section 3(1)(o) of the S.I.C.A., 1985, as the scheme under Section 18 of S.I.C.A., 1985 is under formulation, the Certificate Proceeding, in question, distress or the like against any of the properties of the petitioner's Company cannot proceed and should remain under suspension, as per Section 22 of S.I.C.A., 1985.

He placed reliance on the Supreme Court decision in Tata Davy Ltd. v. State of Orissa, reported in (1997) 6 SCC 69.

It was further submitted that the respondents State of Jharkhand may approach the B.I.F.R. and may realize the certificate amount with their consent in terms with Section 22 of S.I.C.A., 1985.

It was also submitted that the issue whether the certificate amount can be recovered through the certificate proceeding or not will depend on the scheme as may be sanctioned.

6. Learned Advocate General, Jharkhand appearing on behalf of the State of Jharkhand while accepted that the petitioner Company has been declared sick by B.I.F.R. in its meeting held on 17th August, 1994, submitted that there is no bar to recover the admitted 'royalty' with interest due for the period subsequent to the date of declaration 'sick'. In the certificate case, the period of recovery of royalty being March, 2002 to November, 2002, according to the State of Jharkhand, the petitioner cannot claim any protection under Section 22 of S.I.C.A., 1985.

Reliance was placed on Supreme Court decision in the case of Dy. Commercial Tax Officer v. Corromandal Pharmaceuticals, reported in (1997) 10 SCC 649.

7. For determination of the issue, it is relevant to discuss the relevant provisions of S.I.C.A., 1985.

On a reference under Section 15, the B.I.F.R. is required to make enquiry under Section 16 of the S.I.C.A., 1985. Thereafter, if the B.I.F.R., is satisfied that a Company has become a Sick Industrial Company, may pass suitable orders under Section 17 of the said Act. After an order is made under Sub-section (3) of Section 17 in relation to any Sick Industrial Company, the operating agency is required to prepare a scheme with respect to the Company, whereinafter, the B.I.F.R. with such modification, as it may deem fit, can sanction the Scheme as per Section 18. As per Section 22 of the Act, 1985 all the legal proceedings, contracts, etc. are to remain suspended from the stage of Section 16, as quoted below:

"22. Suspension of legal proceedings, contracts, etc.--(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation of consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceeding for the winding up of the industrial company or for execution, distress, or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or any guarantee in respect of any loans or advance granted to the industrial company shall lie or

be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority."

8. In the case of Corromandal Pharmaceuticals, (supra), the assessee Company was declared a Sick Industrial Company under SICA, 1985 by the B.I.F.R. In exercise of its power under Sections 18(4) and 19(3} of the S.I.C.A., 1985, after obtaining the consent of the Financial Institutions concerned, the B.I.F.R. sanctioned a scheme for rehabilitation of the assessee Company w.e.f. 19th November, 1990. The assessee company was assessed to Sales Tax for subsequent assessment Years 1992-93 and 1993-94, but despite the opportunity, the assessee Company defaulted to pay assessed tax. In the said case also, the assessee Company raised objection of recovery on the ground that the recovery proceedings were barred by Section 22(1) of S.I.C.A., 1985. On the other hand, the Revenue contended that the recovery proceeding related to the period after the sanctioned scheme, The legal bar or embargo under Section 22 of the Act could only be in respect of the Sales Tax dues included in a sanctioned scheme and not for the subsequent period. The Supreme Court while upheld the contentions of the Revenue, held as follows :

"........So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts, like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amount due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against the spirit of the statute in a business sense, should be avoided."

9. The case of Tata Davy Ltd., (supra), as referred by the counsel for the petitioner was different. In that case, the appellant company was declared a Sick Company within the meaning of S.I.C.A.. 1985, that means, after 1985. In the said case, the Revenue intended to recover Sales Tax for the assessment year 1983-84 and 1984-85, i.e., the period prior to the date the Company was declared as a Sick Company.

In this background, the Supreme Court observed that the reference to Corromandal Pharmaceutical's and held that the revenue can not recover the arrears of Sales Tax without the consent of the B.I.F.R.

10. In the present case, the petitioner Company has been declared sick under Section 17(3) of the S.I.C.A., 1985 in the meeting of B.I.F.R. dated 17th August, 1994. The Scheme is under preparation under Section 18 of S.I.C.A. That means, enquiry under Section 16 was made and report must have been submitted prior to 17th August, 1994. In this background. It cannot be presumed that the scheme includes the dues reckoned between March, 2002 to November. 2002, including the royalty and interest payable by petitioner.

11. Therefore, the petitioner cannot claim any protection under Section 22 of S.I.C.A., 1985 in respect to royalty and interest payable by it for the period March, 2002 to November, 2002 nor such relief can be granted. However, taking into consideration that the petitioner is a Public Sector Undertaking, is given opportunity to pay back the rest of certificate amount, after adjustment of the amount, already paid, in two equal monthly instalments i.e. within two months. In such case, the respondents will not take any coercive steps against the petitioner or its employees.

12. The writ petition is dismissed, but with aforesaid observations. However, there shall be no order, as to costs.

JHARKHAND HIGH COURT

TATA IRON & STEEL COMPANY LTD. VERSUS STATE OF BIHAR AND ORS.

Decided on 23 July, 2002

Bench: ***Hon'ble Mr. Justice S Mukhopadhaya and Hon'ble Mr. Justice L. Uraon***

Tata Iron & Steel Company Ltd.
versus
State Of Bihar And Ors.

JUDGMENT

S.J. Mukhopadhaya & Lakshman Uraon, JJ.

1. The appellant-Tata Iron & Steel Company Ltd. (TISCO for short) earlier moved before this Court in C.W.J.C. No. 01/84(R) seeking a declaration that it was liable to pay royalty on the tonnage of the washed coal when it is removed from the coal washiery. The case was heard by the learned single Judge who taking into consideration Section 9(2) of the Mines Minerals (Regulation Development) Act, 1957, held that the royalty is payable on the coal removed from the leased area and so long it is not removed, no royalty is payable. The writ petitioner is liable to pay royalty on the weightage of coal.

2. As per the decision aforesaid in C.W.J.C. No. 01/84(R) the appellant-TISCO paid royalty on the weightage of washed coal. Subsequently similar issue fell for consideration before the Supreme Court in the case of State of Orissa and Ors. v. Steel Authority of India Ltd., reported in JT 1998 (5) SC 348. In the said case, the issue raised was whether upon the quantity of mineral extracted or upon the quantity arrived at after processing the royalty is to be paid. The Supreme Court held that processing amounts to consumption and hence royalty is to be paid on the quantity extracted.

3. After the aforesaid decision of the Supreme Court, the appellant-TISCO represented before the District Mining Officer, Hazaribagh vide letter dated 23rd September, 1998 and informed that it intends to pay royalty on raw coal extracted w.e.f. 10th August, 1998, i.e. the day the Supreme Curt delivered the judgment. It was rejected by Assistant Mining Officer, Hazaribagh vide letter No. 1477 dated 27th September, 1998 on the ground that the issue between the parties stood settled by this Court's decision in C.W.J.C. No. 01/84(R), the appellant cannot derive any advantage of subsequent decision of the Supreme Court decision. Such stand taken by the Assistant Mining Officer has been upheld by learned single Judge vide order dated 1st March, 2000 passed in C.W.J.C. No. 3040 of 1998(R).

4. The question arises as to whether the appellant-TISCO can derive advantage of the Supreme Court's decision in State of Orissa and Ors. v. Steel Authority of India Ltd. (supra) or not, a decision having already pronounced in its case, C.W.J.C. No. 01/84(R).

5. Somewhat similar question fell for consideration before the Supreme Court in the case of U.P. Pollution Control Board v. Kanoria Industrial Ltd., reported in AIR 2001 SC 787. That was a case in which M/s. Kanoria Industrial Ltd. paid levy and cess with protest and moved before the High Court under Article 226 of the Constitution of India which was dismissed. Subsequently, the provision of law relating to levy and collection of cess was declared unconstitutional by the Supreme Court but such benefit was denied to M/s. Kanoria Industrial Ltd., on the ground that it lost the earlier case. In the circumstance the Supreme Court observed and held as follows :

Another reason to defeat the claim for refund put forth is that the respondents have filed writ petitions challenging unsuccessfully the validity of levy in question and those orders have become final inasmuch as no appeal against the same has been filed. The contention is put forth either on the basis of res judicata or estoppel. It is no doubt true that these principles would be applicable when a decision of a Court has become final. But in matters arising under public law when the validity of a particular provision of levy is under challenge, this Court has explained the legal position in Shenoy and Co. v. Commercial Tax Officer, Circle II, Bangalore, (1985) 2 SCC 512 : AIR 1985 SC 621, that when the Supreme Court declares a law and holds either a particular levy as valid or invalid it is idle to contend that the law laid down by this Court in that judgment would bind only those parties who are before the Court and not others in respect of whom appeal had not been filed.

To do so is to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. To contend that the conclusion reached in such a case as to the validity of a levy would apply only to the parties before the Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. When the main judgment of the High Court has been rendered ineffective, it would be applicable even in other cases, for exercise to bring those decisions in conformity with the decisions of the Supreme Court will be absolutely necessary. Viewed from that angle, we find this contention to be futile land deserves to be rejected.

6. Similar issue also fell for consideration before this Court in the case of M.A. Refractories v. Jharkhand State Electricity Board, reported in 2001 (2) JLJR 358. In the said case, the Electricity Board rejected the benefit of exemption inspite of law laid down by the Supreme Court on the ground that the earlier writ petition of M/s. M.A. Refractories was dismissed. This Court noticed the Supreme Court decision in U.P. Pollution Control Board v. Kanoria Industrial Ltd., (supra) and held that there being continuity of cause of action, the subsequent writ petition was maintainable.

7. In the present case it is not in dispute that the Supreme Court in the case of State of Orissa and Ors. v. Steel Authority of India Ltd., (supra) while interpreted the Section 9(1) of the Act held that the royalty is payable on the quantity extracted and not upon the quantity arrived at after processing. The judgment aforesaid is not only binding upon the parties before the Supreme Court but a law having laid down is also binding on all being a nature of judgment under Article 141 of the Constitution of India.

8. In the aforesaid background, and in view of subsequent decision rendered by the Supreme Court, the respondents cannot interpret or give any other meaning of Section 9(1) of the Act than the interpretation made by the Supreme Court. Lifting and extract of coal being continuous process on the basis of which the royalty is being paid every year, there is a continuity of cause of action and as such the appellant can claim for benefit as per the decision of the Supreme Court.

9. The Assistant Mining Officer, Hazari-bagh and learned single Judge having taken contrary view vide letter No. 1477 dated 27th September, 1998 and order dated 1st March, 2000 in CWJC No. 3040 of 1998(R) they are set aside.

10. The appellant-TISCO henceforth shall be liable to pay royalty as per the decision of the Supreme Court, as referred above.

11. However, in view of the fact that the State has been reorganized since 15th November, 2000, now In place of 'State of Bihar', 'State of Jharkhand' will be charging royalty, the appellant-TISCO shall not ask for refund of excess royalty, if deposited.

12. This appeal is allowed with afore said observations. However, there will be no order, as to costs.

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JHARKHAND HIGH COURT

STATE BANK OF INDIA
VERSUS
AMIRUL ARFIN GANDHI AND ORS.

Bench : ***Hon'ble Mr. Justice M. Y. Eqbal***

Decided on 4 January, 2002

State Bank Of India
versus
Amirul Arfin Gandhi And Ors.

ORDER

M.Y. Eqbal, J.

1. In this writ application the petitioner-State Bank of India, has challenged the order dated 24.9.1988 passed by the Certificate Officer, Hazaribagh cancelling the certificate and dismissing the Certificate Case No. 2/79-88 filed by the petitioner-Bank against the borrower and after the death of borrower proceeded against his heirs respondent Nos. 1, 2 and 3 and also the order dated 11.03.1994 passed by the Deputy Commissioner, Hazaribagh dismissing the Certificate Appeal No. 85/88 preferred by the petitioner and also the order dated 6.9.1999 passed by the Commissioner, North Chotanagpur Division, Hazaribagh in Certificate Revision No. 67/94 preferred by the petitioner against the respondent Nos. 1, 2 and 3.

2. The petitioners' case is that the original borrower namely, Nurul Arfin Gandhi, borrowed loan time to time from the petitioner-Bank from 1970-75 by executing various loan agreements and other documents. The said borrower was also allowed cash credit facility against the pledged stock. In 1979 the liability of the borrower exceeded beyond the stock and pledged limit of Rs. 60,000/- and cash credit limit of Rs. 20,000/-and accordingly the petitioner-Bank filed a certificate case against the borrower Nurul Arfin Gandhi for recovery of Rs. 1,07,853.48 paise. Pursuant to the notice issued under Section 7 of the Public Demands Recovery Act the borrower appeared and filed his show cause on 25.8.1980. In the meantime, the original certificate debtor namely Nurul Arfin died on 27.5.1983 and respondent Nos. 1, 2 and 3 were substituted in his place. The certificate Officer issued distress warrant against the respondent Nos. 1, 2 and 3, which was challenged by the said respondents in CWJC No. 651/85 (R). The matter was heard by a learned single Judge of the Ranchi Bench of the Patna High Court and writ petition was disposed of on 11.7.1986 with a direction to the said respondents to file their objection under Section 9 of the said Act and the Certificate Officer will dispose of the objection in accordance with law. The Certificate Officer, after hearing the parties on the objection filed by the respondents, passed final order on 24.9.1988 under Section 10 of the said Act and cancelled the certificate holding that the certificate case became barred by limitation and the said heirs of the original certificate debtor have no liability for payment of certificate dues. Being aggrieved by the said order passed by the Certificate Officer, the petitioner-Bank moved in appeal under Section 60 of the said Act before the Deputy Commissioner, Ranchi, who by order dated 11.3.1994 dismissed the appeal by confirming the order passed by the Certificate Officer. The petitioner then challenged the said order in Revision before the Commissioner, North Chotanagpur Division, Hazaribagh. who finally dismissed the revision application holding that as on 15.7.1975 only a sum of Rs. 20,000/- was borrowed by the borrower Nurul Arfin and therefore, only that amount can be recovered on the basis of agreement executed by him in favour of the Bank.

3. Mr. Kameshwar Prasad, learned Sr. Counsel appearing for the petitioner-Bank, assailed the impugned orders passed by the Certificate Officer, the Deputy Commissioner and the Commissioner as being illegal and contrary to law and evidence on record. Learned counsel submitted that the Commissioner having expressly and impliedly held that the certificate demand to the extent of Rs. 20,000/- was maintainable, fell into an error of law and committed an error of jurisdiction in holding the liability of the borrower only to the extent of Rs. 20,000/- by misconstruing the agreement creating liability under the PDR Act to the extent of Rs. 60,000/- learned Counsel further submitted that when the substitution application was duly filed within 5 months and accepted by the Court and also by the High Court, the Certificate Officer committed serious illegality in holding that the substitution petition has not been filed within time, the certificate proceeding became barred against heirs of the original borrower. Learned counsel then submitted that when the demand was not cancelled by the Deputy Commissioner or by the Certificate Officer on the ground of limitation, the Revisional Court has no jurisdiction to reject the demand on the ground of limitation. Learned counsel put heavy reliance on the decision of the Supreme Court in the case of Punjab National Bank v. Surendra Prasad Sinha. (1993) 1 Supp SCC 499 and United Bank of India v. Naresh Kumar, AIR 1997 SC 3,

4. Mr. P.K. Prasad, learned counsel appearing for the respondents, on the other hand, submitted that admittedly the loan amount excluding Rs. 20,000/- was granted to the original borrower prior to 11.7.1975 when there was no provision for recovery of the loan amount under Public Demands Recovery Act. It was only by virtue of amendment made in 1974, the Bank's loan have been included in the schedule of the said Act. According to the learned counsel, any transaction made prior to the amendment cannot be recovered as public demand and any acknowledgement made by the original borrower cannot be given retrospective effect. Learned counsel further submitted that under Section 52(2) and the proviso to Section 52 the concerned respondents cannot be held liable to pay the dues without ascertaining the property inherited by them.

5. Before appreciating the rival contentions made by the learned counsel for the parties, it would first refer some of the undisputed relevant facts of the case. The original certificate debtor, namely. Nun(sic) time to time borrowed loan from the petitioner-Bank from 1970 to 1975 against execution of various documents. The last documents executed by the said borrower are dated 11.7.1975. One of such document is Annexure 1 to the writ application, whereby the borrower agreed for recovery of the bank dues under the provisions of Public Demands Recovery Act. The relevant portion of the said agreement dated 11.7.1975 is quoted herein below :--

"In pursuance of which I/We have executed several documents detailed hereunder to record the terms and conditions of the said advance/loan and have bound myself/ourselves to repay the said advance/ loan and in consideration of which the Bank has advanced or agreed to advance a sum of Rupees sixty thousand only to me/us. I/we agree that any sum remaining due to the Bank with accrued interest and payable by me/us in accordance with the documents noted hereunder, or in accordance with any documents which I/We may execute in future in connection with the said advance/ loan or the repayment thereof, shall be recoverable from me/us as a Public Demand in terms of the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar-Orissa Act IV of 1914) as amended by the Bihar Public Demands Recovery (II Amendment) Ordinance, 1973.

I/We further agree that I/We shall be debarred from raising any plea of jurisdiction of the certificate court in the certificate proceedings if and when instituted to raise the said dues under the said Bihar & Orissa Public Demands Recovery Act.

Dated at the 11th day of July 1975 Signature(s) of the Borrower(s)."

6. It is worth to notice here that in the said agreement details of loan time to time taken by the borrower from 1970 to 1975 has been mentioned, which comes to about Rs. 60,000/-.

7. The Certificate Officer in the impugned order dated 24.9.1988 recorded a finding that there is no document to show that dues could be recovered as Public Demand save and except the PDR Agreement dated 11.7.1975 which cannot be given retrospective effect. The Certificate Officer, however, has not recorded any finding that the heirs of the original borrower namely, respondent Nos. 1, 2 and 3 have been wrongly substituted on the basis of time barred application. The appellate authority has not recorded its own finding rather simply affirmed the order passed by the Certificate Officer. The Commissioner in his order passed in revision, has held that the amendment made in the PDR Act in 1974 cannot be given retrospective effect and, therefore, the loan granted to the borrower prior to 11.7.1975 does not come under the purview of the said Act. The Commissioner further held that the certificate case was barred by limitation and the application for substitution of legal representatives was also barred by limitation.

8. The Bihar and Orissa Public Demands Recovery Act, 1914 was amended by Act IV of 1974 thereby incorporating "any money payable to the State Bank of India" within the list of Public Demand has been set out in Schedule-I to the said Act. The said Act was challenged before the Supreme Court in the case of H.T. Refractories Pvt. Ltd. v. Certificate Officer, (1994) 2 PLJR 72, on the ground that Bihar Legislature had no legislative competence to enact law providing for recovery of Bank dues as arrears of land revenue. Their Lordships, after discussing the law, approved the decision of the Calcutta High Court and the Patna High Court and held that dues of State Bank of India can be recovered as arrears of land revenue and such a provision even if it incidentally trenches upon "Banking under Entry 45 of list 'I' is well within the legislative competence of the State Legislature as it falls within Entry 11A and 13 of List III of 7th Schedule of the Constitution of India.

9. The only question, therefore, falls for consideration is whether the petitioner-Bank is entitled to recover the dues as public demand on the basis of PDR agreement executed by the borrower on 11.7.1975. As noticed above, admittedly the original borrower executed PDR agreement on 11.7.1975 (Annexure 1) agreeing, inter alia, that all the advances made by the Bank and lying due together with interest shall be recoverable from him as a public demand in terms of the said Act. By the said agreement dated 11.7.1975, the relevant portion of which has been quoted hereinabove, the borrower not only acknowledged his total liability but also agreed that all the dues shall be recoverable under the provisions of the Public Demands Recovery Act.

10. Section 3(6) of the said Act defines the word 'Public Demand' as under :--

'Public Demand means any arrear or money mentioned or referred to in the Schedule I and includes any interest which may, by law be chargeable thereof upto the date on which the certificate is signed under Part II'.

11. Entry 15 of Schedule-I very clearly provides that any money payable to State Bank of India shall be recovered as Public Demand. From reading Section 3(6) of the Act together with Entry 15 of Schedule I, its clear that if a debtor agrees in writing that any dues or arrears of dues can be recovered as Public Demand then it can not be held that the loan amount granted prior to amendment of the Act can not be recovered as Public Demand. Such narrow interpretation will defeat the very purpose of the amendment made in the Act.

12. In the case of United Bank of India v. Naresh Kumar and Ors., AIR 1997 SC 3 the Supreme Court took the view that where the courts come to a conclusion that money had been taken by certain parties from the Bank and that the claims of the Bank are justified, it will be travesty of justice if the Bank is to be

non-suited for a technical reason and the public interest can not be permitted to be defeated on a mere technicality.

13. In the case of Dhrup Jee Prasad and Ors. v. State of Bihar and Ors., 2000 (4) PLJR 432, the Division Bench of the Patna High Court while considering a similar question observed as under :--

'The appellants have approached the High Court in its equity jurisdiction. The initial submission as was made before the Court was that the debt is time barred. The High Court is not impressed with this submission as what the appellants have taken as a loan is a public debt and if the contention of the appellants is accepted then it will be a bad precedent that persons like the appellants will take out loans from public banks and public finance institutions and tailor a situation that the loan is not paid and take protection under the statute of limitation that it is beyond recovery. The situation then will amount to a circumstance that persons like the appellants will contribute to deficit financing of nation's economy of undischarged debts and the State then would take recourse to make up this deficit have nothing to do with bad debts.

The debt is admitted. The hypothecation of assets against the debt was given lies on record and the appellants have been ill- advised to continue the proceedings to avoid the discharge of the loan. The appellants are obliged to discharge their loan forthwith."

14. The Commissioner in his order has committed serious errors of law in holding that any loan given prior to 11.7.1975 does riot come under the purview of Public Demands Recovery Act when the borrower in an unequivocal term has agreed that all dues shall be recovered as Public Demand. The Commissioner has further committed serious illegality in so far as he held that the substitution application was time barred in view of the finding recorded by him that part of the loan amount could be recovered as Public Demand. The impugned orders passed by the respondents, therefore, cannot be sustained in law.

15. This writ application is therefore allowed and the impugned orders passed by the Certificate Officer, Deputy Commissioner and the Commissioner are set aside. The matter is remitted back to the Certificate Officer to proceed against the substituted heirs of the original certificate Debtor for the recovery of the dues in accordance with law.

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PATNA HIGH COURT

SANTOSH KUMAR NARNOLIA VERSUS THE STATE OF BIHAR & ORS.

C.W.J.C.No. 217 of 1997

Decided on 6.5.1997

Bench : ***Hon'ble Mr. Justice B.R Singh***

Santosh Kumar Narnolia ... Petitioner
versus
The State of Bihar & ors. ... Respondents.

For the petitioner : Mr. Rajiv Ranjan Mishra

For the respondents : Mr. Tarun Kumar Singh

ORDER

I had heard the parties on 11-4-1997, and had indicated an order in Court. When the order was placed before me in draft, I felt the need to hear the parties further, as to the directions to be given in the writ petition. Accordingly, the matter was placed before me under the heading 'to be mentioned- today and I have again heard counsel for the parties. The writ petition is disposed of by an order recorded separately.

Heard counsel for the parties.

2. The petitioner herein is the proprietor of the firm M/s Sri Lakshmi Textiles. It is not disputed that the Central Bank of India, Dumka Branch (respondent no. 4 herein) had extended to the said firm a cash credit facility of Rs. 50,000/-, which was subsequently enhanced to Rs. 75,000/-. Since the firm failed to discharge its liability to the respondent-Bank, Certificate Case No. 243/94-95 for realisation of Rs. 2,10,149.74 paise was initiated against the petitioner. In the said proceeding the petitioner filed his objection under Section 9 of the Bihar and Orissa Public Demands Recovery Act, and prayed that he may be directed to liquidate the dues outstanding in monthly instalments of Rs. 500/-. The Certificate Officer directed the petitioner to deposit Rs. 10,000/- in the first instance and thereafter the question of payment in instalments may be considered. It is also not disputed that the petitioner deposited the aforesaid sum of Rs. 10,000/-, and again renewed his prayer for fixing of instalment of Rs. 500/- per month. The prayer of the petitioner was not accepted by the Certificate Officer, who directed him to deposit at the rate of Rs. 1250/- per month for the time being, till the Certificate Officer considered the pointwise reply of the Bank to the objection filed by the petitioner under Section 9 of the Act. The petitioner started depositing at the rate of Rs. 1250/- per month. After considering the rejoinder filed by the Bank to the objection filed by the petitioner, respondent no. 3 directed the petitioner to deposit a sum of Rs. 2200/- per month by his order dated 6-12-1995. It also appears from the order of the Certificate Officer dated 6-12-1995 that the petitioner had appeared through his counsel and admitted the dues claimed by the Bank. The petitioner, therefore, started depositing at the rate of Rs. 2200/- per month. The petitioner was, however, surprised to receive a notice on 8-11-96 informing him that the facility granted to the petitioner to pay the outstanding dues in instalments had been withdrawn, and he was directed to deposit at least Rs. 50,000/- per month with the concerned Bank. The said intimation received by the petitioner has been annexed as Annexure-5, which has been challenged in the instant writ petition.

3. A counter-affidavit has been filed on behalf of the Bank, and it is contended that the Bank had objected to instalments being fixed at the rate of Rs. 1250/-, as that was not even sufficient to cover the statutory rate of interest payable by the certificate debtor. However, by order dated 6.12.1995 the Certificate Officer had directed the petitioner to deposit at the rate of Rs. 2200/- per month, which was very low in view of the fact that it was not even sufficient to cover the liability by way of interest, which was payable at the rate of 12 percent per annum on the entire certificate dues. The grievance of the Bank is that if outstanding dues were to be repaid in instalments of Rs. 2200/- per month, the liability could never be discharged, because monthly instalment fixed by the Certificate Officer was hardly sufficient to meet the liability of interest which accrued on the amount due to the Bank. It was under these circumstances that the Certificate Officer reviewed his earlier order under Section 63 of the Bihar and Orissa Public Public Demands Recovery Act, when he realised that he committed a mistake and his order was not consistent with the Government circulars and directives in this regard.

4. It appears that by order dated 18.2.1997 the Certificate officer was called upon to explain under what circumstances he had fixed monthly instalment of Rs. 2200/- only for the liquidation of certificate dues amounting to Rs. 2 lacs, and under what circumstances he had passed ex-parte order of review recalling the earlier order fixing instalments for the payment of the certificate amount. It apears from the order of this Court dated 17.3.1997 that the Certificate Officer appeared in person and submitted that the order fixing a monthly instalment of Rs. 2200 was passed by him without realising that the amount of instalment merely covered the statutory interest on the certificate amount. He expressed his regret and gave an assurance to the Court that such mistakes would not recur in future.

5. Counsel for the petitioner submits that once the Certificate Officer had fixed the instalment for repayment of the dues he had no power to review his order, particularly when the Bank had not appealed against his order. Counsel submits that the order passed by the Certificate Officer (Annexure-5) was passed in violation of the principles of natural justice, inasmuch the petitioner was not afforded an opportunity of representing his case before the Certificate Officer.

6. I have carefully perused the record placed before me. The liability to pay the amount claimed by the Bank is not disputed and, therefore, it is apparent that the petitioner is liable to pay to the Bank a sum of Rs. 2 lacs approximately, and further to pay the interest accruing on the said amount at the rate of 12 percent per annum claimed by the Bank. If the said liability is to be liquidated by repayment of the dues in monthly instalment of Rs. 2200/-, it would take several decades for the liability to be discharged, because the instalment fixed by the Certificate Officer merely covers the interest payable by the petitioner. Very little, if at all, is left to discharge the liability towards the principal amount. I have, therefore, no doubt that the Certificate Officer acted illegally and improperly in directing the petitioner to discharge the liability by making payments at the rate of Rs. 2200/- per month. The rights of the Bank are defeated if the said order (Annexure 4/A) is not quashed. I am, therefore, satisfied that this is not a proper case for exercise of writ jurisdiction, because if the order (Annexure 4-A) directing the petitioner to discharge the liability by making payment at the rate of Rs. 2200/- per month is upheld, the right of the Bank to recover the dues is almost defeated. The order (Annexure 4-A) is apparently an illegal order which cannot be justified in the facts of the case, and the said order should not be revived by granting the relief as prayed for by the petitioner.

7. It is not as if the Certificate Officer has no power to review the orders passed by him. Section 63 of the Bihar and Orissa Public Demands Recovery Act provides that any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order on account of mistake or error either in making of the certificate or in the course of any proceeding under this Act. The Certificate Officer by passing the order (Annexure-5) has apparently tried to correct the error

earlier committed by him. I have no doubt, therefore, that the earlier order passed by the Certificate Officer deserves to be reviewed.

8. The question that remains to be considered is whether the Certificate Officer was justified in passing the impugned order (Annexure-5) without notice to the petitioner. In any view, even if there was good reason to review the order earlier passed, namely, Annexure 4-A, in fairness, the petitioner ought to have been heard before any order reviewing the earlier order was passed. After hearing the petitioner, as also the Bank, the Certificate Officer could have determined the manner in which the petitioner could be directed to liquidate the outstanding dues, and the amount which the petitioner could be directed to pay in instalments.

9. Having regard to the interest of justice, this writ petition is disposed of with a direction to the Certificate Officer to redetermine the instalments in which the outstanding dues are to be liquidated by the petitioner. To enable him to do so, the impugned order (Annexure-5) is quashed. The petitioner as well as the respondent-Bank through their counsel are directed to appear before the Certificate Officer on 26th May, 1997, so that the Certificate Officer may fix a date of hearing in the matter and thereafter pass an order in accordance with law. The Certificate Officer must take care to see that the instalments fixed are not such that the liability may not be discharged within a reasonable time.

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PATNA HIGH COURT

BINDESH KUMAR SINGH VERSUS THE STATE OF BIHAR AND ORS.

1995 (1) BLJR 185

Decided on 18 November, 1994

Bench : ***Hon'ble Mr. Justice S.N. Jha, Hon'ble Mr. Justice N. Roy***

Bindesh Kumar Singh
versus
The State Of Bihar And Ors.

JUDGMENT

S.N. Jha, J.

1. These three writ petitions arising out of a common proceeding under the Bihar Public Demands Recovery Act, 1914 ("the Public Demands Act" in short) have been heard together and are disposed of by this common order.

2. The petitioners have challenged the maintainability of the impugned proceeding which has been levied for recovery of sum of Rs. 1,17,17,903 said to be due to Shri Ram Nagari Sahkari Grih Nirman Samiti Ltd. ('the Society' in short). They also seek quashing of the order passed in the said proceeding directing recovery of the dues from their assets by auction sale. The petitioner in C.W.J.C. No. 9328 of 1993 Bindesh Kumar Singh is an Advocate by profession. He, however, figures as certificate-debtor not as an advocate or legal Advisor to the Society, as claimed by him, rather as the person who executed the sale deeds in favour of the members on behalf of the Secretary of the Society, received the consideration money but allegedly misappropriated the same. The petitioner in C.W.J.C. No. 9445 of 1993 Ramesh Bhagat was an employee of the society while the petitioner in C.W.J.C. No. 10569 of 1993 Bharat Tripathy was its member-Secretary. They have been arrayed as certificate-debtors for having misappropriated more than one crore of rupees of consideration money which they had received from the members of the Society for sale of plots of land to them. A number of point have been raised in support of the writ petitions. I shall first take up the point which is common to all the three cases.

3. The Public Demands Act has been enacted for recovery of 'public demand which is defined under Section 3(6) of the Act to mean "any arrear of money mentioned or referred to in Schedule I...". In terms of Entry 3 and Entry 4 of the Schedule, amongst others, any money which is declared by any law for the time being in force to be recoverable or realisable as arrear of revenue or land revenue and any money which is declared by any enactment for the time being in force to be a demand or a public demand or to be recoverable as demand or public demand are deemed to be 'public demand' within the meaning of Section 3(6). Section 52 of the Bihar Co-operative Societies Act, 1935 (in short 'the Co-operative Act') provides for recovery of certain types of money payable by any person or by any registered society as public demand or as arrear of land revenue in the State of Bihar it is not in dispute that any money falling within the ambit of Section 52 is recoverable as a public demand under the Public Demands Act. The point urged on behalf of the petitioners, however, is that in terms of the said section only the Registrar, Co-operative Societies. Bihar, or the person authorised by him in that behalf is competent to send the requisition to the Certificate Officer for recovery of the dues. Since in the instant case the

requisition was sent by the Administrator of the society without any authorisation by the Registrar in that behalf, the certificate and the resultant proceeding are illegal and without jurisdiction.

4. As the dispute involves interpretion of Section 52 of the Co-operative Act it would be proper to quote its provisions in extenso at the very out set.

52. Recovery of sums due. Any sum payable by any person or by any registered society

(a) as fees for an audit held under Section 33.

(b) in accordance with an order of the Registrar under Section 39 apportioning the costs of an inquiry or inspections.

(c) in accordance with an order passed under Section 40.

(d) in accordance with an order of the Registrar or of a liquidator passed under Section 44, or

(e) in accordance with an order decision or award passed or made under Section 48.

(f) As an amount due from member, past member or the nominee, heirs or legal representative of the deceased member, of a primary co-operative society, shall be recoverable, as a public demand in any area, in which the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and 0. Act 4 of 1914), is in force or as an arrear of land revenue throughout the whole of the State and the Registrar or other person authorised by him in this behalf, shall be deemed to be the person to whom such public demand is due or to whom such arrear of land revenue is payable.

The question for consideration is whether the Administrator of the society without any authorisation by the Registrar was competent to send the requisition.

5. Public Demands or the certificate dues, broadly speaking, are of two types; one payable to the Collector and the other payable to any person other than the Collector. If the money is payable to the Collector the Certificate Officer may himself sign the certificate in the prescribed form and proceed in the matter. If, however, the money is payable to any person other than the Collector, that person is required to send written requisition to the Certificate Officer in the prescribed form. The above provisions are contained in Sections 4 and 5 of the Public Demands Act. In the instant case money admittedly is payable to a person other than the Collector, namely, a registered cooperative society, and there four his requisition was required to be sent under Section 5. Rule 71 of the Bihar Co-operative Societies Rules, 1959, in fact, expressly provides so.

It would be useful to notice the relevant part of Section 5 of the Public Demands Act at this stage:

5. Requisition for certificate in other cases.(1) When any public demand payable to any person other than the Collector is due such person may send to the Certificate Officer a written requisition in the prescribed form:

Provided that in the case of an order framed by a liquidator under the Cooperative Societies Act, 1912 (2 of 1912) the written requisition will be sent by the Registrar of Co-operative Societies, Bihar and Orissa.

6. According to the petitioners, since in terms of the provisions of Section 52 of the Co-operative Act the Registrar or other person authorised by him in that behalf is deemed to be the person to home the money is due and payable, it is he alone, that is to say the Registrar or the person authorised by him in that behalf alone, who was competent to send the requisition. At the first instance the argument does appear to find support from the language of Section 5. Mr. Ram Balak Mahto, learned Counsel appearing for the Administrator, however, submitted that Section 52 of the Co-operative Act merely

vests the Registrar (or the person authorised by him) with the legal competence to send requisition by creating legal fiction in his favour as the person to whom the money is deemed to be due and payable. Counsel submitted that factually the money is due to the society and, therefore, it would be preposterous to hold that the society through its office bearers was/is not competent to take the steps for recovery of money by taking recourse to certificate proceeding. It was submitted that the object of a deeming provision or legal fiction creating an artificial personality or conferring a deemed authority upon the person must be interpreted as enlarging the scope of the authority rather than restricting it. It was pointed out that if the Registrar or the person authorised by him in that behalf is held to be the only person competent to send requisition that would amount to excluding the person i.e. the society which otherwise is entitled to receive the money and to take steps for its recovery in whatever manner it takes. Counsel submitted that the object underlying the legal fiction was obviously to enlarge the authority in regard to sending of requisition for recovery of dues through certificate proceeding so as to vest the Registrar of the Cooperative Societies (or any person authorised by him) the authority in addition to authority of the person who in the normal or natural course of things is entitled to do so, so that the money due to the society may not lapse on account of the conduct of an unscrupulous office-bearer of the Managing Committee of the Society. I find force in the submissions of Mr. Mahto.

7. In interpreting a deeming provision creating legal fiction the Court is required to ascertain the purpose for which the fiction has been created and after ascertaining the same, to assume the facts and consequences which are incidental or inevitable corolary to the fiction. In the words of S. R. Das. J., "When a legal fiction is created, one is led to ask at once "for what purpose it is so created." (State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory). It is well settled that where the statute enacts that something be deemed to exist or some status be deemed to have been acquired which would not otherwise have been so, full effect must be given to the fiction but not so as to extend it beyond the purpose for which it is created. As was observed by the Apex Court in the well-known case of Bengal Immunity Co. Ltd. v. The State of Bihar , Legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. The purpose underlying the legal fiction appears to be to provide for an alternative so that if the office-bearers of the managing committee or the Administrator of the Society does not act, the Registrar or the person authorised by him may take the necessary steps and the interest of the society and its members is protected. There is nothing is Section 52 to suggest that the legal fiction creating authority in the Registrar (or the person authorised by him) as the person to whom the money is due and payable extends upto extinguishment of the authority of the person, who as a matter of fact and reality and in the natural course of things is possessed of it. That may amount to extending the fiction by importing another fiction. (See Commissioner of Income-tax v. Moon Mills Ltd., . If the object was not to divest the authority or the interest which was possessed by the Managing Committee on behalf of the society, it would be preposterous to hold that the authority created in Registrar or the person authorised by him is exclusive and supersedes the authority of the Managing Committee or the Administrator of the society. That interpretation would also result in an anomalous situation. While the society through its Managing committee may take steps for recovery of the money by filing a suit in the civil court, it cannot do so if it decides to recover the money by instituting certificate proceeding. I, therefore, have no hesitation in rejecting the plea of the petitioners that the administrator was not competent to send the requisition and resultantly, the impugned proceeding is illegal and without jurisdiction.

8. In C.W.J.C. No. 9328 of 1993 Mr. Ajayendu Bose made two more submissions. It was contended that the petitioner being an advocate by profession merely acted as legal Advisor to the society. Not being a member or past member of the society, he does not fall within the ambit of Clause (f) of Section 52 The proceeding having admittedly not been initiated in respect of fee for an audit held under Section 33 or pursuant to any order of the Registrar under Section 39 as a result of enquiry or inspection or surcharge

proceeding under Section 40 or in accordance with any order of Registrar or Liquidator under Section 44 or in accordance with any order, decision or award under Section 48, the proceeding so far as the petitioner is concerned, is not maintainable.

9. Section 52 has already been quoted above. It would appear from bare perusal of Section 52(f) that any money due not only from member or past member, his heir or legal representative (in case of the member being dead) but also the nominees of the member or past member are covered by the said Clause. It is not in dispute that petitioner Bindesh Kumar Singh, apart from the service that he might have rendered in his capacity as a lawyer, executed sale deeds on behalf of the Secretary of the society. He must, therefore, be held to be his nominee. The petitioner himself has brought on record the deed of power of attorney dated February 6, 1988. It would be useful to quote the relevant provisions of the said deed as hereunder:

By this power of attorney I, Bharat Tripathy S/o Raghubar Tripathy...Honorary Secretary. Shri Ram Nagari Sahkari Grih Nirman Samiti Ltd. Patna, Registration No. 124 PAT 1982 hereby appoint and nominate Sri Bindesh Kumar Singh son of Sri Jugal Singh., the executant above as my Attorney in my name and on my behalf to do inter alia the following acts, deeds and things, viz.

(1) To negotiate on terms for and to agree to arid sale the land of my society...to the members of my above named society.

(2) Upon such transfer as aforesaid in my name and as my act and deed, to sign, execute and deliver any conveyance or conveyances of my society's property in favour of the said members (purchasers) or his nominee or assignee or assignees of my society.

(3) To sign and execute, all other deeds, instruments and assurances which he shall consider necessary and to enter into and/or agree to such convenients and conditions as may be required for fully effectually conveying the said property of my society as could do myself, if personally present.

(4) To present any such conveyance or conveyances for registration, to admit execution and receipt of consideration before the Sub-Registrar.

And I hereby agree to ratify and confirm all whatever other act and acts my said attorney shall lawfully do, execute or perform or caused to be done, executed or performed in connection with the sale of the said property to the members of my society under and by virtue of this deed.

The above clear and unequivocal declaration by the Secretary leaves no room for any doubt that Bindesh Kumar Singh acted as nominee of the Secretary, a member of the society, and, therefore, he is covered by Clause (f) of Section 52. In other words, the proceeding has been initiated against him not as an advocate but as nominee of the Secretary and cannot be said to be without jurisdiction.

10. Mr. Bose also took the plea of non-service of notice under Section 7. From the records, however, it appears that the petitioner had refused to accept the notice. According to the respondents, by reason of the refusal he must be deemed to have received the notice. I find force in the contention of the respondents. I may only add that any dispute regarding service or non-service of notice involves question of fact. It is not necessary to go into the said dispute in the instant proceeding when alternative remedies by way of appeal revision etc. are provided in the Act.

11. Mr. Ramchandra Jha, learned Counsel for the petitioner in C.W. J.C. No. 10569 of 1993, questioned the propriety of initiation of certificate proceeding in respect of 'unascertained' sum or money. He referred to various provisions of Chapter V of the Cooperative Act dealing with audit, inspection and enquiry and contended that in the fitness of things the Administrator should have got the account audited, enquiry held and inspection made and then after giving opportunity of hearing initiated surcharge

proceeding under Section 40. Without taking recourse to the above measures and ascertaining the amount due, the impugned proceeding must be held to be an abuse of process of law. I do not find any force in the above submission.

12. It would appear from various Clauses of Section 52 that the proceeding can be initiated not only in respect of fees for audit held under Section 33 or in accordance with the order of the Registrar (or liquidator) under Sections 39, 40 or 48 but also in respect of amount due from member, past member, their nominee etc. It is important to keep in mind that any money found due from member or past member on the basis of order passed in a surcharge proceeding under Section 40 or on the basis of an order, award or decision on any dispute under Section 48 has been specifically mentioned in Clause (c) and Clause (e) of the section. In other words, while with respect to any sum found due in proceedings under Section 40 or 48 the recourse can be taken to certificate proceeding, this is also permissible with respect to the amount which is otherwise found to be due from member, past member and so on. In other words, it is not necessary for the purpose of initiating certificate proceeding that a proceeding must be taken at the first instance to ascertain the amount under Section 40 or 48 etc. and then only to levy the proceeding. If that was so, the two sets of provisions, one in respect of money found due in a proceeding etc. as envisaged in Clauses (a) to (e) and the other found due without any proceeding as envisaged in Clause (f), would not have been mentioned separately but in the same section. It may also be noted that Clause (f) came in the statute by amendment in 1989.

13. Counsel contended that if the certificate proceeding is allowed to be initiated without ascertaining the amount after giving opportunity of hearing, the certificate-debtor may be put to loss, hardship and injustice. It was submitted that having regard to summary nature of the proceeding it may not be possible to ascertain the amount and the liability.

14. Section 9 of the Public Demands Recovery Act enables the certificate-debtor to file objection within the stipulated period denying his liability in whole or in part. Section 10 provides that the certificate officer in whose office the certificate is filed, shall hear the petition, take evidence (if necessary) and determine whether the Certificate Officer is liable for the whole or any part of the amount for which the certificate was signed and may set aside, modify or vary the certificate accordingly. A certificate proceeding is, no doubt, not as full-fledged as a suit. However, having regard to the provisions of Sections 9 and 10 there cannot be any doubt that the Certificate Officer is fully empowered to go behind the certificate and after determining the liability of the certificate-debtor, to set aside, modify or vary the certificate. In that sense the position of the Certificate Officer is different from the executing court under the Civil Procedure Code, while the executing court cannot go behind the decree and it has to execute it as it is, the Certificate Officer is entitled to go behind it, even set aside modify or vary it. The proceeding before the certificate proceeding must, therefore, be held to be composite in nature. If it is open to him to determine the liability and allow the claim of the certificate-debtor either in whole or part it follows that it is also competent to ascertain and determine the actual liability of the certificate-debtor and in case of more than one certificate-debtor, to apportion the liability amongst them. I, therefore, do not find any substance in the argument that the certificate proceeding cannot be initiated in respect of an unascertained sum and that no proceeding having been taken under Chapter V of the Co-operative Act the impugned proceeding is bad. From perusal of Section 52 it is obvious that it is open to the society to take recourse to the proceeding under Chapter V, and thereafter, to levy certificate proceeding or to straightaway send requisition for instituting the certificate proceeding. They are alternative in nature and not exclusive to each other.

15. In C.W.J.C. No. 9445 of 1993 Mr. Ajit Kumar Singh while adopting the submissions of Mr. Ajayendu Bose and Mr. Ramchandra Jha pointed out that petitioner Ramesh Bhagat was an employee of the society only for 16 months and, therefore, he cannot be held liable in respect of acts of misfeasance for

the entire period. I have already indicated above while dealing with the submission of Mr. Ramchandra Jha in C.W.J.C. No. 10569 of 1993 that the Certificate Officer is competent to determine the liability and if nod be, after taking evidence in appropriate cases, to modify or vary the certificate and apportion the liability amongst different certificate debtors if there are more than one. Thus it is open to the petitioner to satisfy the Certificate Officer that he is not liable for the entire amount since he worked as employee or the like may during part of the period by adducing evidence. That is a question of fact and on that ground the proceeding cannot be held to be invalid or illegal.

16. The points urged on behalf of the petitioners are thus, held to be devoid of substance. The writ petitions, accordingly, are dismissed.

17. I agree.

(Narayan Roy, J.)

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PATNA HIGH COURT

AMAR NATH THAKUR
VERSUS
STATE OF BIHAR AND ORS.

C.W.J.C. No. 2468 of 1992

Decided on 20 January, 1994

Bench : ***Hon'ble Mr. Justice G.C. Bharuka***

Amar Nath Thakur
Versus
State of Bihar and ors.

JUDGEMENT

G.C. Bharuka, J.

1. This writ application has been filed by the petitioner for quashing of the orders as contained in Annexure '1' dated 15-10-1990, Annexure '2' dated 3-8-1991 and Annexure '3' dated 21-11-1991 passed by the Certificate Officer, Darbhauga, appellate authority and the revisional authority respectively. The further prayer of the petitioner is for setting aside the auction sale of his lands measuring about 16 Kathas 3 Dhurs.

2. The petitioner had obtained a loan Rs. 1,79,000 from the respondent United Bank of India for purchasing a bus bearing No. BRG 6433 and as a security against the said loan, he mortgaged the said bus. He started plying the bus on 4th March, 1982. Since he had failed to make the repayments within the stipulated time, therefore, Certificate Case No. 1/1985-86 was instituted against him, which is pending before the Certificate Officer, Darbhanga, it appears that the aforesaid bus was seized in connection with the said proceedings. Therefore, the petitioner appeared in the certificate case in December, 1986 and prayed for release of his bus. Having failed to get any relief, he filed a writ application in this Court being C.W.J.C. No. 2752 of 1987 which was disposed of by order dated 4-11-1987 (Annexure 9) on the following terms:

(i) The bus in question shall be released in favour of the petitioner. The Certificate Officer, Darbhanga shall pass orders for release of the bus which is attached under its order. The petitioner shall make deposit of Rs 6,000 per month with the Bank after the the bus is actually released. The first payment will be made two months after the release. The petitioner shall, thereafter, go on depositing Rs. 6,000 for every month by the 15th of the month next following.

(ii) In case of two successive defaults or two default within one year in payments of Rs. 6,000 as indicated it will be open to the Certificate Officer to again attach the bus in question and continue the certificate proceeding.

(iii) The petitioner shall not transfer the vehicle in question to any person, until the entire amount of loan is liquidated, without consent of respondent No. 4. Further, the proceeding and become alive only in case of non-payment of instalments as indicated earlier. If necessary, the Certificated Officer will get the bus examined by the Motor Vehicle Inspector.

3. Pursuant to the aforesaid directions of this Court, the Certificate Officer by his order dated 10-11-1987 directed for release of the bus in favour of the petitioner subject to the condition if the petitioner fails to deposit the amount as per the order passed by this Court the bus may be again attached, But it

seems that the petitioner did not take possession of the said vehicle on the ground that it was not in a running condition. He again moved this Court by filing the second writ application being C.WJ.C. No. 1301 of 1988 for quashing of the said order. This writ application was dismissed on 13-4-1988. Against this order of dismissal the petitioner filed a Special Leave Petition being S.L.P. No. 5636 of 1988 in the Supreme Court which was also dismissed on 11-7-1988. Thereafter the Bank filed a petition for sale of mortgaged bus and his landed property. Accordingly, the lands and the bus were auction sold for Rs. 6,101 and Rs. 25,500 respectively on 28-8-1988 and 3-10-1988. The petitioner filed Title Suit No. 74 of 1988 challenging the auction sale of the land but the same dismissed on 26-9-1988. Thereafter, the petitioner filed the third writ application in this Court on 13-10-1988 being C.W.J.C. No. 8098 of 1988 which after hearing the learned Counsels for the petitioner and the Bank was dismissed in limine by a Bench of this Court on 23-12-1988 by order Annexure 15. This was followed by filing of an application purported to be under Section 29 of the Bihar and Orissa Public Demand Recovery Act, 1914 (In short the 'Act' only) before the Certificate Officer, which has been rejected by the impugned order dated 15-10-1990 (Annexure '1'). This order has been affirmed by the appellate and the revisional authories as is evident from the orders contained in Annexures '2' and '3', referred to above. The Certificate Officer after considering the entire facts and circumstances and the multiple remedies availed by the petitioner for stalling the recovery proceedings against him, rejected the application for review, inter alia on the ground that (i) the High Court has dismissed the writ application challenging the auction sale, (ii) the auction purchaser was not made a party, (iii) the application was filed beyond the period of limitation and no explanation was given for the same, (iv) the purchase price was not deposited which was the condition precedent for entertainment of such applications, (v) the petitioner was himself present at the time of auction sale and has not raised any objection with regard to the legality thereof and (vi) there was no material irregularity in the conduct of the said sale. The appeal filed against the said order was dismissed on merits and the revisional authorities refused to entertain the revision application since the petitioner has failed to deposit 40 per cent of dues, which according to him, was the prerequisite for entertainment of the revision.

4. Mr. Banerjee, learned Counsel appearing for the petitioner, has sought to assail the impugned orders on the ground (i) the aution of the bus and the sale of lands have been effected at shockingly low price, thus leading to nullification of the entire sale, (ii) no notice as required under Section 7 of the Act was served upon the petitioner and (iii) the in limine dismissal of an earlier writ cannot act as a bar in challenging the impugned orders at subsequent stages. In support of his last submission he has placed reliance on a Single Judge Judgment of this Court in the case of Ram Shohit Rai v. The State of Bihar and Ors. reported in 1989 BBCJ 141, wherein by placing reliance on the Supreme Court Judgment in the case of Daryao v. State of U.P. : [1962]1SCR574 , it was held that the in limine dismissal of a writ application does not operate as res judicata against a subsequent writ application. In my opinion, the filing of second writ application no doubt, cannot be restricted on the ground of res judicata but then keeping in view the law laid down by the Supreme Court in the case of Sarguja Transport Service v. State Transport Appeallate Tribunal : [1987]1SCR200 , such subsequent writ applications cannot be entertained on the ground of public policy in order to put a curb on the tendency of re-agitating the same cause repeatedly.

5. Apart from the above reasons, in my opinion, the Certificate Officer has given good reasons for rejecting the application filed under Section 29 of the Act. The section reads as under:

29. 'Application to set aside sale of immovable property on ground of non-service of notice of irregularity.-(I) Where immovable property has been sold in execution of a certificate, the certificate holder, the certificate debtor or any person whose interests are affected by the sale, may at any time within sixty days from the date of the sale, apply to the Certificate Officer to set aside the sale on the

ground that notice was not served under Section 7 or on the ground of a material irregularity in the certificate proceedings or conducting the sale:

Provided as follows:

(a) no sale shall be set aside on the ground of any such material irregularity unless the Certificate Officer is satisfied that the applicant has sustained substantial injury thereby ; and

(b) before the Certificate Officer passes an order setting aside a sale under this section he shall require the certificate debtor to pay the amount actually found due from him.

(2) Notwithstanding anything contained in Sub-section (1) the Certificate Officer may entertain an application made after the expiry of sixty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing.

Proviso (a) of Section 29 (1) makes it clear that even if there be any material irregularity, still the sale cannot be set aside unless it is shown that the petitioner has sustained substantial injury. Therefore, even if it be presumed that the petitioner was not served with any notice under Section 7 strictly in accordance with law, still it is a matter of fact that he has appeared in the proceeding much before the auction sale in question and had availed all possible remedies to ventilate his grievances in respect of the actions taken against him till that date. Moreover, the auction sale was effected in his presence. It is not in dispute that pursuant to the order passed by this Court in C. W.J.C. No. 2752 of 19S7, the petitioner, was given opportunities to pay off the loan in easy instalments, but for the reasons best known to him, he did not avail the said opportunities and want on to content the proceedings on some or the other technical ground. Apart from the said facts the entertainment of an application under Section 29 for setting aside sale is subject to two conditions precedents, namely, (i) such application is filed within sixty days from the date of sale and (ii) the certificatedebtor pays the amount actually found due from him. In the present case admittedly as noticed by the respondent authorities, the the application was tiled beyond time without any good reason and the petitioner also failed to pay off the the amount actually found due from him.

6. Keeping in view the aforesaid facts and circumstances, in my opinion, it is not a fit case for interference by this Court under writ jurisdiction. The application is accordingly dismissed with cost assessed at Rs. 500 (Rs. five hundred) only.

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SUPREME COURT OF INDIA

HARISH TARA REFRACTORIES (P) LTD. VERSUS CERTIFICATE OFFICER, SADER

1994 (3) SCALE 269, (1994) 5 SCC 324

Decided on 11 July, 1994

Bench : ***Hon'ble Mr. Justice K. Singh, Hon'ble Mr. Justice A. Anand***

Harish Tara Refractories (P) Ltd.
versus
Certificate Officer, Sader

ORDER

1. We have pronounced judgment today in C.A. Nos. 2620-64 of 1981. For the reasons recorded therein these transferred cases have to be dismissed. We may, however, briefly deal with the controversy involved in these cases.

2. Bihar and Orissa Public Demands Recovery Act, 1914 (the Bihar Act) was amended by Act IV of 1974 thereby incorporating "any money payable to the State Bank of India" within the list of Public Demands set out in Schedule 1 to the Bihar Act. In these transferred cases the only point argued before us was that the Bihar Legislature had no legislative competence to enact law providing for recovery of bank dues as arrears of land revenue.

3. We may refer to the facts relating to Transferred Case No. 40 of 1989. Harish Tara Refractories (P) Ltd., had entered into several agreements with the State Bank of India, Main Branch, Ranchi. The case of the bank is that there were various dealings and transactions between the parties and large sums of money became due and payable by the company. According to the bank the admitted liability of the company as on October 1, 1979 was Rs. 31, 18, 993.55. Since the repayment of the loan was not made despite repeated demands the Manager of the bank sent a requisition for a certificate under the Bihar Act for recovery of the outstanding loan amount together with interest. The Certificate Officer issued a certificate under Sections 4 and 6 of the Bihar Act. The Certificate was challenge by the Company by way of writ petition before the Calcutta High Court, inter alia, of the ground that the Bihar Legislature had no legislative competence to enact the law permitting recovery of the bank dues as arrears of land revenue. It was argued that Bihar Act was a legislation relating to "banking" in respect of which only the Parliament can make law under Entry 45 List I Seventh Schedule Constitution of India. Suhas Chandri Sen, J. dealt with the points raised before him in a lucid manner with utmost clarity, learned Judge referred to the judgment of a Division Bench of the Calcutta High Court in Mukherjee and Co. v. Union of India and came to the conclusion that the provisions of the Bihar Act and of the Bengal Public Demands Recovery Act of 1913 were almost identical and as such the Certificate Officer under the Bihar Act exercising the judicial powers of the State. The learned Judge followed the judgment this Court in State of Bombay v. Narothamdas Jethabai and Anr. 1951 SCR 51 and held as under:

Administration of justice; Constitution and organisation of all Courts, except the Supreme Court and the High Court" has now been brought under Entry 11A of the Concurrent List. It is no more the exclusive power of the State Legislature to legislate on these matters. But "Administration of justice" is certainly a subject on which the State Legislature can legislate. In view of the interpretation given to this phrase by the Supreme Court, this power must necessarily include the power of enlarging or

diminishing the jurisdiction of the Courts. The Bihar Legislature by the Amending Act IV of 1974 has merely enlarged the jurisdiction of the Certificate Officer so as to enable the State Bank of India and other Banks specified in the Schedule to take recourse to the speedier remedy provided under the Bihar and Orissa Public Demands Recovery Act. Possibly, this was done to enable the Banks to avoid the proverbial law's delay and to realise their claims speedily by the expeditious remedy provided by. that Act. Whatever may be the reason for passing this legislation there cannot be any doubt that the amendment clearly comes under the Entry 11A of the Concurrent List. The Amending Act 4 of 1974 has merely brought a dispute relating to money payable to the State Bank of India within the jurisdiction of the Certificate Officer. In effect, what has been done is to enlarge the jurisdiction of the Revenue Court.

4. The learned Judge dealt with the argument that the impugned provision of the Bihar Act was in relation to banking and, therefore, the Bihar Legislature has encroached upon the field reserved for the Parliament and rejected the same on the following reasoning.-1 "Banking" has been kept in the Union List in the Seventh Schedule under Entry 45. The banking laws have not set up any special Court or laid down any procedure for resolving disputes arising between a Bank and its customers. These disputes to the established Civil Court and also by following the procedure that have been laid down. As has been noted earlier in the judgment that establishment of Courts and laying down of the procedure to be followed in those Courts come within the ambit of the legislative competence of the State Legislatures. In pith and substance, the State Legislature has merely enlarged the jurisdiction of an existing Courts to entertain and try certain types of cases relating to banks. Before this amendment was made, a Bank had to file a suit in a civil Court in the ordinary way for realisation of money due to it. The amendment enable the Bank to approach the Certificate Officer and avail of the speedier remedy of that Court. The purpose of the amendment is quite clear. The law has been passed only to make the speedy remedy of the Certificate proceedings available to the Banks. As I have held earlier that it is competent for the State Legislature to enlarge the jurisdiction of a Court and also to legislate on matters of procedure. It is true that "Banking" comes under the Union List; but that does not mean any legislation which affect the Banks in any way must be passed by the Parliament. I have held earlier in the judgment that the impugned legislation comes squarely within entries 11A and 13 of the Concurrent List. Even if the legislation incidentally trenches upon the field reserved for the Central Legislature it will not be bad on that account. This principle of law has been emphasised by the Supreme Court in a number of cases....

It is well settled that Entries in the three Lists should be construed liberally. It is possible, and it is very often the case, that in passing a legislation which is within its competence, a Legislature may incidentally encroach upon the field which has been earmarked in another List exclusively for the Parliament. But that by itself will not make the legislation void, the test is to find out whether the legislation comes within any specific Entry of the State List or the Concurrent List. If in pith and substance, it is a legislation in respect of a matter which comes within the ambit of the power of the State Legislature, then even though, it incidentally trenches upon a field reserved for the Parliament, the legislation will not be bad. In the instant case, there is an additional fact that the Act was re served and has received the assent of the President....

In my opinion, the legislation comes squarely within Entries 11A and 13 of the Concurrent List. In pith and substance, the Amending Act 4 of 1974 passed by the Bihar Legislature had the effect of merely enlarging the jurisdiction of the Certificate Officer. By this amendment, the Bihar Legislature made an already existing speedy procedure of a Court established by it available to the State Bank of India and some other Banks. This legislation was within the competence of the Bihar Legislature and will not be bad even if it incidentally trenches upon the field reserved for the Parliament under List I of the Seventh Schedule.

5. We agree with the above quoted reasoning and the conclusions reached by the learned Judge of the Calcutta High Court and approve the same.

6. In Sawar Mal Choudhary and Ors. v. State Bank of India and Ors. the Patna High Court had an occasion to deal with the same point. S.S. Sandhawalia, CJ who spoke for the Bench posed the question before the Bench in the following terms:

Whether -Article 15 (inserted by Bihar Act of 1974) of Schedule 1 of the Bihar and Orissa Public Demands Recovery Act, is beyond the competence of the State Legislature, is the significant common question in this set of 6 writ petitions, placed for an authoritative decision by a Division Bench.

Primarily relying on Entry 43 List III Schedule 7 Constitution of India the Bench answered the question in the negative. The Bench, however, noticed the judgment of the Calcutta High Court in Harish Tara Refractories's case and observed as under:

In repelling the aforesaid contention of Mr. Bharuka, the firm stand of Mr. K.P Verma, learned Counsel appearing for the respondent State Bank of India was that the recoveries of monies due to the State owned Banks was primarily and purely a matter of procedure and inevitably these matters could, therefore, be left to State Governments and their civil and revenue Courts. It was highlighted that it remains undisputed that the Certificate Officer, who authorises the recoveries of, public demands is a Court, and, in any case, would undoubtedly come within the ambit of revenue Court. Consequently, the State Government would have undoubtedly the legislative power to govern the procedure and matters before the Certificate Officer. Both Entry 11A and Entry 13 of List III may, therefore, also come play because they govern civil procedure as well. Further, because Court of the Certificate Officer is a Court created by the State Government under its statute, the State Legislature under Entry 11A or Entry 13 would not be barred from either legislating about the same or adding to the list of recoveries through such a Certificate Officer. Mr. Varma, in the alternative, therefore, canvassed for the acceptance off the view in Harish Tara Refractories (P) Ltd. v. Certificate Officer (AIR 1985 Calf 56) (supra), holding that Entry 11A and Entry 13 of List II also sanctified the enactment of Article 15 of Schedule 1 to the Act.

As is manifest from the gravamen of the discussions in this judgment, the primary contest herein was between Entry 45 of the Union List I as against Entry 43 of the Concurrent List III. I have already held that monies due to the State owned banks would come well within the ambit of public demands and equally their | recovery both within and outside the State, by virtue of Entry 43 of the Concurrent List III. However, no serious challenge would be laid before us to the detailed reasoning in Harish Tara Refractories (P) Ltd. v. Certificate Officer (supra) deriving f the sanction for Article 15 of Schedule 1 from Entries 11A and 13 of the Concurrent I List III. In the alternative, therefore, I find no reason to differ from the said judgment' either, and, the stand of the respondents based thereon may also be well accepted as an additional ground for sustaining the competency of the State legislature to enact Article 15 of Schedule 1 to the Act. The contention of Mr. Bharuka, therefore, must be rejected.

We do not express any opinion on the interpretation given by the Division Bench off Patna High Court to Entry 43 of List III. We, however, uphold the judgment of the Division Bench on the reasoning quoted above based on Entries 11A and 13 List III.

7. For the reasons given above we uphold the judgment of the Calcutta High in Harish Tara Refractories (P) Ltd. v. The Certificate Officer and Ors. (supra) and of the Patna High Court in Sawar Mai Choudhary and Ors. v. State Bank of India and Ors.(supra) and as such dismiss the transferred cases. The writ petitions/appeals filed by petitioners in the transferred cases in the High Court shall stand dismissed with costs. We quantify the costs as Rs. 5000/- to be paid by each of the petitioners in these transfer cases.

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PATNA HIGH COURT

M/S PRADIP LAMP WORKS ... AND ANR.
VERSUS
THE CERTIFICATE OFFICER,... PATNA CITY & ORS.

Civil Writ Jurisdiction Case No. 6865 of 1993

Decided on 13.9.1994

Bench : ***Hon'ble Mr. Justice S. N. Jha and Hon'ble Mr. Justice Narayan Roy***

In the matter of an application under Articles 226 & 227 of the Constitution of India.

M/s Pradip Lamp Works ... Petitioners and anr.
Versus
The Certificate Officer,... Respondents Patna City & ors.

For Petitioners : M/s S. J. Mukhopadhyaya & S. P Tiwary.

For the State : Mr. S. N. Waris.

For Respondent No. 3 : M/s. K. P. Yadav &-Suresh Kumar

S. N. Jha, J.—

The question for consideration in this writ petition is whether the Certificate Officer other than the Collecter of the district is competent to recover the money found due to the workman from the employer in a proceeding under section 33C (2) of the Industrial Disputes Act (in short, 'the Act'). The facts of the case lie in a narrow compass.

2. At the instance of respondent no. 3, Govind Lal Das, the State Government, made reference of the dispute as to whether he (Govind Lal Das) comes under the category of "workman" as defined in Section 2 (s) of the Act and if, so, whether termination of the services from May 7, 1985 by the management was proper and justified and, in the event the termination is found to be improper and unjustified, whether he is entitled to reinstatement and/or other relief. The Labour court, Patna by its award dated November 29, 1988 held that respondent No. 3 was workman within the meaning of the Act. His termination was illegal and unjustified and he is entitled to reinstatement with full back wages. The petitioner challenged the award by way of a writ petition which was dismissed. Respondent no. 3 in the meantime, filed two applications, bearing Misc. Case No. 18 of 1989 and Misc. Case No. 19 of 1989, for computation of salary for different periods under Section 33 C(2) of the Act. The Labour Court, Patna by its orders dated April 2 and April 3, 1991 held that he was entitled to recover arrears of salary amounting to Rs. 82,500/- and Rs. 23,100/- i.e. Rs. 1,05, 600/- in all. The Additional Secretary, Department of Labour, Employment and Training, Government of Bihar by his letter dated March 22, 1993 sent requisition to the Collector, Patna for recovery of the aforesaid sum. The Collector, Patna appears to have sent the aforesaid requisition to the Certificate Officer, Patna City on the basis of which Certificate Case No. 2 of 1993-94 was registered on April 26, 1993. The Certificate Officer issued notice of the proceeding to the petitioners under Section 7 of the Bihar Public Demands Recovery Act. It appears from the order-sheet of the proceeding that after the warrant of arrest was issued on their failure to either pay the amount or file any objection, they filed an application on September 7, 1993 making an offer to pay the dues in instalments. Prior to this, they had already filed this instant writ petition on July 15, 1993. The Certificate Officer al-lowed the prayer directing the petitioners to

deposit sum of Rs. 5,000/- every month. However, after making some deposits the petitioner did not pay the rest.

3. Mr. S. J. Mukhopadhyaya, learned counsel for the petitioners, has submitted that any money found due to a workman from an employer, amongst other, under an award of the Labour Court or Industrial Tribunal can be recovered by the Collector of the district alone. The Certificate Officer has no jurisdiction or competence to make recovery and that being so the entire proceeding before the Certificate Officer, Patna City in Certificate Case No. 2/93-94 is without jurisdiction.

4. The provisions regarding recovery of money found due to a workman from an employer under an award of settlement etc. are contained under Sub-section (1) of Section 33C of the Act, the relevant part of which runs as follows :

"33C. Recovery of money due from an employer. - (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue."

The term 'Collector' has not been defined in the Industrial Disputes Act. Under the General Clauses Act, 1897, the term is defined to mean "the Chief Officer Incharge of the Revenue administration of a district". It is a matter of common knowledge that the Chief Officer incharge of the revenue administration of a district is none else than the Collector of the District. As per the definition of the term 'Certificate Officer' under Section 3(3) of the Bihar Public Demands Recovery Act, 1914, "Certificate Officer" means "a Collector, a Subdivisional Officer, any officer appointed by the Collector with the sanction of the Commissioner, to perform the functions of a Certificate Officer". Thus, the Certificate Officer may not necessarily be the Collector himself, he may be any other officer duly appointed to perform the functions of the Certificate Officer. On this reasoning a single judge of the Calcutta High Court in the case of T. Sanjeevi v. State of West Bengal (AIR 1966 Calcutta, 58) held that any certificate issued to the Certificate Officer (not being the Collector of the District) was not in conformity with Section 33C (1) of the Industrial Disputes Act and could not be acted upon.

5. It may be noted here that in the above mentioned case the certificate was sent to the Certificate Officer, 24 Parganas and not to the Collector, 24 Parganas by the State Government. The facts of the instant case, however, are different. As indicated above, the requisition in the prescribed form was sent by the Additional Secretary of the Department to the Collector, Patna on March 22, 1993. The requisition was sent in Form No. II appended to 2nd Schedule of the Public Demands Recovery Act. In the column meant for indicating the nature of the public demand, it was stated that the money was due to respondent no. 3 and recoverable under Section 33 C(1) of the Industrial Disputes Act.

6. From a bare perusal of the provisions of Section 33 C (1), quoted hereinabove, two things, inter alia, are obvious; one that the certificate is to be issued to the Collector and two, that the money is to be recovered in the same manner as an arrear of land revenue. Item 3 of Schedule I to the Public Demands Recovery Act read with Section 3 (6) of the Act lays down that any money which is declared by any law for the time being in force to be recoverable as an arrear of land revene is "public demand". In view' of these provisions there cannot be any doubt that the amount has to be recovered as a 'public demand', that is, in accordance with the provisions of the Public Demands Recovery Act. In other words, while the Collector of the district is the appropriate authority to whom the certificate is to be sent, so far as the

manner of recovery is concerned, the same procedure as prescribed in the Public Demands Recovery Act for recovery of arrear of land revenue i.e. public demand has to be followed.

7. The Public Demands Recovery Act is a special Act which has been enacted for recovery of certain types of dues. It provides a special procedure and hierarchy of authorities for the purpose. It would be anamolous to hold that a Certificate Officer (other than Collector) otherwise competent to effect the recovery of any 'public demand' cannot do so in respect of any money payable to a workman from an employer under an award etc. although the same is recoverable as a public demand. There is nothing in the section to suggest that the actual steps for recovery must also be taken by the Collector himself. The expression "shall proceed to recover the same" should be understood as referable to the manner or procedure for recovery. That is to say, it is not open to the authority to recover the amount by following any other procedure than the one prescribed for recovery of arrear of land revenue i.e. public demand under the Public Demands Recovery Act. According to me, it is open to the Collector to either take the steps for recovery himself or to have the recovery made through an officer who is otherwise competent to do so. Any other interpretation would render the provisions of the Public Demands Recovery Act superfluous. In any view, if two views are possible, the view which is harmonious with and gives effect to the provisions of a special statute should be preferred. As admittedly the Certificate Officer, Patna City to whom the certificate was sent by the Collector is otherwise competent to effect recovery of 'public demands' under the Public Demands Recovery Act and has followed the procedure prescribed under that Act, I do not find any error of jurisdiction. In my opinion, on the facts of the case, there has been no violation of the provisions of Section 33C (1) of the Industrial Disputes Act.

8. The question framed is answered thus. The certificate in respect of any money found due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A and V-B of Industrial Disputes Act has to be sent to the Collector of the district. It is the Collector alone who is competent to recover the amount. He may, however, do it by himself or through any other officer who is otherwise competent to recover 'public demands'. In any event, the same procedure as applicable to recovery of arrear of land revenue i.e. public demand under the Public Demands Recovery Act of the State has to be followed for effecting the recovery.

9. In the result, this writ application is dismissed. There will be no order as to costs.

Narayan Roy, J. -1 agree.

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PATNA HIGH COURT

ASHOK KUMAR SINGH
VERSUS
SHIV KUMAR SINGH

Criminal Writ Jurisdiction Case No. 63 of 1994
and
Criminal Writ Jurisdiction Case No. 64 of 1994

Decided on 8.2.1994

Bench : ***Hon'ble Mr. Justice Dharmpal Singh and Hon'ble Mr. Justice G. C. Bharuka***

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Ashok Kumar Singh ... Petitioner (Cr. W. J. C. 63/94)
Shiv Kumar Singh ... Petitioner (Cr. W. J. C. 64/94)
Versus
The State of Bihar and 2 ors. ... Respondents (in both the cases)

For the Petitioner : M/s Sujata Mukherjee and Debanjan Choudhary.

For the State : Mr. D. N. Yadav.

G. C. Bharuka, J.—

These writ applications have been filed by the petitioners for issuance of a writ of habeas corpus commanding upon the respondents District Certificate Officer, Patna (in short D.C.O.) to release them by quashing their orders of arrest and detention, which have been passed under purported exercise of the powers contained under the provisions of Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as 'the Act' only).

2. The petitioners in these writ applications are owners of public carrier Truck bearing registration Nos. BIA 8898 and BIA 9298 respectively. The District Transport Officer sent requisitions dated 28-10-92 (Annexure 3) to the respondent District Certificate Officer, for filing certificates against the petitioners as per the provisions of Sections 5 and 6 of the Act for the realisation of the alleged arrears of tax amounting to Rs. 45,854/63 against each of the petitioner for the period 1-10-89 to 30-9-92. The respondent D.C.O., on receipt of the said requisition, registered two certificate cases against each of the petitioners, order-sheet whereof have been filed as Annexure-4 which are identical in both the cases.

3. From the order-sheet it appears that after the receipt of the said requisition, the Certificate Officer by stamped stereo-type order dated 27-1-93 directed for issuance of notice and attachment order under Section 7/14 of the Act against the judgment debtors requiring compliance by 27-2-93. But strangely much before the date so fixed, on 5-2-1993 the respondent D. C. O. passed another order directing issuance of warrant of arrest against the petitioners just in view of the request made by the District Transport Officer to the said effect. Pursuant to these orders, the petitioners were arrested by the police and produced before the D. C. O. on 3-12-93 and 4-12-93 respectively. The D. C. O. thereupon remanded them to civil jail on the ground that they were not ready to immediately pay the alleged dues. He ordered for their detention till they pay off the certificated dues. The detentions have been continued by subsequent orders dated 6-12-93 and 20/23-12-93 on the ground that they have failed to pay the amount alleged to be due against them. The petitioners have challenged the validity of these detentions.

4. The validity of the impugned detentions in civil jail has to be adjudged keeping in view the provisions of the Act and the fundamental right guaranteed under Article 21 of the Constitution of India. Therefore,

I would first like to refer to the relevant provisions of the Act and the Rules framed thereunder. The Act intends to make provisions for the recovery of public demand as defined under Section 3(6) of the Act in the State of Bihar.

Section 3 (3) of the Act defines the Certificate officer in the following terms :

3. *Definitions. — In this Act, unless there is anything repugnant in the subject or context:*

(1) ..

(2) ..

(3) *"Certificate Officer" means a Collector, a Sub-Divisional Officer and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate Officer.*

Part II of the Act provides for filing, service and effect of certificates and hearing of objections thereto. Sections 4, 5, and 6 provides for signing of certificate by the Certificate Officer on the basis of requisition made in this behalf, whereupon a Certificate case is instituted. Thereafter, as provided under Section 7 of the Act, the Certificate Officer is required to serve a notice upon the Certificate Debtor intimating him about the filing of the Certificate and inviting his objections to the process of realisation of the certificate dues. Section 9 of the Act entitles the Certificate Debtor to file his objection denying the liability which has to be heard and disposed of in the manner provided under Section 10 of the Act.

5. Part III of the Act provides for execution of the Certificate.. Sections 14 and 15 and Rule 53 as contained in Schedule II of the Act are material for the present case and the same are being quoted hereunder :

14. *When certificate may be executed.-No step in execution of a certificate shall be taken until the period of 30 days has elapsed since the date of the service of the notice required by sections 7 and 11 or, when a petition has been duly filed under section 9, until such petition has been heard and determined ;*

Provided that, if the Certificate Officer in whose office a certificate is filed is satisfied that the Certificate Debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as js liable to attachment under this Act, and that the realisation of the certificate would jn consequence be delayed or obstructed, he may at any time direct for reasons to be recorded in writing, an attachment of the whole or any part of such movable property."

15. *Mode of execution. — Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of a certificate —*

(a) *by attachment, and sale, if necessary, of any property, or in the case of immovable property, by sale without previous attachment, or*

(b) *by arresting the Certificate-Debtor and detaining him in civil prison, or*

(c) *by both of the methods mentioned in clause (a) and (b).*

Explanation to clause (c) — The Certificate Officer may, in his discretion, refuse execution at the same time against the person and property of the Certificate Debtor.

Rule 53. Discretionary power to permit Certificate-Debtor to show cause against detention in prison. —

(1) *The Certificate Officer may, before issuing a warrant for the arrest of the Certificate-Debtor, issue a notice calling upon him to appear before the Certificate Officer, on a day to be specified in the notice, and show cause why he should not be committed to civil prison.*

(2) Where appearance is not made in obedience to the notice, the Cerificate Officer may issue a warrant for the arrest of the Certificate-Debtor.

6. From the above referred provisions, it is quite clear that no step by way of arrest and detention of the Certificate-Debtor can be taken until the expiry of 30 days from the date of service of notice required under Section 7 and, in case, objection is filed under Section 9 until such petition has been heard and determined. It is also clear that even if the aforesaid conditions are satisfied, steps, in normal course, for issuance of warrant of arrest, should be taken only after hearing the , Certificate Debtor in this regard as provided under Rule 53 referred to above.

7. In the present case, admittedly no notice under Section 7 of the Act was ever served upon either of the petitioners inviting their objections to their alleged liabilities to pay tax in respect of the vehicles owned by them. Still the Certificate Officer in flagrant violation of the statutory provisions and in complete disreged of the fundamental right guaranteed under Article 21 of the Constitution, passed orders for issuance of warrant of arrest against the petitioners and lodged them in jail where they are languishing for more than 60 days to coerce them to make payment as requisitioned by the District Transport Officer without allowing them to repudiate or contest the said demands.

8. Article 21 of the Constitution of India, in clear terms, declare that "no person shall be deprived of his life or personal liberty except according to procedure established by law."

9. Keeping in view the aforesaid provision of the Act and the rules framed thereunder and the fundamental rights guaranteed under the Constitution, it needs no elaboration to hold that the impugned detention of the petitioners in civil jail is contrary to the procedure laid down under the Act and is thus illegal and malafide.

10. From the discussion as above, it is quite clear that the two petitioners before us have been the victim of arbitrariness and malafildc perpetuated by the District Certificate Officers who are drawn from the executive wing of the State at the instance of the Collector. The facts of the case are eloquent to demonstrate that the personal right of these petitioners have been violated with impunity.

11. The learned Government Advocate appearing on behalf of the respondent Certificate Officer was also present in person in Court. He could not justify the impugned detention of the petitioners with reference to any existing law. In the case of Rudul Sah vs. State of Bihar and another (AIR 1983 S. C. 1086,) Sebastian M. Hongray Vs. Union of India (A.I.R. 1984 S. C. 1026) and Blum Singh, MLA vs. State of J & K and others (A.I.R. 1986 S. C. 494) it has been held by the'apex Court that in case of illegal detention, the Court, in order to prevent violation of the right guaranteed under Article 21 of the Constitution, will be well within its jurisdiction to award exemplary costs, to mitigate the suffering of the aggrieved persons. In Rudul Sah case (supra), it has been held that :

'Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.

12. Keeping in view the facts and law as discussed above, both the writ applications are allowed with a direction to the respondents to immediatley release the petitioners from civil jail. Anyhow it will be open for the Certificate Officer to continue with the execution of the certificate cases in accordance with law. But keeping in view the gross illegalities committed in' the present cases by way of detention of the petitioners in violations of legal provisions, I award a cost of Rs. 5000/-(Rupees five thousand) in each case to be paid by the State of Bihar through the Col-lector, Patna, by way of crossed Bank Drafts drawn in favour of these petitioners within a week from today.

Dharmpal Singh, J.— I agree.

PATNA HIGH COURT

BUDHA SINGH
VERSUS
THE STATE OF BIHAR AND ORS.

AIR 1981 Pat 149

Decided on 14 May, 1980

Bench : ***Hon'ble Mr. Justice B. Jha, Hon'ble Mr. Justice C. S. Sinha***

Budha Singh
versus
The State Of Bihar And Ors.

ORDER

1. In an application under Article 226 of the Constitution of India, the petitioner prays for quashing Annexures 6, 7 and 8. These orders have been passed by various authorities under the provisions of Bihar Public Demands Recovery Act, 1914.

2. The Forest Department, Deltonganj, published a notice in the Bihar Gazette dated 7-12-66 for sale of Kendua leaves. The auction was held on 21-12-1966 and the petitioner was the highest bidder. The petitioner agreed to pay Rs. 9,000/-annually for three years. He also deposited a sum of Rs. 2250/- as earnest amount on 21-12-66 before the authority concerned. He did not deposit the balance amount of Rs. 6750/- before the authority concerned. One of the conditions, as mentioned in the advertisement, as contained in Annexure 1, was that if the petitioner did not deposit the aforesaid balance amount in the treasury, then in that case, his contract shall automatically be revoked. In the present case, it is admitted position that the petitioner never deposited the balance of the bid amount in the treasury and, as such, his contract was automatically revoked by the department concerned. There is also a provision in para 5 of Annexure 1 that the loss incurred shall be recoverable from the contractor concerned. It is for this reason, it is stated, that the department assessed the loss, that is, Rs. 5531/-and directed the petitioner to pay the loss to the Forest Department. The officer of the Forest Department sent a requisition to the Certificate Officer for realising this amount from the petitioner. The point under consideration is: Whether such amount of damages can be realised by the Certificate Officer under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 or not? (hereinafter referred to as 'the Act'). According to the provisions of the said Act, any authority can realise the amount through the process of the Act, as mentioned in Schedule 1. The heading of Schedule 1 of the said Act is 'Public Demands'. In this connection, the learned counsel for the State referred to Item No. 9 of Schedule 1 of the Act. In other words the argument of the learned counsel for the State is that this money shall come within the purview of Item No. 9 of Schedule 1 of the Act. It is relevant to quote Item No. 9 of Schedule 1 of the Act;

"9. Any money payable to a servant of the Government or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as a public demand."

3. On a perusal of Item No. 9 of Schedule 1 of the Act, it is clear that if a party agrees by written instrument to pay a certain amount to the Govt. or to the local authority, then in that case it shall be recoverable as a public demand. On a perusal of Annexure 1, it is clear that the amount of damages is not at all mentioned in annexure 1. In absence of any specified amount, such money cannot be recovered under

Item No. 9. The word 'money' mentioned in Item No. 9 means the money specified in the agreement of the parties. In view of the fact that the amount of damages is not mentioned in Annexure 1; as such, amount of damages cannot be recovered by the Forest Department. Neither the agreement nor the Act or the rules made thereunder provides any machinery to ascertain the damages incurred by the Forest Department. Whenever any money is realised as public demand or arrear of revenue or arrear as land revenue, then in all these cases the specified amounts are mentioned by the authorities concerned. If the amount of damage is not mentioned, then it can be ascertained only by the civil court and not by the Forest Department itself.

4. In this connection, a reference has also been made to Section 73 of the Bihar Private Forests Act, 1947 which is as follows :--

"73. Recovery of money due to Governments. All money payable to the State Government under this Act, or under any rule made under this Act or on account of the price of any forest-produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue,"

On a perusal of Section 73 of the Bihar Private Forests Act, 1947 also, it appears that the amount of damages as mentioned in Annexure 1 will not come within the purview of Section 73 of the Forests Act.

5. Another circumstance is that the petitioner was never put in possession of the forest for collecting Kendua leaves. In view of these infirmities I hold that the Certificate Officer had no authority in law to realise Rs. 5531/- through the process of the Act for the reasons mentioned above.

6. In the result, the application is allowed and Annexures 6, 7 and 8 are hereby quashed. Parties shall bear their own costs.

Chaudharysia Saran Sinha, J.

7. I agree with the order proposed by my learned Brother. But I would like to make a few observations of my own.

The claim of the respondents, forwarded before the Certificate Officer rests on para 5 of Annexure 1, which is undisputedly, a part of the agreement executed between the petitioner on the one side and the Governor of Bihar on the other. Clause 5 of Annexure 1 states merely about the realisation of the loss incurred by the State Government for the inaction of the petitioner leading to reauction as a public demand. No specific amount of loss is mentioned therein. A claim for Rs. 5531/- was put forward before the Certificate Officer. Learned counsel for the State in spite of repeated query failed to satisfy this Court as to how this amount of Rs. 5531/- was arrived at or even calculated. Learned counsel for the respondents contended that the amount of Rs. 5531/- could be recoverable under Section 73 of the Bihar Private Forests Act, 1947 (hereinafter referred to as 'the Forests Act') read with Item No. 9 of Schedule 1 to the Bihar and Orissa Public Demands Recovery Act. 1914 (hereinafter referred to as 'the Act'). Section 73 of the Forests Act refers to all money payable to the State Government under that Act or under any rule made thereunder or on account of price of any forest produce. It is nowhere the case of the respondents that the money sought to be realised from the petitioner is payable under the Forests Act or any rule made thereunder. Money recoverable on account of price of any forest produce cannot be equated to loss incurred by the State Government in connection with the forest produce. Obviously, therefore, none of the three parts of Section 73 is applicable to the instant case and we are left to fall back upon the provisions of Item No. 9 of Schedule 1 referred to above.

8. According to Item No. 9, any money payable to a servant of the Government or to any local authority in respect of which person liable to pay the same has agreed by a written instrument that it shall be

recoverable as a public demand, will come within the definition of 'public demand' as occurring in Section 3 (61 of the said Act. The money in question is not payable to a servant of the Government or any local authority but to the Governor of Bihar. This apart the Public Demands Recovery Act lays down summary procedure for realisation of money and it requires strict compliance with the provisions' of the Act and the Rules. A certificate is in the nature of decree. This is why Section 4; of the Act necessitates the satisfaction of the Certificate Officer that money sought to be realised is due. It is in this context, that the terms 'any money in respect of which the person liable to pay the same has agreed' have to be considered. The loss mentioned in para 5 of the agreement in question is in the nature of damages and not an ascertained sum of money nor can it be said that amount is ascertainable on the face of the terms of the agreement. This being the position, the respondents cannot take advantage of the provisions of Item No. 9 of Schedule 1 of the Act. I may, however, observe that the respondents shall be within their rights to proceed against the petitioner for recovery of the loss after it is duly ascertained in accordance with law.

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SUPREME COURT OF INDIA

PUNJAB NATIONAL BANK AND ORS VERSUS SURENDRA PRASAD SINHA

1992 AIR 1815, 1992 SCR (2) 528

Decided on 20 April, 1992

Bench : ***Hon'ble Mr. Justice Ramaswamy, K.***

Punjab National Bank and Ors. ...Petitioner
Versus
Surendra Prasad Sinha ...Respondent

ACT:

Limitation Act , 1963-Section 3-Whether bars the right to which a remedy related-Right to enforce debt by judicial process-Scope of-Time barred debt-Realisation of-Filing of suit to recover debt-Creditor's obligation.

Penal Code, 1860-Section 405-Action in terms of a contract-Whether amounts to criminal breach of trust or misappropriation-Creditor in possession of security-Adjustment of debt due from security-Justification of.

Penal Code, 1860-Section 409, 109/114-Complaint petition-Maintainability-Duty of Magistrate, indicated-Accused to be legally responsible for the offences charged-Magistrate's satisfaction of prima facie case-Criminal justice-Objects of.

HEADNOTE:

On 5.5.1984, the Bank-Appellant No.1, gave a loan of RS.15,000 to one S.N. Dubey. The respondent and his wife executed a Security Bond, as guarantors and handed over a fixed Deposit Receipt for a sum of Rs. 24,000 which was valued at Rs. 41,292 on its maturity on 1.11.1988.

The principal debtor defaulted marking payment of the debt. When the respondent's F.D. matured, the Manager of the Bank (appellant No.5) adjusting a sum of Rs.27,037.60 due and payable by the principal debtor as on December 1988 and the balance sum of Rs.14,254.40 was credited to the S.B. Account of the respondent.

The respondent filed a private complaint against the appellants in the Court of Addl. Chief Judicial Magistrate u/ss.409,109/114, IPC, alleging that the debt became barred by limitation as on 5.5.1987; that the liability of the respondent being co-extensive with that of the principal debtor, his liability also stood extinguished as on 5.5.1987; that without taking any action to recover the amount from the principal debtor within the period 529 of limitation, on 14.1.1989, the Branch Manager credited to his S.B. Account only Rs.14,254.00 on the maturity of his F.D.R. and thereby the appellants criminally embezzled the amount.

The appellants filed this Criminal Appeal by special leave challenging the High Court's order declining to quash the complaint filed by the respondent u/ss.409, 109/114, IPC.

Allowing the appeal of the Bank, this Court,

HELD :

1.01. The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is the right is destroyed. [532E-F]

1.02. Though the right to enforce the debt by judicial process is barred, the right to debt remains. The time barred debt does not cease to exist by reason of s.3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. [532G]

1.03. What s.3. refers is only to the remedy but not to the right of the creditors. Such debt continues to subsists so long as it is not paid. It is not obligatory to file a suit to recover the debt. [532G-H]

2.01. Action in terms of the contract expressly or implied is a negation of criminal breach of trust defined in s.405 and punishable under s.409 I.P.C. It is neither dishonest, nor misappropriation. [533C]

2.02. The creditor when he is in possession of an adequate security, the debt due could be adjusted from the security, in his possession and custody. [533A]

2.03. The bank had in its possession the F.D.R. as guarantee for due payment of the debt and bank appropriated the amount towards the debt due and payable by the principal debtor. [533D]

2.04. The respondent and his wife stood guarantors to the principal debtor, jointly executed the security bond and entrusted the F.D.R. as 530 security to adjust the outstanding debt from it at maturity. Therefore, though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists. In terms of the contract the bank is entitled to appropriate the debt due and credit the balance amount to the saving bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose. [533B-C]

3.01. The Magistrate without adverting whether the allegation in the complaint prima facie makes out an offence charged for, obviously, in a mechanical manner, issued the process against all the appellants. The High Court committed grave error in declining to quash the complaint on the finding that the Bank acted prima facie high handedly. [533E]

3.02. Judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence, against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process, least it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. [533F-534A]

JUDGMENT

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 254 of 1992.

From the Judgment and Order dated 25.6.1991 of the Madhya Pradesh High Court in Misc. Criminal Case No. 1701 of 1991.

G.L. Sanghi, Dhruv Mehta, Aman Vachher and S.K. Mehta for the Appellants.

The Judgment of the Court was delivered by K. RAMASWAMY, J. Special leave granted.

Punjab National Bank And Ors vs Surendra Prasad Sinha on 20 April, 1992 counsel. The facts set out in the complaint eloquently manifests on its face a clear abuse of the process of the court to harass the appellants. The respondent, an Advocate and Standing Counsel for the first appellant filed a private complaint in the court of Addl. Chief Judicial Magistrate, Katni in C.C. No.933/91 offences under s.409 and ss.109/114 I.P.C.

The facts stated in the complaint run thus : The first appellant's branch at Katni gave a loan of Rs. 15,000 to one Sriman Narain Dubey on May 5, 1984 and the respondent and his wife Annapoorna stood as guarantors, executed Annexure 'P' "security bond" and handed over Fixed Deposit Receipt for a sum of Rs. 24,000 which would mature on November 1, 1988. At maturity its value would be at Rs. 41,292. The principal debtor committed default in payment of the debt. On maturity, the Branch Manager, 5th appellant, Sri V.K. Dubey, adjusted a sum of Rs. 27,037.60 due and payable by the principal debtor as on December, 1988 and the balance sum of Rs. 14,254.40 was credited to the Saving Banks Account of the respondent. The respondent alleged that the debt became barred by limitation as on May 5, 1987. The liability of the respondent being co-extensive with that of the principal debtor, his liability also stood extinguished as on May 5, 1987. Without taking any action to recover the amount from the principal debtor within the period of limitation, on January 14, 1989, Sri D.K. Dubey, the Branch Manager, intimated that only Rs.14,250.40 was credited to his Saving Bank Account No. 3763. The entire amount at maturity, namely Rs. 41,292 ought to have been credited to his account and despite repeated demands made by the respondent it was not credited. Thereby the appellants criminally embezzled the said amount. The first appellant with a dishonest interest to save themselves from the financial obligation neglected to recover the amount from the principal debtor and allowed the claim to be barred limitation and embezzled the amount entrusted by the respondent. The appellant 2 to 6 abated the commission of the crime in converting the amount of Rs. 27,037.40 to its own use in violation of the specific direction of the respondent. Thus they committed the offences punishable under s.409 and ss.109 and 114 I.P.C.

The security bond, admittedly, executed by the respondent reads the material parts thus : "We Confirm having handed over to you by way to security against your branch office Katni F.D. Account No. 77/83 dated November 1, 1983 for Rs. 24,000 in the event of renewal of the said Fixed Deposit Receipt as security for the above loan." "We Confirm...the F.D.R. will continue to remain with the bank as security here". "The amount due and other charges, if any, be adjusted and appropriated by you from the proceeds of the said F.D.R. at any time before, on or its maturity at your discretion, unless the loan is otherwise fully adjusted from the dues on demand in writing made by you...." "We give the bank right to credit the balance to our saving banks account or any other amount and adjust the amount due from the borrowers out of the same". "We authorise you and confirm that the F.D.R. pledged a security for the said loan shall also be security including the surplus proceeds thereof for any other liability and the obligation of person and further in favour of the bank and the bank shall be entitled to retain/realise/utilise/appropriate the same without reference to us."

Admittedly, as the principal debtor did not repay the debt, the bank as creditor adjusted at maturity of the F.D.R., the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Saving Banks account of the respondent. The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is that right itself is destroyed. For example under s.27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though the right to enforce the debt by judicial process is barred under s.3 read with the relevant Article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reasons of s.3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What s.3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsists so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody. Undoubtedly the respondent and his wife stood

guarantors to the principal debtor, jointly executed the security bond and entrusted the F.D.R. as security to adjust the outstanding debt from it at maturity. Therefore, though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists. In terms of the contract the bank is entitled to appropriate the debt due and credit the balance amount to the saving bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose. Action in terms of the contract expressly or implied is a negation of criminal breach of trust defined in s.405 and punishable under s.409 I.P.C. It is neither dishonest, nor misappropriation. The bank had in its possession the fixed deposit receipt as guarantee for due payment of the debt and the bank appropriated the amount towards the debt due and payable by the principal debtor. Further, the F.D.R. was not entrusted during the course of the business of the first appellant as a Banker of the respondent but in the capacity as guarantor. The complaint does not make out any case much less prima facie case, a condition precedent to set criminal law in motion. The Magistrate without adverting whether the allegation in the complaint prima facie makes out an offence charged for, obviously, in a mechanical manner, issued the process against all the appellants. The High Court committed grave error in declining to quash the complaint on the finding that the Bank acted prima facie high handedly.

It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Migistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case of harass them for vendetta.

The appeal is accordingly allowed and the complaint is quashed.

Appeal allowed.

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PATNA HIGH COURT

SAWAR MAL CHOUDHARY AND ORS.
VERSUS
STATE BANK OF INDIA AND ORS.

AIR 1988 Pat 185, 1987 165 ITR 467 Patna

Decided on 2 May, 1986

Bench : ***Hon'ble Mr. Justice S. Sandhawalia, Hon'ble Mr. Justice R. N. Prasad***

Sawar Mal Choudhary And Ors.
Versus
State Bank Of India And Ors.

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether Article 15 (inserted by Bihar Act of 1974) of Schedule I of the Bihar and Orissa Public Demands Recovery Act, is beyond the competence of the State Legislature, is the significant common question in this set of 6 writ petitions, placed for an authoritative decision by a Division Bench.

2. The matrix of facts may be briefly noted from Civil Writ Jurisdiction Case No. 3310of 1985 (Sawar Mal Choudhary v. The State Bank of India and others). The petitioner purchased a truck under the educated employment scheme, which was financed partly by the State Bank of India, Katihar Branch, by raising a loan of rupees one lac. An agreement was duly executed between the petitioner and the State Bank of India, through a hypothecation deed and it is admitted that the petitioner had made certain payments towards the loan advanced by the respondent State Bank of India. Apparently, on the failure of the petitioner to make repayment of the loan, the respondent Bank sent a requisition, under the Bihar and Orissa Public Demands Recovery Act (hereinafter referred to as the Act), on the 26th April, 1984, on the basis of which a Certificate Case No. 5 of 1984 was registered. The service of notice under Section 7 was duly made on the petitioner and he filed objections challenging the authority of the Bank to realise the loan in question. All the objections were rejected by the Certificate Officer, and an order for issuance of warrant for arrest against the petitioner was passed on the 10th of November, 1984. Allegations are made that the Bank had failed to pay the requisite court-fees in accordance with the provisions of Section 5 of the Act, and that the requisition, contained in Annexure T, was not duly filled up, as prescribed.

3. The somewhat hyper technical sketchy averments made in the original writ petition stand stoutly controverted in the counter-affidavit of the respondent State Bank of India. Therein it has been averred that the requisite court-fee amount of Rs. 4,929.80 paise has been duly paid and that the requisition in Form 2 was duly sent to the Certificate Officer by the Branch Manager, duly filled in, and signed. The allegations in paragraphs Nos. 10 to 13 of the writ petition have been denied. Similarly, in the counter-affidavit filed on behalf of Respondent No. 2, the District Certificate Officer, Katihar, the allegations in the Writ petition have been controverted.

4. However, subsequently, on the 16th of Dec. 1985, a supplementary petition had been moved on behalf of the petitioner, laying a challenge to the constitutionality of Article 15 of Schedule I to the Act. It is the claim that the said article is not covered by Entry 43 of List II of the Seventh Schedule to the Constitution of India, and, consequently, the Bihar Legislature had no competence to enact Bihar Act of 1974. It is the case that the impugned Article 15 of Schedule I pertains to Banking, which is

exclusively a Central subject, by virtue of Entry 45 of List I of the Seventh Schedule to the Constitution. In the supplementary affidavit, reference has been made to the other connected writ petitions, which stand admitted on the identical issue of the vires of Article 15 of Schedule I to the Act.

5. In view of the patent significance of the question raised and the obvious urgency of the matter, these connected set of writ petitions have been directed to be expeditiously heard by a Division Bench, and, that is how they are before us.

6. Inevitably, in the context of a pristinely legal challenge on the ground of in competency of the State legislatures, the issue must necessarily turn on the language of the relevant constitutional and statutory provisions. However, before one adverts to them and analyses the same, it is apt to have a bird's eye view of the legislative history. The predecessor statute herein is the Bengal Public Demands Recovery Act. 1913(Act 3 of 1913). The Bihar and Orissa Public Demands Recovery Act, 1914 (Act 4 of 1914) was notified in the gazette on the 1st of July, 1914. Plainly enough, it is a pre-Constitution legislation which has held the field for now 72 years. Schedule I to the said Act is an integral part of the statute framed with particular reference to Section 3(6) and proviso (b) to Section 43 of the Act. It would appear that originally it had fourteen Articles therein. Admittedly, the impugned Article 15 thereof was inserted by Third Ordinance No. 110 dated the 26th of Aug. 1973 which was subsequently followed by the amending Act 4 of 1974 which indeed is in pari materia with the provisions of the said Ordinance. It would thus appear that the provisions of Article 15 have also so far held the ground for the last 14 years without any meaningful constitutional challenge.

7. However, learned counsel for the petitioners have, with vigour and vehemence, assailed the relevant part of the impugned Article 15. To appreciate the rival contentions, it becomes necessary to quote the constitutional and the statutory provisions in extenso at the very outset : --

'"The Constitution of India. Seventh Schedule (Article 246) List I -- Union List,

xxxxx

45. Banking, xxxxx List III -- Concurrent List, xxxxx

43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.

xxxxx

Section 3(6) of the Act reads as under --

"3. Definitions.-- In this Act, unless there is anything repugnant in the subject or context : --

xxxxx

(6) 'public demand' means any arrears or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II;

xxxxx"

Article 15 of Schedule I to the Act runs as follows : --

"15. Any money payable to --

(i) *State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955); or*

(ii) *a Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970); or*

(iii) *a company or a corporation or a statutory body, including a registered society carrying on financial transaction, owned by or in which, Government has a majority of shares or which is managed by an authority appointed under any law for the time being in force; or*

(iv) *the Bihar State Electricity Board, in respect of which the person liable to pay the same has agreed by a written instrument that it shall be recoverable as public demand".*

For the sake of clarity it may perhaps be noticed at the very outset that the challenge in these petitions has been focused only on the first two categories of Article 15, namely, with regard to monies payable to the State Bank of India or banks specified in column (2) of the first Schedule of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970.

8. Before us the rival stands were primarily rested on entry 45 of the Union List I as against entry 43 of the Concurrent List III. Inevitably, in a way the import of these legislative entries is what we are called upon to construe and though the matter is well settled, yet it is somewhat necessary to hearken broadly to the approach for the true construction of these legislative entries. By now it is established beyond cavil that the entries in the legislative list should not be read in a narrow restricted or pedantic sense. Each general word therein should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction according to the ordinary meaning must be put upon the words used therein. If authority is needed for this well settled proposition, there is no dearth therefor and a reference could be made to Navinchandra Mafatlal v.Commr. of Income-tax, Bombay City AIR 1955 SC 58 and Sri Ram Ram Narain Medhi v. State of Bombay AIR 1959 SC 459.

9. The core of the argument of Mr. Trivedi, who opened the attack on behalf of the petitioners in challenging the first two clauses of Article 15 of the Schedule is that these primarily pertain to banking. It is pointed out that by virtue of entry 45 of the Union List I banking is a completely central subject. Learned counsel relied on Section 5(b) of the Banking Regulation Act, 1949, which attempts some definition of this wide ranging term as under : --

"5. Interpretation.--In this Act unless there is anything repugnant in the subject or context,--

xxxxx

(b) 'banking' means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;

xxxxx"

On the aforesaid premises it was sought to be argued that the State Bank of India and the other nationalised banks were primarily doing the business of banking by borrowing and lending money, and, therefore, every legislation appertaining thereto could be covered by Entry 45 of Union List I and was thus within the domain of Parliament alone. It was his case that any intrusion in this arena is beyond the pale of State Legislatures.

10. To appreciate the aforesaid argument in proper perspective, the relevant part of the scheme of the statute deserves notice in passing. This again has to be viewed in the context of the fact that the phrase 'public demand' is not defined either in the Constitution or in the Seventh Schedule thereto pertaining to the legislative entries, nor in the Central General Clauses Act or the Bihar & Orissa General Clauses Act. Indeed, no definition of this phrase, apart from the one in the Act itself, to which reference follows hereafter, could be brought to our notice. That the phrase 'public demand' intrinsically is one of the widest amplitude cannot be denied. It is against this background that one has to construe the definition given in Section 3(6) of the Act. Significantly the constitutionality of this wide ranging definition has not even remotely been challenged before us and perhaps could not possibly be so done. Once that

extensive definition is accepted then moneys due to the State Bank of India, which is nothing but a limb or instrumentality of the State, and equally the nationalised Banks, would clearly come within the wide ranging ambit of 'public demand'. Now in the Act Sub-section (6) of Section 3 has in terms defined public demand for its purposes. This definition is by direct reference to Schedule I. The said Schedule then 'has its heading as 'Public Demands' and at the same time makes' express reference to Section 3(6). It is thus manifest that Section 3(6) and Schedule I are one integral whole, which have to be construed as part and parcel of each other. But what perhaps calls for pointed notice in this context is that under the Act the definition and the concept of 'public demand' becomes one of the widest amplitude. Even in its ordinary common parlance and dictionary meaning the public demand is a wide ranging concept. However, even this has been further and deliberately expanded by the legislature to include within its sweep any arrears or monies which may come to be mentioned or referred to in Schedule I including any interest accruing thereon. It deserves highlighting that Section 3(6) is not merely an inclusive definition but expressly says that 'public demand' means whatever may be specified in Schedule I. In the result, even the broad sweep of public demand is further widened by the statute herein and, in any view, designedly. In logical essence it leads to the result that for the purposes of this Act, a public demand is only that arrears or money which finds place in Schedule I even by reference. It seems that the legislature has deliberately not attempted to define 'public demand' or limiting the same. Thus it may well be that something which may otherwise appear to be a public demand would be excluded from the sweep of the Act if it is not included or does not find reference in Schedule I. In the converse, whatever arrears or money which the legislature chooses to incorporate in Schedule I becomes by virtue of the definition under Section 3(6) a public demand for which recovery can be made under the Act. The scheme of the definition under Section 3(6) of the Act and the frame of Schedule I complementary thereto thus becomes the key to the interpretation of these provisions.

11. Once the aforesaid view is taken, the somewhat diffused arguments raised in this context fall into their proper place. Therefore, merely legislating on what the legislature thinks as a public demand and providing for its recovery is not an exercise in banking. If the framers of the law are of the view that arrears or money due to the State Bank of India (which admittedly has been for a long time an entirely State enterprise), and equally to the banks nationalised later, is a public demand worthy of expeditious recovery then it cannot be easily said that this exercise is one of banking simpliciter. That the legislature in its wisdom may think that arrears or monies due to this class of banks should be recovered with the same expedition as his extended to money and other less significant public demands under Articles 1 to 14 of the same Schedule would not, in my view, imply any intrusion into the pristine field of banking. By way of example, the new Article 15 also provides for recovery of sums due to the Bihar State Electricity Board if it has been so agreed but it can hardly be said that this would be legislation with regard to electricity. All such provisions plainly are in respect of that which, in the eye of law and the intent of legislature, is a public demand deserving expeditious recovery as against the other tardy processes of the law. Swift recovery of public demands or monies is not necessarily banking. To reiterate and, if necessary, to repeat, there is not only no constricted definition of 'public demand' in Section 3(6) but indeed it is deliberately extended and expanded one by virtue thereof. The legislature has not chosen to put 'public demand' in the Procrustean Bed of a strait-jacketed definition but on the contrary has left its doors wide open to include any arrears or monies which the legislature in its wisdom may choose to place in Schedule I. To put it conversely, by a deeming fiction any arrears or money mentioned or referred to in Schedule I ipso facto becomes a public demand recoverable under the Act. It had to be conceded that recoveries under Articles 1 to 14 of the Schedule pertaining to monies due to the State or its organs or legal authorities or co-operative societies, etc. are not seriously challengeable. If that is so, one fails to see how recoveries of arrears or monies due to entirely State owned or nationalised banks can be on a radically different footing. Mr. Trivedi, the learned counsel for the petitioners, has fairly

conceded that there was no decision or authority in favour of the somewhat extreme stand he had taken in this context. The submission must, therefore, be rejected both on principle and on the plain language of the statute.

12. Mr. Thakur Prasad, the learned counsel for the petitioners in C.W.J.C.5997 of 1983, had then sought to make flanking attacks from different angles. He sought to place reliance on entries 43 and 45 of List II (State List) which are in the following terms : --

"43. Public debt of the Slate."

"45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues."

The contention raised was that the State Legislature could under the Act recover only that which was due cither as a public debt or land revenue of the State. According to the Counsel, under the Act public demand has to be confined to what is due to the State of Bihar and not to any other person unless expressly warranted and specified by another Central statute. Reliance was sought to be placed on passing observations in Kanhaiyalal Dabriwala v. State of Bihar 1982 PLJR 257 : (AIR 1982 NOC 124) which pertained wholly to the issue of court-fees payable by a Bank in certificate proceedings.

13. The argument aforesaid seems to stem from some misapprehension or fallacy with regard to what is a public debt as against a public demand. The two phrases are certainly not synonymous. It is somewhat simplistic to equate the wide ranging varied public demand with the public debt of the State and there is no warrant for such a proposition. Neither principle nor precedent could be cited for any such contention. As noticed already, under the Act, public demand is what is mentioned or referred to in Schedule I and in the converse any arrears or monies placed by the legislature in the said Schedule would become a public demand. These are. therefore, in a way convertible term. As noticed already, the legislature has not chosen to spell out any intrinsic definition of 'public demand' but by a circular definition has extended its meaning to whatever is contained in the Schedule. Equally, it is not possible to say that barring public debt of the State the only other public demand is the land revenue due to State Governments. Nothing, therefore, seems to flow both on principle or the language of Entries 43 and 45 of List II of the Seventh Schedule. It cannot possibly be said that only land revenue or collection of revenue and public debt of the State can be the only public demands under the Act. Indeed this stand receives the lie direct from some of the other articles in Schedule I of the Act. For instance, Article 14 pertains to recoveries in favour of co-operative societies. Again Article 9 is in the terms following :

"Any money payable to a servant of the Government or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument duly registered that it shall be recoverable as a public demand."

Equally, Article 10 is with regard to stamp duty under the Estates Partition Act, 1897. It bears pointed notice that the Indian Stamp Act is a Central Act. Yet recoveries thereunder are authorised by this article. All these would clearly indicate that the various articles in Schedule I are not pointedly confined only to either public debt or the State demands or to land revenue alone. These articles extend to other wide ranging fields as well. Construing the in pari materia provisions of the Bengal Public Demands Recovery Act, 1913, which, as already noticed, is the predecessor statute, the Division Bench of the Calcutta High Court, in N.C. Mukherjee and Co. v. Union of India AIR 1964Cal. 165 had observed as under : --

"The Bengal Public Demands Recovery Act. 1913, enables recovery of public demands referred to in Schedule 1 of the Act. A reference to the Schedule shows that under the Act there can be recovery of not only arrears of land revenue but also of (a) other revenue, (b) demands of the Government other than revenue, (c) demands due to persons other than the Government."

An identical view has then been recently taken in Harish Tara Refractories (P) Ltd. v. Certificate Officer AIR 1985 Cal 56 :

''In the First Schedule, along with the arrears of revenue and other moneys due to the State, a number of items have been included which are not moneys payable to the State at all. Rule 8 relates to rent payable in respect of property belonging to a private individual which is under the charge of or is managed by any Court of Wards or the Revenue Authorities on behalf of that private individual. Rule 9 is in respect of money payable to a servant of the Government or of any local authority. Rule 12 is in respect of any money awarded as compensation under Section 2 of the Bengal Land Revenue Sales Act, 1868 and Rule 14 relates to any money ordered by Liquidator appointed under Section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a Society or as the costs of liquidation.

Therefore, it is clear that 'public demands' under the Bihar and Orissa Public Demands Recovery Act, 1914, include not only moneys, payable to the State but also moneys which cannot ordinarily be regarded as public demands.

Having regard to the provisions and also the scheme of the Bihar and Orissa Public Demands Recovery Act, it is not possible to uphold the contention that the money payable to the State Bank of India not being a 'public demand could not be realised under the Bihar and Orissa Public Demands Recovery Act. In this connection, it should also be borne in mind that the State Bank of India is a body fully owned and controlled by the Central Government. It was nationalised for public purpose and it is managed by or on behalf of the Government of India for the benefit of the public. It is not an independent body like the British Broadcasting Corporation. It was held by a Division Bench of the Bombay High Court in the case of State Bank of India v. Kalpaka Transport Co. Pvt. Ltd. AIR 1979 Bom 250 that the State Bank of India was an agency of the Government."

I am inclined to agree unreservedly with the aforesaid enunciation, and, also for the added reasons given earlier, it has to be held that 'public demand', both generically as also with regard to what is included in Schedule I to the Act, is not to be constricted only to either the public debt of the State or demands due to the State or its land revenue collections only.

14. Another limb of the aforesaid contention was that the recoveries which do not come within the ambit of Entries 43 and 45 of the two Lists can only be made if another Central statute independently provides for such recovery thereunder as a public demand recoverable under the respective State Statute. To buttress this contention, reference was made to Section 47(2) of the Income-tax Act, 1922, which was later substituted by Sections 222 and 223 of the 1961 Act. Similar or identical provisions were sought to be referred to as Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Section 8 of the Payment of Gratuity Act, Section 142 of the Customs Act and a number of other statutes as well. In the light of the aforesaid provisions the submission of the learned Counsel was that the Banking Companies Act, 1949, and the subsequent Banking Regulation Act have no such provision authorising the collection of amounts due to banks as public demand. This, according to Counsel, being an imperative requirement, in its absence the State Legislature could not legislate for recoveries pertaining to Bank dues. In sum, the submission is that in respect of a Central subject, the Central statute itself must provide for its recovery under the State statutes pertaining to public demand recoveries. Reference was made to clauses (2) and (3) of Article 246 of the Constitution which pertain to the exclusive powers of legislation of the Parliament and State Legislatures and to Article 254 with regard to inconsistency between laws made by either of them. Reliance was attempted to be placed on Purushottam Govindji Halai v. Additional Collector of Bombay AIR 1956 SC 20.

15. The aforesaid contention, though it might bring credit to the ingenuity of the learned Counsel, is nevertheless untenable on a close analysis. Merely because a Central statute may expressly authorise

recoveries under the respective State statutes for public demands, it cannot possibly be said that it would bar the State legislatures themselves from doing so by their own mandate. This is not, indeed, one-way street, but a broader highway. It is plain that with regard to money recoveries under Central statutes the Centre may not have the machinery or the authorities for such recoveries in all the States within the Union. It may, therefore, well fall back on and authorise such a recovery under the State statutes with regard to public demands within their respective jurisdictions which may already be in existence. Such Central recoveries would otherwise not be included in the Schedules as public demands of the respective State statutes. Therefore, inevitably, where it is so desired, they have to be authorised or included within the ambit of such public demands by the Central Legislature itself. This, however, can possibly be no ground for creating a bar against tbe State Legislatures themselves for making such recoveries or include them in the category or list of public demands recoverable under their own State statute. Indeed, the contention of Mr. Thakur Prasad may well boomerang upon him. On his own stand, recoveries of public demands, falling squarely under the exclusively Central legislation, are permissible under the different State statute pertaining to recoveries of public demands. The Constitution Bench, in Purushottam Govindji Halai v. Additional Collector of Bombay AIR 1936 SC 20, had in terms upheld the recoveries of the arrears of Central income-tax under the Bombay City Land Revenue Act and other State legislations for recoveries of public demands in their respective territories. If that be so, it may well be said that, if Central revenue and demands can be validly authorised to be recovered by the machinery provided by the State statutes for recoveries of public demands, it would be more so within the province of State Legislatures themselves to define and include what they deem to be a public demand and to then authorise its recoveries under the respective statutes. Therefore, the contention of the learned Counsel for the petitioners, far from aiding them, would lend positive support to the other side, because the converse would equally be true and the State Legislature, consequently, would be also entitled to legislate and declare as to what are public demands and the mode and methods of their recoveries in their respective statutes. The submis Thakur Prasad must, therefore, necessarily fail.

16. Mr. Thakur Prasad raised yet another ingenious argument with regard to Entry 43 in the Concurrent List III. He very fairly conceded that apart from this Entry 43, there is no other entry for recovery of public demands either in the State List II or in the Union List I. Admittedly, in all the three Lists in the Seventh Schedule this is the only entry pertaining to recoveries of public demands.

However, he ingeniously contended that this entry pertains only to recovery of public demands outside the State and had no application within it. Reliance was placed on passing observations in the Full Bench judgment in P.R. Krishna Rao v. Municipal Sales Tax Officer, Ernakulam AIR 1954 Trav Co. 218 and Ms N.C. Mukherjee and Co. v. The Union of India AIR 1964 Cal 165.

17. The contention that Entry 43 of the concurrent list pertains only to recoveries of taxes and public demands outside the State's jurisdiction appears to me as wholly untenable on principle and the language of Entry 43 of List III itself. It is the admitted position that in the whole gamut of the Seventh Schedule there is no other entry for the recovery of public demands. On principle, therefore, it looks inconceivable that the framers of the Constitution, when contemplating the recovery of public demands, would make provision for such recoveries outside the State but none at all for similar recoveries within the State itself. Plainly enough, the major burden of recoveries of State taxes and their public demands arises within their own territories and not outside it. Such recoveries beyond the jurisdiction would normally be fewand more in the nature of an exception to the rules. To attribute to the framers of the Constitution any designed anomaly that whilst providing for recoveries of public demands they altogether omitted such recoveries within the State and confined themselves only to outside the State, seems to me as wholly unwarranted. Therefore, it must be held that Entry 43 of the concurrent list pertains both to the recoveries of taxes and other public demands within and without the respective States.

18. A close analysis of the language of Entry 43 including the aid of the punctuation therein would itself indicate that as the solitary entry on the subject it covers both recoveries within and without the State. The opening part of the entry is unqualified and talks of recovery in a State of claims in respect of taxes and other public demands. When this is read plainly it is obvious that no such limitation of such recoveries being entirely outside jurisdiction would arise. It is only as an inclusive provision that it has further added that arrears of land revenue and sums recoverable as such arrears, arising outside that State, would also be within the ambit. The latter part of Entry 43 is thus an extension of the power to recover public demands outside the State as well, and not an abridgement of the larger and general power already conferred to recover taxes and other public demands.

19. Yet again, one has to remand oneself that Entry 43 occurs in the concurrent list. Therefore, it is applicable both to the State as also to the Central or Parliamentary legislation. If this entry is read, as advocated by the petitioners, then in its application to the Central claims for taxes and public demands, it would mean that such recoveries have to be made outside the territories of India. I do not think that in its application to the Union, Entry 43 is intended for any such extra territorial legislation in other countries. Indeed, on the stand taken on behalf of the petitioners, Entry 43 in its application to the Union would raise anomalous, if not mischievous, results, which have to be avoided.

20. Mr. K.P. Varma, learned Counsellor the respondent State Bank of India, highlighted that even the petitioners had conceded that under Entry 43 State would be entitled to recover public demands arising outside the State. Consequently, it was undisputed that this entry in fact squarely covers the field of recoveries of public demands. The sole question that would remain on the language of Entry 43 would, therefore, be, whether the words, "arising outside that State" at the end of the said entry, were intended to abridge the power of recovery of public demands or to enlarge or extend it even to the demands arising outside the State. Mr. Verma rightly posed a question that if Entry 43 authorises recoveries of public demands even outside the State, what possible bar there could be for the self-same recoveries within the territories of such States themselves. He rightly pointed out that such recoveries within the State territories were implicit and inherent to the situation and thus, 'outside that State' was only by way of enlargement and extension. Learned Counsel also pinpointed that the entry did not employ the word 'only' to qualify such demands arising outside the State. According to Mr. Varma, and, in our view rightly, this was clearly a clause enlarging the basic provision of the entry within the State to include within its sweep such recoveries outside the State as well.

21. Undoubtedly, an observation in P.R. Krishna Rao v. Municipal Sales Tax Officer, Ernakulam (AIR 1954 Trav Co 218) (supra)(FB) does lend a handle to the contention raised by Mr. Thakur Prasad However, on this aspect the reasoning of the judgment is questionable. A close perusal of the judgment would indicate that the primal question therein was whether Entry 43 is confined to claims which arose subsequent to the Constitution or whether it extends to the claims that had already arisen before the Constitution of India was promulgated. Indeed, the question whether such recoveries are to be made within the State or outside it was not even remotely in the ken of the Full Bench. Nonetheless, in the course of the discussion, there is an isolated line, observing so on apparently a superficial reading of that entry. This, according to me, is plainly an obiter dictum. There is neither any reasoning therefore, nor any principle or precedent is cited in its support. It would seem passingly strange that this entry, which is the only one providing for public demands, pertains to demands outside the State whilst admittedly no other entry provides for recoveries of public demands within the State itself. There seems no warrant for reading an inclusive provision in an inverted manner by holding that what in included therein by way of extension or enlargement is meant to be the only provision and the basic power of making such recoveries within its own territory is excluded. With the deepest deferenceon this specific point, I would wish to record my dissent from the solitary and isolated observation in the Full Bench judgment, which, as noticed earlier, is otherwise an obiter dictum.

22. Similar fallacy seems also to have crept in the case of N.C. Mukherjee and Co. v. Union of India (AIR 1964 Cal 165) (supra).Therein also the basic question at issue was not even remotely whether Entry 43 of the concurrent list pertains to recoveries of public demands only outside the State or within it. Nevertheless, in the very opening of paragraph 12 of the report it was observed that "plainly the Bengal Public Demands Recovery Act, 1913, is not a law with respect to Entry 43 of the concurrent list. It is not a law with respect to recovery in the State of West Bengal of claims regarding public demands arising outside the State." This observation plainly enough begs the very question that is at issue. One fails to see how it is plain or axiomatic that Entry 43 of the concurrent list pertains exclusively to recoveries outside the State and not within. Indeed it can be said that on a plain grammatical construction, Entry 43 may extensively cover both the demands within and without the State. There is again no reasoning or principle or authority cited for an observation which was considered merely axiomatic, and, as has been shown above, was not at all warranted. With the deepest deference on this aspect, I would respectfully differ from the observations in N.C. Mukherjee & Co's case (supra).

23. To conclude on this aspect, I am inclined to hold that Entry 43 of the concurrent list envisages within its wide sweep recoveries in respect of taxes and public demands both within and without the State.

24. Mr. G.C. Bharuka, learned counsel for the petitioners in Civil Writ Jurisdiction Case No. 1807 of 1983 however, tried to assail the impugned provisions of Article 15 of the Schedule from a somewhat different angle. By reference to the Stroud's Dictionary and Black Dictionary he reiterated the stand that money-lending was an intrinsic and integral part of the Banking business, and, consequently, recoveries of such moneys lent was inherently and absolutely a banking transaction. On that premise, it was contended that these transactions can come within the ambit of legislation only under Entry 45 of List I. Therefore, Parliamentary legislation alone and in particular, provisions in the Banking Act or in the Banking Companies Regulation Act only can authorise such recoveries. Reliance was placed on Entry 95 of List I, Entry 65 of List II and Entry 46 of List III of the Seventh Schedule to the Constitution, which, in almost identical terms pertain to the jurisdiction and power of all courts (except the Supreme Court) with respect to any of the matters in the respective lists. Herein the core of the contention of the learned Counsel was that in each case the jurisdiction and power of all such courts had to be circumscribed by the subjects contained in each of the lists.

Therefore, the Certificate Officer, being a revenue court of limited jurisdiction, the State legislature cannot confer or enlarge its powers or jurisdiction to recover something which is governed by the entry pertaining to Banking, namely, Entry 45 of List I. In sum, the submission was that the Union or the States can confer jurisdiction and powers on their respective courts only with regard to the matters contained in the subjects in their respective lists and cannot, intrude in the fields reserved for each other. Counsel attempted to place reliance on State of Bombay v. Narottamdas Jethabhai AIR i 1951 SC 69.

25. The somewhat involved contention of Mr. G. C. Bharuka appears to me as suffering from the fallacy of begging the very question that is at issue. It assumes or proceeds on the premise that recoveries of monies due to the State Bank of India or the nationalised banks are stricto sensu banking exclusively and cannot be a public demand. Now admittedly the State Bank of India and the nationalised banks are virtually limbs and instrumentality of the State itself. One fails to see how monies due to such like wholly State owned bodies are in a way not owed to the State itself or on any case cannot assume the character at least of a public demand when widely construed. This aspect has been dealt with some detail in the opening part of this judgment in Paras 9 to 11 and it would be wasteful to tread the same ground again. It must, therefore, be held that recoveries of monies due to the State Bank of India or the State owned banks would come well within the ambit of public demand and are not exclusively and entirely banking stricto sensu.

26. In repelling the aforesaid contention of Mr. Bharuka, the firm stand of Mr. K. P. Varma, learned Counsel appearing for the respondent State Bank of India, was that the recoveries of monies due to the State owned Banks was primarily and purely a matter of procedure and inevitably these matters could, therefore, be left to the State Governments and their civil or revenue Courts. It was highlighted that it remains undisputed that the Certificate Officer, who authorises the recoveries of public demands is a Court, and, in any case, would undoubtedly come within the ambit of revenue Courts. Consequently, the State Government would have undoubtedly the legislative power to govern the procedure and matters before the Certificate Officer. Both Entry 11A and Entry 13 of List III may, therefore, also come in i play because they govern civil procedure as well. Further, because the Court of the Certificate Officer is a Court created by the State Government under its statute, the State Legislature, under Entry 11A or Entry 13 would not be barred from either legislating about the same or adding to the list of recoveries through such a Certificate Officer. Mr. Varma, in the alternative, therefore, ! canvassed for the acceptance of the view in Harish Tara Refractories (P.) Limited v. Certificate Officer(AIR 1985 Cal 56)(supra), holding that entry 11A and Entry 13 of List II also sanctified the enactment of Article 15 of: Schedule I to the Act.

27. As is manifest from the gravamen of the discussions in this judgment, the primary contest herein was betwixt Entry 45 of the Union List I as against Entry 43 of the Concurrent List III. I have already held that monies due to the State owned banks would come well within the ambit of public demands and equally their recovery both within and outside the State, by virtue of Entry 43 of the Concurrent List III. However, no serious challenge could be laid before us to the detailed reasoning in Harish Tara Refractories (P.) Limited v. Certificate Officer (supra) deriving the sanction for Article 15 of Schedule I from Entries 11A and 13 of the Concurrent List III. In the alternative, therefore, I find no reason to differ from the said judgment either, and, the stand of the respondents based thereon may also be well accepted as an additional, ground for sustaining the competency of the State legislature to enact Article 15 of Schedule I to the Act. The contention of Mr. Bharuka, therefore, must be rejected.

28. Lastly, one must notice, in fairness to Mr. Varma, his firm stand that even on ,the doctrine of pith and substance, Article 15 of the Schedule I would come well within the ambit of Entry 43 of the Concurrent List III. He rightly pointed out that by now it is well settled that entries in the lists are not meticulously exclusive and may well overlap each other. The recovery of monies due to State owned banks is in pith and substance a public demand and even if these incidentally overlap an element of banking, it would squarely remain within the sweep of Entry 43 of the Concurrent List. Even accepting the argument of the petitioners at the highest, merely because such a recovery may marginally trench on the subject of banking, it would, in no way, detract from its validity because in pith and substance this still remains to be public demand as such.

29. The aforesaid contention is plainly meritorious. It is by now settled beyond cavil that if the impugned legislation is in pith and substance within the sweep of a legislative Entry, the same would not be invalidated merely because of the fact that it incidentally transgresses into the subjects in a rival List. This has been so held way back in 1940 by the Federal Court, in Subramanyam Chettiar v. Muthuswamy Goundan, AIR 1941 FC 47, which was expressly approved and applied by the Judicial Committee in Prafulla Kumar v. Bank of Commerce, Khulna, AIR 1947 PC 60. The Final Court has reiterated this in the undermentioned terms in the State of Rajasthan v. G.Chawla, AIR1959SC544 :-

"After the dictum of Lord Selborne in Queen-Empress v. Burah, (1878) 3 AC 889, oft-quoted and applied, it must be held as settled that the legislatures in our country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the List conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive,

are sometimes not really so. They occasionally overlap, and are to be regarded as enumeration simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and, only if that pith and substance falls substantially within an entry or entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List notwithstanding."

29A. In the light of the aforesaid authoritative enunciation, even on the doctrine of pith and substance, it must be held that Article 15 of Schedule I of the Act, would well remain within the wide sweep of Entry 43 of the Concurrent List III, despite any alleged incidental and marginal intrusion in the field of Banking.

30. To finally conclude, the answer to the question posed at the very outset is rendered in the negative and it is held that Article 15 of Schedule I to the Bihar and Orissa Public Derhands Recovery Act is within the competence of the State Legislature by virtue of Entry 43 of the Concurrent List III. In the alternative, it is equally well within the ambit of Entries 11A and 13 of the said List as well. The challenge to the constitutionality of the said article has consequently to be repelled.

31. Once it is held as above and the common pristinely legal issue stands settled, a weighty and impassable primary objection has been forcefully and vehemently raised on behalf of the respondents. It was argued that the Act itself provides effective remedies by way of statutory appeal, revision and even a review in unequivocal terms. It was contended that herein inevitably with regard to the case on merits issues of fact may well arise which can only be determined aptly in the aforesaid forums provided by the legislature. Learned counsel for the respondents reiterated that no adequate ground for by passing or short-circuiting the remedies provided by statute has been made out here.

32. The submission aforesaid appears to us as plainly meritorious. Reference to Section 60 of the Act would make it manifest that a statutory appeal from any original order made under this Act stands duly provided. If such order is made by an Assistant Collector or a Deputy Collector or by a Certificate Officer not being the Collector then it lies to the Collector and in the event of such original order being made by the Collector himself, it would He to the Commissioner. The five subsections of Section 60 provide for the forum, procedure, limitation, transfer, stay, etc., in the appellate jurisdiction. In particular it may be noticed that interim relief has also been taken care of by Sub-section (5) which, in term, lays down that pending decision of any appeal the execution may be stayed if the appellate authority so directs. What next meets the eye is the fact that though a bar is created against second appeals by Section 61, the same is softened by expressly providing in Section 62 for statutory revision against the appeal or original order as well. Therein power has been conferred on the Collector to revise any order passed by a Certificate Officer, Assistant Collector or a Deputy Collector and further on the Commissioner to revise an order passed by the Collector and lastly the Board of Revenue itself for revising any order passed by the Commissioner under the Act. Yet again a power of review has then been provided by the succeeding Section 63 itself for correcting any mistakes or error either in the making of the certificate or even in the course of any proceeding under the Act. Thus there appears to be no manner of doubt that the legislature has itself been very solicitous in providing for procedure under the Act and creating statutory forums for appeals, revisions and reviews.

33. Faced with the uphill task of bypassing the numerous statutory remedies aforesaid, the learned counsel for the petitioners attempted to clutch at a straw for contending that these were either ineffective or illusory. The submission was sought to be rested first on the second proviso to Sub-section (1) of Section 60 (inserted by the amending Act of 1974) which provides that the appellant must pay 40 per cent of the amount due or such amount as the appellant admits to be due from him whichever is greater as a condition for preferring the appeal. Reference was also made to analogous provision for revision in the first proviso to Section 62 which requires a deposit of 40 per cent of the certificate dues before

the entertainment of the revision petition thereunder. On the basis of the aforesaid provisions, learned counsel for the petitioners took the somewhat tall stand that in fact there was no worthwhile remedy by way of appeal or revision if it is hedged in by the conditions of deposit.

34. The stand taken on behalf of the petitioners has only to be noticed and rejected It may perhaps be first highlighted that under Section 62 providing for a revision what is required is not a double deposit and the second proviso thereto makes it clear that no certificate debtor shall be called upon to do so if he has already deposited this amount at an earlier stage. It would follow therefrom that where the certificate debtor has once made the deposit at the appellate stage, there is no further impediment in his way of the same nature for referring a revision. This apart, it seems to be well settled by precedent that merely providing for a condition for deposit for regulating the right of appeal or revision in no way renders it either illusory, ineffective or something which can be ignored or by passed. It is unnecessary to elaborate this aspect on principle because, to my mind, it appears to be covered by binding authority. In Anant Mills v. State of Gujarat, AIR 1975 SC 1234, Khanna, J., speaking for the Court, observed as follows : --

"The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appel. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions.....................

Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment to tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that -- 'no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid.' Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right."

35. This identical point was also the subject matter of consideration by the Division Bench in Sri Chand v. State of Haryana, AIR 1979 Punj & Har 19. After an exhaustive discussion of principle and precedent, it was held therein as under : --

"Once it is held, as it necessarily must be that the right of appeal stems merely from its conferment by the legislature then it is equally evident that the same authority may regulate, impair or hedge it down with onerous conditions. This position, apart from being clear on principle, is equally covered by binding precedent............

On this aspect, therefore, there is no choice but to conclude that the legislature is perfectly within its right to regulate the right of appeal conferred by it by imposing conditions or restrictions on its exercise."

35A. In the light of the aforesaid authoritative enunciations the submission on behalf of the petitioners must be rejected and it has to be held that the right of appeal andrevision conferred by Sections 60 and 62 of the Act are adequate and effective statutory remedies provided by the legislature.

36. As the last throw of the gambler, it was then contended on behalf of the petitioners that even though the Act has provided for an appeal, revision and review, the same would be no bar for entertaining and adjudicating the same matter in the wrii jurisdiction. It was submitted that the legal issue having been heard and determined, the merits must also be similarly decided. Reliance was placed on Ram and Shyam Company v. State of Haryana, AIR 1985 SC 1147 and observations of learned single Judges

and Division Benches of this Court to the effect that the existence of an alternative remedy is not an inflexible legal bar for the exercise of writ jurisdiction.

36A. In view of the aforesaid submission, the fact situation in this set of cases may well be referred to. These were admitted primarily on the pristinely legal point whether Article 15 of Schedule I of the Act was beyond the competence of the State Legislature. That, question plainly pertaining to the vires of the statute could not be heard in the appellate or the revisional forums below. Even otherwise this significant issue merited an authoritative and early decision by the High Court. The admission orders in this context are instructive. The common legal issue having been settled, there now appears not the least reason why the statutory remedies of appeal and revision should be bypassed. We are inclined to the view that within this jurisdiction the matter has now been concluded by the recent Full Bench judgment in Dinesh Pd. Mandal v. State of Bihar, 1985 BBCJ 79 : (AIR 1986 Pat 112). In view of this, it seems not only unnecessary but indeed wasteful to, refer to passing observations in the earlier single Bench or Division Bench authorities on the point. It is well settled that once a point of law has been pronounced upon by a Full Bench, any observations contrary thereto by smaller Benches cannot hold the field and must be presumed to be wrongly decided. In Dinesh Pd. Mandal's case the identical issue whether the alternative remedies provided under the statute have to be exhuasted before seeking the relief in the writ jurisdiction under Article 226 of the Constitution was directly the subject matter of adjudication. Therein after an exhaustive discussion and relying on Union of India v. T. R. Varma, AIR 1957 SC 882, A.V. Venkateswaran v. Ram Chand Sobhraj Wadhwani, AIR 1961 SC 1506, Premier Automobiles Ltd. y. Kamalakar Santaram Wadke, AIR 1975 SC2238, Basanta Kr. Sarkar v. Eagle Rolling Mills Ltd AIR 1964 SC 1260 and Basanta Kumar Sarkar v. Eagle Rolling Mills Ltd., ILR (1961) 40 Pat 193, it was held as under: --

"Therefore, the salutary rule is that the writ Court would entertain the matter only if the adequate and efficacious remedies have been first resorted to and exhausted. The failure to observe that rule can only be at the peril of crushing the extraordinary jurisdiction itself and ultimately rendering it inefficacious, because it is, and was never intended, to replace or substitute the ordinary legal remedies expressly provided by the Legislature. Therefore, on principle Use' resort to the extraordinary jurisdiction permissible only after resorting to UK alternative remedy where available.

Unless the extraordinary remedy of the writ jurisdiction is to be hamstrung and indeed rendered nugatory by making it a substitute for the ordinary statutory remedy, the distinction between the two has to be firmly maintained. The writ jurisdiction is not the remedy of the first instance where others exist. It is the remedy of the last resort. If the Legislature, in its wisdom, provides a statutory remedy, it is not for the High Courts to override and nullify that mandate.";

and it was then concluded --

"In consonance with the above, the answer to Question II must be rendered in the affirmative, and it is held that the suitor must exhaust the remedies under the Act before seeking relief in the writ jurisdiction, unless the monstrosity of the situation or other exceptional circumstances cry out for interference by the writ Court at the very threshold."

In the context of the aforesaid authoritative enunciation, nothing at all could be pointed out on behalf of the petitioners which could even remotely indicate a situation so monstrous as to cry out for interference as an exceptional measure by the writ Court at the very threshold.

37. In fairness to the learned counsel for the petitioners, reference must be made to Ram and Shyam Company v. State of Haryana, AIR 1985 SC 1147. Their Lordships therein were moved primarily by what they called the fact situation therein. It was held that for all practical purposes the impugned

action therein was of the Chief Minister of the State and therefore a provision providing for a statutory appeal to the State Government was on the face of it illusory. It was rightly observed as under : --

"To whom do you appeal in a State administration against the decision of the Chief Minister? The cliche of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself.

Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Court Minister? There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

'From the above, it is plain that the aforesaid case is clearly distinguishable. No such situation arises herein and we have already held that the statutory remedies provided are both effective and adequate. Counsel's reliance on this judgment is thus not well based. In any case, the observations of the larger Bench in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd., AIR 1985 SC 330, appear to us as now rendering the issue beyond the pale of controversy. Whilst reiterating the stringent observations in Titaghur Paper Mills Co. Ltd v. State of Orissa, AIR 1983 SC 603, it was held as under : --

"Article 226 is not meant to short circuit or circumvent statutory procedure. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication or public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

In the light of the above we find ourselves wholly unable to resort to a practice which their Lordships have, in categoric terms, so strongly discouraged The contention of the learned counsel for the petitioners, therefore, must necessarily be rejected.

38. In the light of the aforesaid discussion and findings all the six writ petitions are hereby dismissed without any order as to costs and the petitioners are relegated to the statutory remedies provided under the Act.

39. Some apprehension was then voiced on behalf of the petitioners that the remedies provided by the statute may now have become barred by limitation. This fear is also not otherwise well founded Section 65 of the Act expressly extends the application of the Indian Limitation Act to proceedings therein. Sub-section (2) in term provides as under : --

"Except as declared in Sub-section (1), or as otherwise provided in this Act, the provisions of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate filed hereunder were decree of a Civil Court."

In the light of the above, it would be plain that Section 5 of the Limitation Act would be equally attracted and it would have been open for the petitioner to seek condonation of delay, inter alia, on the ground of having bona fide prosecuted a remedy elsewhere. However, to avoid the least possibility of prejudice on this score, we direct that if, so advised, the petitioners resort to the statutory remedies available to them within one month from today, no technical pleas of limitation would be raised against them.

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PATNA HIGH COURT

RAMCHANDRA SINGH
VERSUS
STATE OF BIHAR AND ORS.

1987 (35) BLJR 178

Decided on 12 November, 1986

Bench : ***Hon'ble Mr. Justice S Sandhawalia, Hon'ble Mr. Justice N. Singh and Hon'ble Mr. Justice S. Hasan***

Ramchandra Singh
Versus
State Of Bihar And Ors.

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether Article 7 of Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914, entitles the Collector to recover the agreed settlement amount from settles of a hat, bazar or mela in the absence of a duly executed registered lease deed, is the ticklish question requiring adjudication in this Full Bench. Directly on the issue is the contrary view of the Division Bench in S.A. Mannan v. State of Bihar (1958) I.L.R. 37 Pat. 302. followed later in Prabhunath Singh v. The State of Bihar 1980 B.B.C.J. 344.

2. The facts are not in serious dispute. On the 1st April, 1977, an open auction was held in the presence of Shri Awadhesh Prasad Singh, Deputy Collector Gaya, for the settlement of hat in Khizersarai for the year 1977-78. The petitioner along with others participated therein and deposited Rs. 600 as security money and the bid was knocked down in favour of the petitioner for Rs. 11,501 only as the highest bidder. It is the petitioner's claim that he later deposited Rs. 5,400 with the Anchal Adhikari, though, admittedly, no receipt whatsoever was issued by him. It is then averred on behalf of the petitioner that neither any Parwana or any toll chart was issued in favour of the petitioner and further no registered lease deed was executed betwixt the respondent State and the petitioner, as required by Rule 7-T of the Bihar Land Reforms Rules, 1951. It is his case that only by virtue of the terms of agreement executed in the prescribed Form 'P (4)' that the arrears of rent or interest etc. with regard to such settlement can be made recoverable under the Bihar and Orissa Public Demands Recovery Act, 1914, (hereinafter to be referred to as'the Act'). The further case sought to be set up on behalf of the petitioner is that he applied before the Anchal Adhikari for issuance of toll chart or Parwana, which, however, was not issued, and, consequently, he did not collect the tolls from the said bazar even for a single day. Later the petitioner moved an application for the refund of the total amount of Rs. 6,000 vide Annexure 'I' to the writ petition. Far from this being done a notice dated 29-11-1977 was issued by the Anchal Adhikari, Khizersarai, demanding deposit of the bid money of Rs. 11,501 from the petitioner and in reply thereto he denied any such liability and reiterated bis demand for the refund instead. Later a certificate proceeding was initiated against the petitioner and a notice dated 19-12-1977 Under Section 7 of the Act was issued vide Annexure '2'. The petitioner filed an objection before the Certificate Officer, Gaya, (respondent No. 3), who rejected the objection vide his order dated 24-1-1978 and with some modification directed realisation of the amount. The petitioner thereafter preferred an appeal Under Section 60 of the Act before the Additional Collector, who, after hearing the parties, rejected the same vide Annexure'4'dated 18-3-1981. Aggrieved thereby the present writ petition was preferred, inter alia, challenging the very maintainability of the certificate proceeding against him under the Act,

primarily on the ground that no registered lease deed had been formally executed betwixt him and the respondent State.

3. In the counter-affidavit filed on behalf of the respondents the factum of holding of an open auction and the bid having been knocked down in favour of the petitioner as the highest bidder for Rs. 11,501 is clearly admitted. However, the petitioner's claim that he had subsequently deposited Rs. 5,400 with the Anchal Adhikari, who allegedly did not issue any receipt, is stoutly denied and it is stated that he never deposited any amount and the coined out version is entirely false. It is averred that the petitioner started collecting tolls from Khizersarai Bazar despite the fact that he had not deposited the requisite money and further though the bid chart was duly issued vide memo No. 409 dated 1-12-1977, (vide Annexure 'B' to the counter- affidavit of the petitioner refused to accept the same. It is admitted that no registered lease deed could be executed but the petitioner had put his signatures on the bid sheet dated 1-4-1977 in token of the fact that he had agreed to abide by the order or instructions of the Officer and that he had agreed to take settlement at Rs. 11,501. It is reiterated that the petitioner had in fact continuously collected tolls after the bid was knocked down in his favour. The Anchal Adhikari directed the Circle Inspector to hold an enquiry about the collecting of the tolls and vide his report (Annexure 'C') he clearly held that the petitioner was collecting the same from Khizersarai Bazar ever since 1-4-1977. The other pleadings made on behalf of the petitioner are stoutly controverted and the impugned orders, Annexures 3 and 4, are averred to be legal and unimpeachable.

4. This writ petition originally came up before my learned Brother Masan, J. sitting singly. Before him reliance on behalf of the petitioner was sought to be placed on 1980 BBCJ 344 (supra). Expressing some doubt about the correctness of the view therein the matter was referred to the Division Bench. For somewhat similar reasons the Division Bench referred the case to the larger Bench. That is how it is before us now.

5. Mr. Rana Pratap Singh, learned Counsel for the petitioner, first isolated the words "interest in land" from its broad context in Article 7 of Schedule I and then pinned himself thereon with legalistic literality for contending that in law no interest in land above the value of Rs. 100 can even be created except by a formal deed duly executed and registered. It was submitted that Article 7 must be narrowly and strictly construed to include only those interests in land which are ejusdem generis thereto and unless a registered deed in conformity with the Transfer of Property Act had been drawn up, no such right, title or interest in land could arise. Consequently the provisions of Article 7 in such a situation can never come into play. In the alternative it was argued that a profit a prendre was equally an interest in land and required the identical legal formalities of execution and registration. Even more specifically it was argued that Rule 7-of the Bihar Land Reforms Rules, 1951 mandated a deed to be drawn up in Form P (4) for the settlement of Hat and this having not admittedly been done would preclude the applicability of the Schedule. Basic reliance was placed on S.A. Mannan v. State of Bihar (1985) I.L.R. Cal. 302. and other cases in line therewith which, in turn, have been followed by the Division Bench in Shri Prabhu Nath Singh v. The State of Bihar and Ors. (supra).

6. There is no gain saying the fact that the aforesaid two authorities directly and squarely go in aid of the petitioner's stand. However, it is the correctness of the ratio therein which is hotly put in issue and has, indeed, necessitated this reference to the larger Bench. The view in the aforesaid cases and Ors. of the same tenor having held the field for a considerable time in this jurisdiction thus requires an in-depth and somewhat exhaustive examination.

7. Inevitably the controversy herein has to turn on the language of the relevant provisions of the Act and primarily Article 7 of the First schedule thereto in the context in which it has been set. One may, therefore, at the very outset read the relevant provisions for facility of reference:

Preamble An Act to consolidate and amend the law relating to the recovery of Public Demands in Bihar and Orissa.

Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bihar and Orissa;

And whereas the previous sanction of the Governor-General has been obtained, Under Section 5 of the Indian Councils Act, 1892, to the passing of this Act.

It is hereby enacted as follows:

** * * * * **

3. *Definitions:la this Act, unless there is anything repugnant in the subject or context:*

(4) *'movable property' includes growing crops;*

(6) *'public demand' means any arrear or money mentioned or referred to in Schedule I, and includes Schedule I.*

   1. *Any arrear of revenue which remains due in the following circumstances, namely;*

   ** * * * * **

   2. *Any arrear of revenue which is due from a farmer on account of an estate held by him in farm,*

   3. *Any money which is declared by any law for the time being in force to be recoverable or realizable*

   4. *Any money which is declared by any enactment for the time being in force:*

      (i) *to be a demand or public demand; or*

      (ii) *to be recoverable as arrears of a demand or public demand, or as a demand or public demand;*

      (iii) *to be recoverable under the Bengal Land-revenue Sales Act, 1968 (Ben. Act VII of 1868).*

   5. *Any money due for sureties of a farmer in respect of the revenue of the state formed by him.*

   6. *Any money awarded as fees or costs by a Revenue-authority under any law or any rule having the*

   7. *Any demand payable to the Collector by a person holding any interest in land, pasturage, forest*

   ** * * * * **

   9. *Any money payable to a servant of the Government or any local authority, in respect of which Explanation. This item shall not apply to any money or demand specified in Items 3, 4 and 7.*

8. To my mind the key to the interpretative exercise here is first the question of the true approach to the Act and Schedule I thereto rather than any finical legalistic plea on the individual words of Article 7 of the said schedule. In sum, the question is whether all the articles in the schedule are to be broadly and liberally construed as provisions intended for the recovery of what are patently public demands or are to be strictly and narrowly constricted to hyper-technicalty exclude therefrom what otherwise should appear squarely to be within their ambit. This exercise inevitably entails a look at the history of the Act, its basic purpose and the larger scheme of its provision and in particular of Schedule I thereto.

8-A. The State or the public exchequer has always stood at a pedestal higher than and different from the private individual's demands for recovery of his debts. From times immemorial the State Exchequer has reserved to itself the special and peculiar procedure for the recovery of certain dues and debts owing to itself. Whilst the individual citizen resorts to the civil courts for debts due to him, in the case of State the public exchequer cannot, by the very nature of things, resort to the ordinary civil process for the recovery of all sums due to it. Necessarily a special procedure for enforcing its own demands is resorted to by the State in the interest of public exchequer because it would be impossible to carry in the business of government if its revenues were all to be referable to regular litigation in civil courts. There, thus, arises a concept of public demands in the nature of land revenue, rents, taxes, fines and other dues, in respect of which the primal need is a special summary procedure for their recovery where they are not paid or denied. Perhaps the classic example in this context is that of land revenue which is a special feature in India and the modes of its recovery and realisation historically go back to the earliest time. For our purposes it is wholly unnecessary to delve too far down in history and it suffices to notice that under early British rule the customary modes of demand and coercion for the recovery of land revenue both before and subsequent to the permanent settlement were resorted to. One of the earliest statutes in this on text is Regulation III of 1974 in the province of Bengal followed by Regulation I of 1801 and Regulation V of 1812. Later public demands other than land revenue also came within the ambit of the special mode for their recovery. Act VII of 1868 for first time codified provisions relating to the procedure for the recovery of State demands other than land revenue proper. It was followed by a series of other status ultimately culminating in Bengal Act I of 1895 which was the predecessor statute to the Bengal Public Demands Recovery Act, 1913 (Act III of 1913). This perhaps continued to apply within this jurisdiction till the creation of the separate Province of Bihar and Orissa and till the present Bihar and Orissa Public Demands Recovery Act, 1914 was notified in the gazette on the 7th October, 1914. The Act is in part in pan mmeria with its predecessor statute. Plainly enough it is a pro-Constitution legislation which in essence has held the field for 72 years now and, as noticed, is only a successor of much older provisions applicable to the erstwhile Province of Bengal. Schedule I to the Act is an integral part of the statute framed with particular reference to Section 3 (6) of the Act. The existing articles (barring Articles 9-A and 15) were an integral part of the statute even when originally enacted.

9. Now, the articles in Schedule I have to be viewed to the context of the fact that the phrase "public demands" is intrinsically one of the widest amplitude. It is against this background that one has to construt the aforequoted definition given in Section 3 (6) of the Act. This definition is by direct reference to Schedule I. The said schedule then has its heading as "Public Demands" and at the same time makes express reference to Section 3 (6). It is thus manifest that Section 3 (6) and Schedule I are one integral whole which has to be construed as part and parcel of each other. But what perhaps call for particular notice in this context is that under the Act the definition and concept of public demand becomes one of the widest amplitude. Even in its ordinary common parlance and dictionary meaning, a public demand is a wide ranging concept. However, this has been further and deliberately expended by the legislature to include within its sweep any arrear or any money which may com; to be mentioned or even referred to in Schedule I and include also any interest which may be chargeable thereon. Yet again it deserves highlighting that Section 3 (6) of the Act is not merely an inclusive definition but expressly says that the public demand means whatever may be specified in Schedule I In the result even the broad sweep of public demand is further extended by the statute herein and, in my view, designedly so. In logical essence, this leads to the result that for the purposes of the Act a, public demand include all arrears of revenue or any money due or demand payable which finds place in Schedule I even by reference. It seems patent that the legislature has deliberately not attempted to define public demand or

limiting the same. All the arrears of revenue, money or payable demands which the legislature chooses to incorporate in Schedule J become by virtue of the definition Under Section 3 (6) a public demand of which recovery can be made under the Act. The scheme of the definition Under Section 3 (6) of the Act and the frame of the articles of the schedule complementary thereto thus become a key to the interpretation of these provisions.

10. Now it needs no great erudition to hold from the 69 Sections of the Act that the same is a statute for the special purpose of the recovery of public demands and prescribes a special procedure therefore. In looking at the public demands enumerated in Schedule I one cannot equally lose sight of the articles preceding and succeeding Article 7 which particularly falls for consideration. Articles 1, 2 and 3 deal with arrears of revenue and bring within their sweep any such arrear which becomes due under the provisions of the statute enumerated therein or which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land revenue. Yet again Articles 4, 5 and 6 pertain to any money which may come within the ambit of a public demand as specified therein and include even any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him as also any money awarded as fee or cost by a revenue authority. Article 7 then deals with any demand payable to the Collector and inevitably falls for detailed consideration later. Particular reference is called for to Article 9 which in sharp contrast to Article 7 talks in express terms of a written instrument by which a person has agreed to pay any money payable to a servant of the government or local authority as a public demand. Articles 8 and 10 to 15 with particular detail make provision for recovery of the other different classes of demands of money or rent das to the State or public authorities and to co-operative societies. By virtue of the added Article 15 (inserted by Act 4 of 1974) the money payable to the State Bank or nationalised banks or companies and corporations and equally to the Bihar State Electricity Board has also been brought within the ambit of public demands. It is in this mosaic that Article 7 is to be construed and there seems to be little doubt that the provisions thereof must be given a broad and liberal construction and nothing which can come reasonably within its wide sweep is to be excluded from it by confining it to a procrustean bed of legalism.

11. To ray mind, the crucial and the wide ranging words in Article 7 deliberately employed are "any interest''. The word 'interest' by itself has a broad sweep. Its relevant dictionary meaning in Chambers 20th Century Dictionary is claim to participate or be concerned in come way; stake share, behalf; a right to some advantage; the body of persons whose advantage is bound up; in anything.

In the New Oxford Illustrated Dictionary, the relevant meaning of the word 'interest' is Thing in which one is concerned, principle in which a party is concerned; party having a common interest; pecuniary stake.

The learned Advocate General had rightly and forcefully contended that the word 'interest' employed in Article 7 is to be given its broad dictionary meanings aforesaid. He contended plausibly and, in my view, rightly that the inherent fallacy which underlies the stand taken on behalf of the petitioner is in construing the plain word 'interest' as if it is the legal terms of art connoted by the phrase "right, title and interest" and thereafter equating it therewith. Imbued as we are by legal phraseology, one tends sub-consciously to give a technical legal meaning to an otherwise word of common parlance. The learned Advocate-General rightly highlighted that it is not well warranted to read the word 'interest' when the legislature has deliberately prefixed it with the word 'any' as well in the legalistic sense of a right, title or interest in immovable property. The two concepts are distinct and separate. They are not synonyms and it is uncalled for to read them so. Equally fallacious it is to first read the words "any interest" as a right, title and interest in land and then to import the re-equipment of the Transfer of Property Act and the Registration Act. It was correctly pinpointed that the Legislature is well aware of the legal term of art " right, title and interest."

In Article 7 the words “any interest” and “such interest” have been employed twice and the Legislature has advisedly refused to use the well known phrase “right, title and interest” in either context. On the contrary, it has widened the already large sweep of the world ‘interest’ by prefixing the word ‘any’ thereto. Therefore, to read “any interest” as a right, title and interest in land is nothing but doing violence to both the language in Article 7 and the intent of the Legislature in employing the same.

12. This obsession with the phrase “right, title and interest” as a term of art despite the employment of the words “any interest’ in Article 7 perhaps calls for a further elaboration. A person may have a firm legal licence to come upon the land. Obviously this would not give him any title in the land as such. Yet could it possibly be said that he has no interest therein despite an established licence to come over it ? The answer must obviously be no. Similarly a person may not have strictly a legal right as such in the land because of legal infirmities and technical defects like the absence of a formal executed deed and its requisite registration and the infirmity of the contract being not drawn up in the form as pres- cribed in Article 299 where it may be applicable. Nevertheless a person may have the deepest interest in the said land despite the absence of a legally enforceable right thereto. Another example may be taken of adverse possession in which the prescriptive period of full twelve years may not have as yet passed. Though the person may not thus have acquired a legal title thereto, nevertheless he would have a clear interest in the land by virtue of his long adverse possession. A strict legal right or title is one thing and a mere interest is another. As has been said earlier, the word interest’ is in itself wide enough but “any interest” is at it widest and one finds no reason to constrict, confine and restrict. Indeed everything points to a broader and liberal interpretation thereof. Taking the concrete example in the present case, the learned Advocate-General highlighted that herein it is common ground that the petitioner had deposited security money, had participated in the open auction and the bid was knocked down in his favour. It was even pinpointed that thereafter he claimed to have deposited one half of the bid money it is common ground that a bid sheet was duly prepared and issued in his favour. The firm concurrent finding of fact by the Certificate Officer and the appellate Collector is that the petitioner was put in possession of the Hat and had actually exercised that light continuously for well nigh nine months by making the collection of tolls thereat. In this context would it possibly be said that he did not hold any interest in the Hat and was not liable to the Collector for the bid amount which was a condition of the use and enjoyment of such a Hat ? The answer seems to be too plain to call for further elaboration.

13. The matter then deserves examination from another fresh angle. The contention of the learned Counsel for the petitioner that no interest whatsoever in the land can be created except by a duly executed and registered deed, is itself utterly untenable. Undoubtedly, a lease for land creates an impeccable interest in the said land. It is unnecessary to quote the well known provisions of Section 105 of the Transfer of Property Act defining a lease of the immovable property. The manner of making a lease is provided for in Section 107. The relevant parts thereof are as under:

> ***107.*** *Lease how made, A lease of immovable property from year to year, or for any term exceeding one year, of reserving a yearly rent, can be made only by a registered instrument.*
>
> *All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. It appears from the above that a lease of immovable property for one year or less can be made by even any oral agreement accompanied by delivery of possession. There is no gain saying the fact that a lease of any immovable property creates not only an interest but indeed a legal interest as well. Therefore, plainly enough, an interest in land can well exist and be created by agreement and delivery of possession alone. Even if the matter has to be narrowly confined, the settlement of a Hat in favour of a person for a year by delivery of possession is legally feasible and would thus clearly create an interest therein. Equally an unregistered document or other evidence of agreement added to delivery of possession creates*

a subsisting interest. There is no manner of doubt there that on the concurrent findings of fact the petitioner was put in possession and in fact had made collections of toll for the Hat. Clearly enough he, therefore, had an interest in the Hat. The question therefore arises that if an interest in the Hat or land could be created for a year or less, does such interest evaporate totally in thin air if it is for a period of a day or two more than one year ? True enough, a legal enforceable title or right may fall because of the absence of the legal requirements. But to my mind, it cannot be possibly said that in such a situation the holder ceases to have any interest in the Hat or similar rights.

14. Here a distinction between a lease and a profit a prendre may also be noticed. This has been authoritatively spelt out in the following words of Vivian Bose, J. in Smt. Shantabai v. State of Bombay and Ors.

In a lease, one enjoys the property but has no right to take it away. In a profit a prendre one has a licence to enter on the land, not for the purpose of enjoying it, but for removing something from it, namely, a part of the produce of the soil.

It is plain from the above that a profit a prendre is some what lower than a lease of an immovable property. Therefore, if a lease, which is a much more substantive interest in land can exist by oral agreement and delivery for period of a year or less, plainly enough profit a prendre for a year or less can doubly be so created by agreement and delivery. Even a legal interest for a year or less either by way of a lease or profit a prendre in land can well be created without the requirement of a formally executed deed and registration thereof To contend in abstract, that no interest in land whatsoever can be created without the aforesaid formalities is itself plainly untenable.

15. Now, apart from the provisions of the Transfer of Property Act, the larger aspect is that Article 7 of the Schedule is not to be myopically construed in isolation but in the larger mosaic of the other articles in which it stands entirely embedded. The learned Advocate-General rightly drew our attention to the widely couched language employed in this article and even the more so in the preceding Articles 1 to 3. It was pointed out that the wide sweep of these articles covers any arrear of revenue or land revenue and anything which is law is realisable as such. Similarly, any money which is due to the designated authorities in Articles to 6 is within the ambit of recovery as a public demand. The broader prospect herein is a special and quicker procedure for the recovery of public dues. With this background, the learned Advocate-General first pinned himself on the opening part of the article to highlight that the core of the matter here is any demand payable to the Collector. The width of the language is patent and calls for no elaboration. He then related it to the latter part of the article which provides that such a demand must be a condition to the use and enjoyment of such land, pasturage, forest-rights, fisheries and other things. Reading together, it was pinpointed that where monies are payable to the Collector as a demand which is a pre-condition for the use and enjoyment of the land, it would broadly come within the sweep of Article 7. Yet again, the person liable must be holding any interest therein which does illustrate the wide ranging nature thereof. Particularising the thing, the counsel pointed out that the payment of the bid money for the Hat was a condition for the use and enjoyment of such land and was payable to the Collector by the petitioner who undoubtedly held an interest therein. To constrict the import of Article 7, despite its special purpose and its wide ranging language and the context in which it is laid, appears to me as wholly untenable.

16. In this context, in ray view, a reference to the succeeding Article 9 is somewhat instructive by way of analogy. It is pointed noticeably that while Article 9 talks of a written instrument, in Artiste 7 any such reference or requirement is conspicuous by its absence. Therefore, wherever a written instrument is itself executed agreeing to the recovery of a public demand, it would come squarely within Article 9. The explanation to this article excludes its applicability to demands specified in Articles 3, 4 and 7. Consequently even in the conspicuous absence of any such requirement, to read the necessity of a duly

executed registered document for the applicability of Article 7 appears to me as somewhat incongruous and contrary to known canons of construction.

17. Lastly, it deserves highlighting that it is an error to first read Article 7 as confined to holding any interest in land alone and then to invoke all the strictest provisions of the Transfer of Property Act and the Registration Act therefore. Plainly enough the phrase "any interest in land, pasturage, forest-rights, fisheries or the like" has to be construed as a whole and not confined to its opening part as any interest in land alone. Article 7 is expressly mandated to cover any interest in pasturage, forest-rights, fisheries or the like as well apart from land strictu sensu. However what appears to be a clue to the interpretation and indicative of the width of the provision of the words "or the like'' is advisedly inserted by the Legislature herein and coupled with "other things" at the end of the article. Plainly enough the enumeration herein is not exhaustive but merely illustrative. It names four things as an illustration and the rest are left wide open by the phrase "or the like". This leaves room for the widest play of similarities. But even if it be read restrictively as ejuscem generis, it would qualify each of the four categories and not land alone. The ejusdem generis rule would be equally applicable to things akin to pasturage, forest-rights and fisheries as well. Would a Hat, Bazar or Mela be ejusdem generis to the aforesaid enumeration 7 To my mind, it plainly is. If the Legislature had chosen to frame this article as any interest in land, pasturage, forest-rights, fisheries, Hat, Bazar or Mela, there would not be the least incongruity in it-rather a total consistency therein. Reference in this context is called to Section 4 of the Bihar Land Reforms Act wherein all the categories are enumerated in terms. Plainly enough, the Legislature is cot compelled to visualise and enumerate all conceivable demands payable to the Collector pertaining to such like interests and, therefore, have categorised the four, and the rest is covered by the words "or the like". The words "or the like" have necessarily to be given the width in which the Legislature clearly intended. It is sound rule of construction that no words of statute are to be construed as redundant or otiose. To pin down Article 7 as merely confined to interest in land alone is thus, to my mind a basic error. Equally erroneous it is to read the words "or the like" as qualifying the last word 'fisheries', alone. It does not. These words precisely categorise the four things and are indicative of anything broadly similar thereto.

18. What has been said above is then buttressed by the concluding words of the article. The Legislature's intention to put it widely is manifested by the words "enjoyment of such land, pasturage, forest-rights, fisheries or other things". It is significant that here the Legislature has not even used the words "or the like" but still a wider phraseology "or other things". To read and confine a provision so widely couched as Article 7 into one as pedantical constricted to interest in land is, in my view, doing 1987 (35) Ram Chandra Singh v. State of Bihar (H.C., F.B.) 189 violence to the wide-ranging provision of this article and equally to the patent intent of the Legislature.

19. Ere inevitably adverting to precedent, it is well to recall that on settled canons of construction an interpretation of a statute which leads to anomalous or mischievous results is to be avoided. If the stand taken on behalf of the petitioner is to be accepted then the necessary result is that even though the petitioner was put in possession and has collected the tolls for full nine months on the authority of bid sheet and a contingent settlement in his favour, yet no recovery can be made by the Collector from him, on the admitted ground that no formal registered deed was executed betwixt the parties. Any suit by the Collector to recover the amount must also necessarily fail for identical reasons. The end result is that the petitioner would be legally entitled to defalcate the amounts of tolls which have been found to have been collected by him. The construction advocated on behalf of the petitioner would lead to the result that if the settles of a Hat, Bazar and Mela can delay and later decline execution of a registered deed, then despite the collection of tolls by him, the Collector cannot recover the same either under the Act or by way of a suit. A construction that would lead to such an anomalous and, if I may say so, mischievous results is not to be easily adhered to. Indeed it was pointed out on behalf of the respondent State that this is the usual result ensuing from the view taken in S.A. Mannan's case (supra).

20. Now before adverting to precedent a strong note of caution, however, must be sounded. Whatever has been said above is in the narrow context of the question whether the demand by the Collector is recoverable as a public demand under Article 7. The sole question is whether by virtue of the special nature of the Act; the peculiarities of the law for recovery of the State revenue and public demands; and the nature and content of schedule I to the Act and Article 7 in particular; warrant a recovery by its special procedure. This aspect has little, if not nothing, to do with the actuality and the enforceability of a contractual right in a court of law. As has been noticed above, if the Collector in a situation of this kind were to sue in a court of law, he would have little or no chance of success. Similarly, it is plain that an actual or a contingent settlee of a Hat would have no enforceable right in a court of law unless the requisite formalities of such a contract are first established. learned Counsel for the petitioner's argument or assumption that unless it can be decreed in a court of law on the basis of an enforceable contract a public demand cannot be recovered under Article 7 seems to me as wholly unwarranted. It can be said with confidence that though the contractual liability for reasons of defect like the absence of a contract, or lack of formal execution or registration or non-conformity with Article 299 of the Constitution may bring in an impassable hurdle in the enforcement of a contract in a court of law the same would nevertheless be recoverable if it comes fairly and squarely within the ambit of any one of the fifteen articles of Schedule I to the Act by virtue of their own pristine force. To put it tersely, recoverability of a public demand under the Act is one thing, whilst the enforceability of a contract in a court of law is entirely another.

21. Coming now to precedent learned Counsel for the petitioner's reliance on Anand Behera and Anr. v. State of Orissa and Anr. is of no assistance to him. This pertained to the oral sale of fishery right by the then Raja in relation to the Chilka Lake in Orissa. Their Lordships of the Supreme Court merely held that on the abolition of the zamindari right it had vested in the State and the oral sale of fishery rights confers no legal or fundamental rights upon the petitioners to maintain a writ petition under Article 32 of the Constitution before the Supreme Court. There is not and, indeed, cannot be any dispute with the settled proposition that fishery rights are a profit a prendre arising out of land and as such immovable property. A somewhat similar view with regard to the licence and the right to cut trees in the forest again fell for consideration before their Lordships in Smt. Shantabai v. Stale of Bombay and Ors. (supra). Therein also it was held that unregistered documents granting the petitioner a right to cut trees in forest land and the subsequent stoppage from doing so on the vesting of the forest in the State gave rise to no infraction of fundamental right which could possibly be enforced under Article 32 before the final Court. Both these cases cannot in any way advance the case of the petitioner because no issue whatsoever of the maintainability of the writ petition or the infraction of any fundamental or legal rights arises herein. Yet again the reliance by the learned Counsel for the petitioner on the Full Bench judgment in Chetlal Sao and Anr. v. The State of Bihar and Ors. 1986 B.B.C.J. 109. is equally misconceived. The issues therein were meticulously formulated and precisely answered and the question before us was not even remotely before the Full Bench in that case. What was held therein was that a writ of mandamus would not be maintainable in the absence of a concluded registered contract for the lease of fishery rights. No such issue arises herein at all and no aid can be derived from the ratio of the said judgment.

22. One may now come to the sheet anchor of the petitioner's case ia S.A. Mannan v. State of Bihar (supra). A perusal of the said judgment would indicate that in the brief paragraph dealing with the matter in the short judgment the issue was hardly adequately debated upon. learned Counsel for the parties seem to have been somewhat remiss in not presenting the matter in all its various facets. The larger purpose and the scheme of the Bihar and Orissa Public Demands Recovery Act; its legislative history; the width of the definition of "public demands"; the amplitude of the various articles in Schedule I thereto; and the context in which particularly Article 7 has been set; and equally the fact that an interest in land

may be created by a lease for one year or less even by an oral agreement coupled with delivery; all seem to have singularly missed consideration. Indeed a perusal of the few lines in the judgment in this context would indicate that no independent opinion seems to have been formed and expressed by the Beach but it purported to have followed the earlier decision in Surendra Narain Singh v. Bhai Lal Singh (1895) I L.R. 22 Cal. 752. That was a case of an inter se dispute between the co-shares of a Hat in a verbal agreement claiming rent therefore from the allegedly defaulting co-sharer. Admittedly in that case the lease was for more man one year and consequently no verbal agreement therefore was allowed to be proved and there is no discussion whatsoever of the issue arising herein in the said judgment and indeed the primal question turned on whether in the second appeal the plaintiff in the alternative could convert a suit of one character into a suit of another of inconsistent nature. Plainly enough that judgment can hardly be of any relevance to the issue of recoveries as a public demand under Article 7 of Schedule I. Similarly, with Respect, the reliance on Golam Mohiuddin Hossain v. Parbati (1909) I.L.R. 30 Cal. 665. holding that rents and profits derivable from a Hat can be validly mortgaged, can possibly be of no aid for the solution of the question. The very question at issue seems to have been begged by observing that because there was not an enforceable concluded contract duly registered between the parties, it would follow that no recovery under Article 7 of Schedule I could be made. With the deepest reference to the learned Judges and in the light of the exhaustive discussion earlier, I am constrained to hold that the said judgment does not lay down the law correctly and has, consequently, to be overruled.

23. Once the judgment in S. A. Mannan's case (supra) was rendered, it seems, it was not thereafter questioned and was routinely followed by single Benches and Division Benches thereafter. This was so done also in Shri Prabhunath Singh v. The State of Bihar and Ors. (supra) Indeed one of the learned Judges of the Division Bench, S. Narain, J., contented himself by observing that it was conceded by the learned Advocate for the State that the case is covered by the ratio of the decision in S.A. Mannan v. State of Bihar (supra). My learned Brother, N.P. Singh, J., with some elaboration rightly observed as under:

The grant of right to collect tolls from a hat, in my view, stands on a different footing than grant of a right to catch fish or to cut standing timber trees which were held in the aforesaid cases to amount to an interest in land.

However, he preferred to follow the earlier decision in S.A. Mannan v. Mate of Bihar, With the deepest respect and for identical reason a fortiorari it has to be held that this judgment and also all other cases following or taking the identical view with S. A. Mannan's case are not good law.

24. To finally conclude, the answer to the question posed at the very outset is rendered in the affirmative. It is held that Article 7 of the Schedule to the Act entitles the Collector to recover as a public demand the agreed settlement amount from a settlee of a Hat even in the absence of a duly executed registered lease deed.

25. Once it is held as above, necessarily the writ petition must fail. It is not in serious dispute that on the Anchal Adhikari's direction the Circle Inspector, after holding a full inquiry, held that the petitioner had collected the tools from the Khizersarai Bazar ever since 1st of April, 1977. The Certificate Officer, after full consideration, rejected the petitioner's objection and came to the firm conclusion that the collection of tolls had in fact been made by the petitioner. The appellate authority, on an independent consideration, came to the identical conclusion. No serious challenge to these concurrent findings could easily have been laid in the writ jurisdiction and was, in fact, not so laid by the learned Counsel for the petitioner. The writ petition has thus no merit and is hereby dismissed. In view of the legal intricacy and the earlier existing precedent, I would leave the parties to bear their own costs.

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PATNA HIGH COURT

BHAGWAN DEVI BANKA AND ORS.
VERSUS
R.B. SINHA AND ORS.

1986 (9) ECC 35, 1986 (26) ELT 890 Pat

Decided on 20 November, 1985

Bench : ***Hon'ble Mr. Justice U. Sinha, Hon'ble Mr. Justice N. Ahmed***

Bhagwan Devi Banka And Ors.
versus
R.B. Sinha And Ors.

JUDGMENT

Nazir Ahmed, J.

1. This is a writ petition for quashing the certificate proceeding bearing O.D. Certificate Case No. 20 of. 1974-75 against the petitioners and also for quashing the order of respondent No. 5 District Certificate Officer, Monghyr, dated 29-9-1980 in the aforesaid certificate case. A copy of the order sheet of O.D. Certificate case No. 20 of 1974-75 up to 29-9-1980 has been filed as Annexure 1, and a copy of the order dated 29-9-1980 rendered in English has been annexed as Annexure 1/A.

2. The petitioners have filed a genealogy of the family of Gangadhar Banka which is at page 6 in paragraph 3 of the writ petition and is as follows :-

Gangadhar Banka (Died on 22-1-1979)

| | Durga Devi Lakshmi Devi (2nd wife) (1st wife) (deceased) (deceased) | | | Shriram Banka | = Bhagwan Devi (P.) | | Raghunath Pd Anand Kumar | Banka (P. 2) Banka (P. 3) | | | | Ghanshyam Das Ramavatar Narayan Das Banka Banka (decd) Banka (R. 6) (R. 7) Murari Lal Banka (R. 8)

3. It may also be pointed out that on 25-11-1980 vide order n6. 3 a prayer was made on behalf of the petitioners that respondents nos. 6, 7 and 8 who belong, to the branch of Lakshmi Devi (2nd wife of Gangadhar Banka), are not necessary parties and so their names were ordered to be expunged. Thus in the branch of Gangadhar Banka the petitioners now remain only legal representatives on the record. From the order of the District Certificate Officer (Respondent No. 5) as contained in Annexure 1, an English translation of which is Annexure 1-A, it is evident that certain facts are admitted. Respondent No. 5 has clearly pointed-out at page 136 of the brief that the admitted fact is that in the family of, Gangadhar Banka there was partition in 1955 and his sons became separate in their family and business life and by being separate inter se they began doing their exclusive independent business and that the sons of Gangadhar Banka who resided at Jhajha had no concern with the business of Gangadhar Banka vice versa Gangadhar Banka had no concern with the business of his sons at Jhajha and that Gangadhar Banka and his sons became separate in their daily family life and in their business life. He has also pointed out at page 145 that after the family partition of 1955 Shriram Banka son of Gangadhar from Durga Devi went to Bombay and started his business there and Shri Gangadhar Banka after living at Calcutta for sometime went to Bombay and began doing business of power loom at Bombay jointly with his son Shriram Banka, The District Certificate Officer also held that the amount of demand under recovery were levied as excise duty jointly against Gangadhar Banka and late Shriram Banka. It was also undisputed that along with Gangadhar Banka his son Shri Ram Banka who was his partner in this

business was liable to pay his dues and it was also not disputed that the writ petitioner Smt. Bhagwan Devi is the wife of Shriram Banka and Raghunath Prasad Banka and Anand Kumar Banka are sons of late Shriram Banka. The Certificate Officer also held that Shri Ram Banka died in state of jointness with the writ petitioners.

He therefore held that the petitioners were joint. He has clearly stated at page 147 that Shri Ram Banka was joint in mess and business with the writ petitioners. The Certificate Officer, therefore held the petitioners were legal heirs of Gangadhar Banka and Shriram Banka, as the business at Bombay was jointly done by Gangadhar Banka and Shriram Banka. The Certificate Officer clearly held that respondents nos. 6 to 8 who were in the branch of Lakshmi Devi, 2nd wife of Gangadhar Banka were separate and had no concern with the business of Gangadhar Banka and Shriram Banka. It was due to this that the names of respondent nos. 6, 7 and 8 have been expunged by order dated 26-11-1980.

4. A counter-affidavit has been filed in this case on behalf of respondents nos. 1 to 3 where it has been asserted that Gangadhar Banka and Shriram Banka were held liable to pay the central excise duty in respect of their manufacturing activities in manufacturing cotton fabrics falling, under tariff item 19 under the Central Excises and Salt Act, 1944 (hereinafter referred to as the 1944 Act), by the adjudicating Officer Shri R.B. Sinha, Officer on Special duty, Central Excise, Bombay (Respondent No. 1) by his order in original No. 2/67 dated March 6, 1967, and Gangadhar Banka and Shriram Banka were held liable to pay the central excise duty to respondent No. 1 after giving them fullest opportunity to explain their case. It has also been asserted in the counter-affidavit that Gangadhar Banka and Shriram Banka availed of the appeal and revision facilities provided under the 1944 Act and the appellate authority and the revisional authority in their orders confirmed the aforesaid order-in-original of respondent No. 1 with regard to the liability of the aforesaid party to pay the central excise duty. Gangadhar Banka and Shriram Banka were required to pay by way of central excise duty of Rs. 6,57,690.10 paise on cotton fabrics manufactured by them, plus penalty of Rs. 1000 each as communicated by the Assistant Collector, Central Excise, Bombay in his letter dated April 15, 1967 and August 9, 1974 the later communication being issued after the Government of India's decision in revision dated 29-4-1974. There was no response to the above communication and so the Assistant Collector of Central Excise, Bombay (respondent 2) issued a certificate dated 23-9-1974 under Section 11 of the 1944 Act addressed to the District Collector, Monghyr (Bihar) asking him to initiate recovery proceedings in respect of the above dues from Gangadhar Banka who was reported to be staying at Jhajha in Monghyr district under his jurisdiction.

5. Annexure A of the counter-affidavit is the order passed by respondent No. 1, Annexure B thereof is the appellate order of the Central Board of Excise and Customs, New Delhi. Annexure C relates to the revision application which was disposed of by the Government of India, Ministry of Finance, Department of Revenue and Insurance. Annexure D is the notice issued by the Assistant Collector, Central Excise, Bombay to GangaDhar Banka and Shri Ram Banka for paying the dues. Annexure E is the letter sent by the Assistant Collector of Central Excise, Bombay, Division No. 1 to the District Collector of Monghyr along with the certificate duly signed by him. Annexure F is the notification showing vesting of powers to every officer of the Central Excise Department. Thus it is evident that the certificate was issued for the dues which were payable by Gangadhar Banka and Shriram Banka.

It appears that Shriram Banka died before Gangadhar Banka, and Gangadhar Banka died on 22-1-1979 during the pendency of the certificate proceedings. Hence the certificate was issued against Gangadhar Banka before his death on 22-1-1979.

6. On behalf of the writ petitioners also Annexure 2 has been filed which is same as Annexure E to the counter-affidavit which contains the certificate also but the writ petitioners have marked the certificate as Annexure 3.

7. In the counter-affidavit it has also been asserted in paragraph 5 that the writ petitioners had raised various objections before the learned Collector, Monghyr who after prolonged hearing and due deliberation held by his order dated 10-7-1978 that the certificate wets legal and was filed by the competent officer and the aforesaid order was never challenged and so the legality of the certificate cannot be challenged.

8. On the aforesaid facts various grounds have been raised in the writ petition by learned counsel for the petitioners. However, when the case was taken up for hearing Mr. Balbhadra Prasad Singh made only two legal submissions before us. Admittedly Gangadhar Banka died on 22-1-1979 and even Shriram Banka was dead prior to the death of Gangadhar Banka.

9. The first ground which has been submitted before us by Mr. Balbhadra Prasad Singh is that there is no provision in the 1944 Act and in the Revenue Recovery Act, 1890 (hereinafter referred to as the 1890 Act), for substituting legal representative of a certificate debtor. Admittedly the certificate was issued against Gangadhar Banka.. For this purpose Mr. Balbhadra Prasad Singh relied on a case reported in 1972 Allahabad Weekly Reporter at page 235, but this decision has not been made available to us and so it is not possible for us to refer to that decision.

10. Mr. Sudhir Kumar Katriar, on behalf of respondent nos. 1 to 3, has submitted that the 1890 Act does not lay down the procedure for recovery of the public demand. He has referred to Section 7 of the 1890 Act which lays down that nothing in the foregoing sections shall be construed to affect the provisions of any other enactment for the time being in force for the recovery of land revenue or of sums recoverable as arrears of land revenue. He has submitted on the basis of Section 7 of the 1890 Act that the local laws are saved by Section 7 and so the local laws will be applicable in this case. For this purpose he has relied on Section 3(b) of the 1890 Act which lays down that the Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district. He has also relied on various decisions to- support his views.

11. Mr. Sudhir Kumar Katriar on behalf of respondent nos. 1 to 3 has relied on a Division Bench decision of the Allahabad High Court in the case of Udhamal v. Sales Tax Officer and Anr., [1966] 17 STC 633 where it has been held that the provisions of the Revenue Recovery Act, 1890 would not exclude the operation of the U.P. Zamindari Abolition and Land Reforms Act. It has also been held in this decision that where the Sales Tax Officer addressed a letter to the Collector to recover the arrears of sales tax from the appellant as arrears of land revenue, the Tahsildar under the direction of the Collector, (could take the necessary proceedings for the recovery of the amount) under the provision of the U.P. Zamindary Abolition and Land Reforms Act.

12. Learned advocate for respondent nos. 1 to 3 has also relied on the case of Prabhakar Vishnu Naik v. Union of India AIR 1970 Bom 285 where it has been held that the presumption of law is that the official acts are done as required by law in a proper way. It has also been held in this decision that even in the case at least as regards those matters for which no special provision is made by the Revenue Recovery Act, the ordinary law is applicable and it was held that the provisions of the Revenue Recovery Act do not impair the provisions of Revenue Code for recovery of land revenue by reason of Section 7 of the Revenue Recovery Act and since the amount is to be recovered as land revenue, those provisions will apply in this case.

13. Mr. Sudhir Kumar Katriar has also relied on the case of K. Burman v. The Commercial Tax Officer, Calcutta-1 and Ors. 1972 Tax LR 2447 where it has been held that the 1890 Act applies to the entire Indian Union and that this is the principal section for recovery of any amount due to the Collector within the meaning of the section and Section 5 by its very language imports the provisions of Section 3 by equating a public demand in respect of which a certificate has been issued with land revenue

due to the Collector for purposes of recovery. It has also been held in this decision that the Deputy Commissioner after receiving the certificate becomes entitled and obliged to make the recovery pursuant to the provisions made for recovery of land revenue in Chapter XI of the Mysore Land Revenue Code dealing with the realisation of land revenue and other revenue demands and it cannot be said that the provisions of that Chapter can be reached only through Section 193 of the Code. It was also held in this decision by the Mysore High Court that so far as arrears of land revenue or other public demands recoverable as land revenue accruing or arising in other States are concerned, the law by which the machinery under Chapter XI of Mysore Land Revenue Code is invoked is the Revenue Recovery Act. In this case the certificate for public demand was sent from West Bengal to Mysore and in those circumstances it was held that the local law will be applicable in view, of Section 7 of the 1890 Act.

14. Mr. Sudhir Kumar Katriar has also relied on the case of Padrauna Raj Krishna Sugar Works Ltd. and Ors. v. Land Reforms Commissioner, U.P., Lucknow and Ors. 1962 ALJ (Vol. 60) page 616 where it has been held in paragraph 30 that once a certificate has been sent to the Collector under Section 46(2) of the Act the same is realisable in the manner provided by the Land Revenue Laws prevailing in the State in which the recovery is to be made and that it is well known that in different states there are different laws under which moneys can be recovered as arrears of land revenue.

15. Now the argument advanced by Mr. Balbhadra Prasad Singh, on behalf of the petitioners is that the substitution of the petitioners as legal representatives was not proper and legal. I have already pointed out that under Section 7 of the 1890 Act when the certificate was sent to Bihar it has to be governed by the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as the 1914 Act), as it relates to the machinery provisions.

16. Section 3(6) of the 1914 Act gives definition of "public demand" and it means any arrear or money mentioned or referred to in Schedule I and includes any interest which may by. law, be chargeable thereon up to the date on which a certificate is signed under Part II, and under Section 3(7) "rules" means rules and forms contained in Schedule II or made under Section 48. Section 4 of this Act lays down that when the certificate officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office. Section 5 of the 1914 Act lays down that when any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer written requisition in the prescribed form Section 6 of the 1914 Act lays down that on receipt of any such requisition the certificate officer, if he is satisfied that the demand is recoverable and that recovery is not barred by law, may sign a certificate in the prescribed form, stating that the demand is due; and shall cause the certificate to be filed in his office. Section 51 of the 1914 Act clearly lays down that no certificate shall cease to be in force by reason of the death of the certificate holder. Section 52 of the 1914 Act lays down that where certificate debtor dies before the certificate has been fully satisfied the Certificate Officer may, after serving upon the legal respresentative of the deceased a notice in the prescribed form proceed to execute the certificate against such legal representative; and the provisions of the 1914 Act shall apply as if such legal representative were the certificate debtor and as if such notice were a notice under Section 7.

However, the proviso to Section 52 lays down that where the certificate is executed against such legal representative he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liablity, the Certificate Officer executing the certificate may, of his own motion or on the application of the certificate holder, compel such legal representative to produce such accounts as the Certificate Officer thinks fit. Section 52(2) of the 1914 Act provides that for the purpose of this section, property in the

hands of a son or other descendent which is liable under the Hindu law for the payment of the debt of a deceased ancestor, in respect of which a certificate has been filed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

17. Thus, it cannot be doubted that the Certificate Officer can proceed against the legal representative in view of Section 52 of the 1914 Act. Under such circumstances it has to be held that the Certificate officer was justified in proceeding against the writ petitioners as legal representatives of Gangadhar Banka and there is no illegality in the order.

18. Now I shall take up the second ground raised by Mr. Balbhadra Prasad Singh, learned counsel for the petitioners. The second ground raised by Mr. Balbhadra Prasad. Singh is to the effect that the certificate signed by the Assistant Collector of Central Excise, Bombay Division No. 1 is invalid and void, as he was not competent to sign it and it should have been signed by the Collector of the district. In this connection Mr. Balbhadra Prasad Singh referred to various provisions of the 1890 Act. He has pointed out under Section 2(2) of the 1890 Act "Collector" means the chief officer in charge of the land revenue administration of a district, and under Section 2(3) "defaulter" means a person from whom an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum. Section 3 of the 1890 Act lays down that where an arrear of land revenue, or a sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule stating the name of the defaulter and such other particulars as may be necessary for his identification and the amount payable by him and the account on which it is due and that the certificate shall be signed by the Collector making it or by any officer to whom such Collector may, by order in writing delegate this duty and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated, and that the Collector of the other district shall on receiving the certificate proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.

19. On this basis Mr. Balbhadra Prasad Singh for the petitioners has submitted that as the certificate was not signed by the Collector of the district, the certificate is illegal and invalid so the entire proceeding is void. However, Section 3(3) of the 1890 Act clearly shows that in the district where the certificate is sent the Collector of that district shall recover the public demands as if it were an arrear of land revenue which had accrued in his own district which clearly shows that the procedure laid down in the district where arrear is to be realised has to be followed. Section 5 of the 1890 Act lays down that where any sum is recoverable as an arrear of land revenue and by public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate, shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own district and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself. This clearly shows that the public officer other than a Collector has also authority to sign the certificate. Section 6 of the 1890 Act relates to the property liable to sale. 1 have already mentioned about Section 7 of the 1890 Act. Section 10 lays down that where a Collector receives a certificate under this Act from a Collector of another State, he shall remit any sum recovered by him by virtue of that certificate to that Collector, after deducting his expenses in connection with the matter. Thus it is evident that the 1890 Act is not exhaustive and this is why under Section 7 of the 1890 Act other local laws have been saved.

20. On the other hand Mr. Sudhir Kumar Katriar for respondent nos. 1 to 3 has submitted that Section 3 of the 1890 Act relates to the Collector to whom the land revenue is payable, and if the land revenue is payable to any other public officer other than a Collector then at the request of that officer the Collector will proceed to recover the sum. He is supported by the decision reported in AIR 1952 Mad 841.

21. Mr. Sudhir Kumar Katriar has also referred to Section 11 of the 1944 Act, which lays down that in respect of the duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to levy such duty or require the payment of such sums may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue. Thus it is evident that an officer under the 1944 Act could sign a certificate and send it to the district in which the certificate debtor resides. It cannot be doubted that in this case admittedly the dues, were under the 1944 Act which were being recovered as a public demand. In view of Section 11 of the 1944 Act the certificate was signed by the Assistant Collector, Central Excise, Bombay Division No. I who forwarded the certificate along with his forwarding letter dated 28-9-1974 which is at pages 218 and 219 of the brief. The amount was due to the Assistant Collector, Central Excise, Bombay, Division No. 1 and so the Collector could' not sign the certificate under Section 3 of the 1890 Act, as it was not an amount due to the Collector. Under such circumstances the certificate was validly signed under Section 11 of the 1944 Act and it has to be presumed that the official acts were properly done. Under such circumstances the certificate cannot be held to be void on the ground that it was signed by the Assistant Collector of Central Excise.

22. Mr. Balbhadra Prasad Singh pressed only the aforesaid two grounds before us and both the grounds have been disposed of.

23. In view of my discussions above, I hold that there is no merit in this writ petition. It is, accordingly, dismissed, but there will be no order as to costs.

Udhay Sinha, J.

24. I agree with the judgment just delivered by my learned Brother. I would, however, like to add a few words of my own.

25. After the series of litigations it is no more in doubt that Gangadhar Banka and Sriram Banka were liable to pay the central excise duty. The next question is whether the Assistant Collector, Central Excise could issue requisition for realisation of the dues by certificate process. Section 11 of the Central Excises and Salt Act, 1944 clearly empowers him to transmit a requisition. The next question would be whether he could request Collector of Munger to collect the dues as public demand, no doubt, would be in terms of the Schedule to the Bihar Public Demand Recovery Act. The Central Excise Act places no bar upon the excise authorities to make such a requisition. In fact, it was not contended on behalf of the petitioners that the requisition could not be issued to Collector of Munger. The only question that remains is, after the dealth of Gangadhar Banka and Sriram Banka, the original certificate debtors, whether their heirs could be substituted in their place and whether the certificate could be realised from them. The Bihar Public Demand Recovery Act clearly provides for executing the certificate against the heirs of the certificate debtor. My learned Brother has discussed this aspect of the matter with which I am in full agreement. Once the certificate has been transmitted the satisfaction of the certificate in this State has to be carried out in terms of the Bihar Act. There can therefore, be no serious objection to the revenue authorities proceeding against the petitioners. The reliance placed upon the provisions of the Revenue Recovery Act, 1890 is clearly misplaced. The provisions of that Act do not nullify the provisions of the Bihar Act. The provisions of the Central Act must be read as supplementing the State Act not supplanting them. The application has, therefore, been rightly dismissed by my learned Brother.

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PATNA HIGH COURT

SPEEDCRAFTS (PRIVATE) LIMITED VERSUS THE STATE OF BIHAR AND ORS.

1982 (30) BLJR 553, 1983 52 STC 251 Pat

Decided on 24 September, 1982

Bench : ***Hon'ble Mr. Justice S. Choudhuri and Hon'ble Mr. Justice U. Sharma***

Speedcrafts (Private) Limited
Versus
The State of Bihar And Ors.

JUDGMENT

S.K. Choudhuri, J.

1. This writ application has been filed under Articles 226 and 227 of the Constitution of India in which the petitioner prays for issuance of a writ of certiorari quashing the orders contained in annexures 1, 2, 3 and 4. Annexure 1 is the order dated 27th January, 1975, passed by the certificate officer (respondent No. 6) rejecting the objection of the petitioner and holding that the certificate dues in the certificate proceeding which has been initiated for realisation of the arrears of sales tax, will be realised from the property which has been transferred to the petitioner by the Bihar State Financial Corporation, Patna (respondent No. 7). Annexure 2 is the appellate order passed by the Collector, Patna (respondent No. 3), dated 7th February, 1978, by which he has rejected the appeal on the ground that the appeal was not maintainable as 40 per cent of the certificate dues have not been deposited. Annexure 3 is the order of the Commissioner, Patna Division (respondent No. 4), dated 10th March, 1980, in which he has found the order of the certificate officer on all the points to be correct. However, he held that the appeal before the Collector was maintainable and 40 per cent of the certificate dues was not required to be deposited. Annexure 4 is the order passed by the Member, Board of Revenue (respondent No. 2), dated 16th July, 1981, by which the contentions of the petitioner have been rejected and the judgment of the authorities below have been affirmed.

2. In order to appreciate the points raised in this writ application, it will be necessary to state the salient facts which are not in dispute.

The property in the hands of the petitioner originally belonged to the Hindustan Bicycle Manufacturing and Industrial Corporation Limited ("H.B.C" for short). It appears that sales tax for different periods were not paid by the said H.B.C, and accordingly, for realisation of the sales tax for the period 1947-48 to 1957-58, several certificate cases were initiated on requisitions filed by the Assistant Commissioner of Commercial Taxes. It has not been disputed before this Court that the notice under Section 7 of the Bihar and Orissa Public Demands Recovery Act ("P. D. Act" for short) was served on the H.B.C, sometime before 9th April, 1956. It is also not disputed that on 14th July, 1958, the said H.B.C. sold the property in question under a registered deed to the v Hindustan Vehicles Limited ("H.V.L." for short). On 5th September, 1959, the H.V.L. took a loan of Rs. 10,00,000 (ten lacs) from respondent No. 7, an authority constituted under Section 3 of the State Financial Corporations Act, 1951 (63 of 1951), hereinafter called "the Act", and mortgaged the said property to respondent No. 7 as security for the said loan. It is said that it was an English mortgage and was made on 5th January, 1959. Some certificate

cases were also filed by the sales tax department against the H.V.L. for realisation of sales tax dues for the period after the aforesaid transfer by the H.B.C. to the H.V.L.

The H.V.L. is said to have made default in payment of the corporation dues, and therefore, on 27th November, 1971, in purported exercise of the powers conferred under Section 29 of the Act, respondent No. 7 sold the property to the petitioner under a registered deed in which in Clause 6 it was mentioned that the said property, which is being conveyed, is free from all charges, liabilities, encumbrances and claims and the Financial Corporation (respondent No. 7) shall keep the purchaser indemnified against the same. This property was purchased for a consideration of Rs. 15.20 lakhs. This sale is said to have been conducted by the Financial Corporation (respondent No. 7) by inviting tenders and the petitioner being the highest tenderer, the property was sold to it.

3. It will be relevant to state here that after the transfer by the H.B.C to the H.V.L., fresh notices were served upon the latter, which on receiving them filed objections before the certificate officer. The said objections were allowed by the certificate officer. The requisitioning officer thereafter filed appeals. Those appeals were allowed on 18th September, 1970, by the Collector and the certificate cases were allowed to proceed for realisation of the certificate dues against the H.V.L. It was further held that the H.V.L. was the transferee under Section 20 of the Bihar Sales Tax Act, 1947, from the H.B.C., on 14th July, 1958, and therefore, the certificate dues are realisable from the property transferred to H.V.L.

4. As during the pendency of these certificate cases, the property was sold on 27th November, 1971, by the Financial Corporation to the petitioner about which I have already stated above, an order was passed in the certificate cases to serve notices under Section 7 of the P.D. Act upon the petitioner and also the Financial Corporation. It is said that the notices were served on them on 9th August, 1973. Two objections were filed ; one by the petitioner and the other by the Financial Corporation. Both the objections have been rejected by the certificate officer by his order dated 27th January, 1975, as contained in annexure 1. It appears from the order (annexure 1) that the stand of the petitioner was fully supported by the Financial Corporation. The contention put forward on behalf of the Financial Corporation was that the property sold by them to the petitioner under Section 29 of the Act was free from encumbrances, and therefore, the certificate dues are not realisable either from the Financial Corporation or from the petitioner. The certificate officer, however, held that the sale by the H.B.C. as also by the Financial Corporation are hit under the provisions of Section 8 of the P.D. Act, and the mortgage dues of the Financial Corporation would remain postponed under the said section as notice under Section 7 of the P.D. Act was already served on the H.B.C. The certificate officer, therefore, held that the sales tax dues are recoverable from the property in the hands of the petitioner, as the sales tax dues have become charge on those properties after service of notice under Section 7 of the P.D. Act. The certificate officer also held that Section 46-B of the Act does not absolve the properties of the charge created upon them merely by sale of the same by the Financial Corporation to the petitioner. He also held that the recovery proceedings, namely, the certificate proceedings, are against the property and charged to the extent of the certificate dues, and the H.V.L., being the transferee was liable to pay, and therefore, the property being now in the hands of the petitioner, the due is recoverable from that property.

5. As against the order of the certificate officer, the petitioner preferred an appeal and having lost in appeal, it preferred a revision application before the Commissioner, which also having lost, ultimately preferred revision before the Member, Board of Revenue, and the same having been lost, the petitioner has approached this Court by filing this writ application.

6. I shall first deal with the main contention put forward by Mr. Shreenath Singh, the learned counsel appearing on behalf of the petitioner. He contended that what is prohibited under Section 8 of the P. D. Act is any private transfer or delivery of any immovable property after service of notice under

Section 7 of the P.D. Act, and in the present case, the sale to the petitioner being made by the Financial Corporation, which is the statutory authority, in exercise of its power under Section 29 of the Act, the sale would be considered to be involuntary, and therefore, the prohibition contained in Section 8 of the P.D. Act would not apply to the transaction of transfer by the Financial Corporation to the petitioner. It was fairly conceded by Mr. Singh that if it is held by the court that it was a private transfer, then this argument put forward by him would fail. The question, therefore, to be answered is as to whether the transaction of sale by the Financial Corporation to the petitioner was a voluntary sale or an involuntary sale. If the answer is that it was an involuntary sale, then the argument put forward by Mr. Singh has to be accepted. If, however, it is held that the said transaction was a private transfer, then it will be hit by Section 8 of the P.D. Act, in view of service of notice under Section 7 of the P.D. Act already effected upon the certificate-debtor. It is, therefore, necessary here to read Section 8 of the P.D. Act as well as Section 29(1) of the Act. Section 8 of the P.D. Act reads thus:

8. *Effect of service of notice of certificate.--From and after the service of notice of any certificate under Section 7 upon a certificate-debtor--*

(a) *any private transfer or delivery of any of his immovable property situated in the district, or in the case of a revenue-paying estate, borne on the revenue-roll of the district in which certificate is filed, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and*

(b) *the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequently to the service of the said notice shall be postponed.*

Sub-section (1) of Section 29 of the State Financial Corporations Act, 1951, reads thus :

(1) *Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof, or in meeting its obligations in relation to any guarantee given by the Corporation, or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.*

Under Section 8(a) aforesaid, if any private transfer of the property is made after service of notice under Section 7 of the P. D. Act, then such transfer shall be void as against any claim enforceable in execution of the certificate proceedings and under Clause (b) of that section such certificate due is made a charge on such a property and other charges, which are created subsequently to the service of notice under Section 7 shall remain postponed.

Section 29(1) of the Act, which has been quoted above, has to be carefully read. Under Sub-section (1), no doubt a right to transfer by way of lease or sale has been given to the Financial Corporation, if any default in repayment of the loan is made by any industrial concern. It has not been disputed that the petitioner is an industrial concern. The question is how to enforce this right which has been given under Sub-section (1) to the corporation ? Section 31 of the Act is a special provision for enforcement of claims by the Financial Corporation. This provision has two sub-sections. They read thus :

(1) *Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the corporation, or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under Section 30 and the industrial concern*

fails to make such repayment, then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation ; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern "without the permission of the Board, where such removal is apprehended.

(2) An application under Sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

Under this provision a person may be generally or specially authorised by the Board to apply to the District Judge within whose jurisdiction the industrial concern carries on business on the whole or a substantial part of its business for one or more of the reliefs mentioned in Clauses (a), (b) and (c) of Sub-section (1). This remedy is, however, "without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882". Section 69 of the Transfer of Property Act gives power of sale without the intervention of the court in the cases falling in Clauses (a), (b) and (c) of Sub-section (1) of that section. The mortgagor was the H. V. L., and it was a public limited company registered under the Indian Companies Act, 1930, and the mortgagee was the Bihar State Financial Corporation, a corporation established under Section 3 of the Act. It is not disputed that the said mortgage was an English mortgage and there was default in payment of dues of the corporation under the mortgage deed, and thus there was a breach of the instalment clause. Therefore, Clause (a) of Section 69(1) of the Transfer of Property Act was attracted, the mortgagor being a public limited company and the mortgagee being a corporation. In cases falling under Clause (a), power of sale without the intervention of the court is not necessary to be mentioned in the mortgage deed. However, it is so necessary in cases falling under Clauses (b) and (c) of Section 69(1) of the Transfer of Property Act. A copy of the mortgage deed was supplied to us by the learned counsel for the Financial Corporation with the consent of the learned counsel for me petitioner. It shows that express power of sale without the intervention of the court was given to the mortgagee, in case of default in payment of instalments. It appears that that was mentioned by way of abundant caution as it may be helpful in case Clause (b) of Section 69(1) of the Transfer of Property Act would apply. Thus it is clear that the sale was held by the Financial Corporation by virtue of the powers under Section 69(1)(a) of the Transfer of Property Act, read with Section 29 of the Act. That being so, it is not necessary to go into a question as to whether Clause (b) of Section 69(1) of the Transfer of Property Act was also attracted. None of the parties to the writ application challenged the said sale which took place on 27th November, 1971. It was admittedly for consideration, and the whole amount went to liquidate the dues of the H.V.L., which was payable to the Financial Corporation under the mortgage deed. Since then the petitioner is coming in possession of the property. Under these circumstances, it cannot be held that the said sale was an involuntary one.

Mr. Singh contended that it would be still an involuntary sale. In support of his submission he cited a few decisions. The first case cited was the case of Mohammed Afzal Khan v. Abdul Rahman AIR 1932 PC 235. That was a case where a decree for partition was made on the basis of an award where the

matters in difference were referred to arbitration without the intervention of the court. It was argued that in such a case it would be considered to be a private sale, within the meaning of Section 64 of the Code of Civil Procedure, and therefore, void as against the attaching creditor. This argument was not accepted by their Lordships. It was held that "if the party against whom a decree is passed, fails to transfer the property as required by the decree, the transfer may be enforced by proceedings in execution, and this is what actually happened in the present case". Nobody can dispute the dictum laid down in this case, nor this decision has been disputed by the other side. The next case cited was the case of Quarban Ali v. Ashraf Ali (1882) ILR 4 All 219 (FB). There it has been held that private alienation means a voluntary sale, gift or mortgage in contravention of the attachment order and not the enforced execution of a conveyance or assignment in obedience to a decree of a court qualified to pass it. The other decision cited is Sadayappa v. Ponnama (1885) ILR 8 Mad 554. It has been held therein that where a vesting order is made under the Insolvency Act after attachment and before the decree, the title of the official assignee takes effect and prevents the attaching creditor from obtaining the satisfaction of his decree by sale. The principle of law laid down in these cases are correct and cannot be disputed, and these propositions have not been disputed at the Bar. However, on the other hand, Mr. Rameshwar Prasad II, learned counsel representing the sales tax department, cited a decision in Union of India v. Jardine Henderson Ltd. AIR 1979 SC 972. That case, if I may say so, has no relevancy as the fact of that case itself shows that the transfer taken by M/s. Jardine Henderson Limited was a private sale and the question for decision in that case was the interpretation of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act (11 of 1964), which made provision for application of the Act retrospectively to the pending certificate proceedings. Therefore that case has no bearing in the present case. Some more decisions were cited by Mr.Rameshwar Prasad II, i.e., the cases of Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer AIR 1978 SC 449, Union of India v. Ratanlal Bhawalka AIR 1978 Cal 164 and Tax Recovery Officer v. Hansaben [1982] 135 ITR 572. These decisions are all distinguishable. As the principles laid down in the case cited by Mr. Singh and discussed above, have not been challenged at the Bar, it is not necessary to burden the judgment by discussing and distinguishing these decisions, which were cited by Mr. Rameshwar Prasad II.

The decisions cited by Mr. Singh do not help him. No decision has been brought to our notice where it has been held that a sale held, without intervention of the court, and in accordance with Section 69 of the Transfer of Property Act, will be considered to be an involuntary sale, and not a private sale.

7. In view of the discussions made above, it has; therefore, to be held that the transfer by the

8. The other submission made by Mr. Shreenath Singh is that in the facts and circumstances (vi) The sale of the assets will be free from all charges, liabilities, encumbrances and claims

9. The learned counsel, therefore, submitted that under such circumstances a direction can be What are the constitutional obligations on the State when it takes action in exercise of its statutory Is the State entitled to deal with its property in any manner it likes or award a contract to any What are parameters of its statutory or executive power in the matter of awarding a contract or The next case cited was Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir AIR 1980 SC 1992. In that case also in the opening part of the judgment the learned Judge of the Supreme Court has pointed out that the questions raised are of "some importance in the field of constitutional law, but they are not abstract questions which can be divorced from the facts giving rise to them". The salient facts of that case was that the State passed an order sanctioning 11.85 lakhs blazes in the inaccessible areas to the second respondents for a period of ten years, on the terms and conditions set out in the order. The main ground of attack on the said order was that it was arbitrary, mala fide, and not in public interest and it creates monopoly in favour of the second respondents, and the State "acted arbitrarily in selecting the second respondents for awarding tapping contract, without affording any opportunity to others to compete for obtaining such contract

and this action of the State is not based on any rational or relevant principle and is, therefore, violative of Article 14 of the Constitution as also of the rule of administrative law which inhibit arbitrary action by the State". All the three grounds on which the order was challenged were rejected and the order of the State Government was held to have been passed in pursuance of a particular policy, and therefore, the writ applications were dismissed.

10. Thus, in my view, the above two decisions of the Supreme Court do not help the petitioner in any way. The principle laid down in those decisions do not apply to the facts of the present case. It is true that there was an indemnity clause in the sale deed of the petitioner, and the Financial Corporation has throughout supported the petitioner in the argument, but here the Financial Corporation, which has executed the sale deed with the indemnity clause, is not proceeding with the certificate cases. The certificate-holder is the sales tax authority. It has already been pointed out that before the H. B. C. transferred the property to the H. V. L., notice under Section 7 of the P. D. Act was already served upon the H. B. C, and therefore, the sale by the H. B. C. to the H. V. L. is hit by Section 8 of the P. D. Act and such sale is void against any claim enforceable in execution of the certificate and the amount due under the certificates has been made a charge upon such property to which every other charge created subsequently to the service of the said notice shall remain postponed. It has also been pointed out that when the property was in the hands of the H. V. L., some more certificate cases were filed against the H. V. L., and before the property could be sold to the petitioner by the Financial Corporation, notice under Section 7 of the P. D. Act was served upon the H. V. L. Therefore, the said transfer was also void against the claim enforceable in execution of those certificates against the H. V. L., and the property remained charged for those dues. The sales tax authority, which is the certificate-holder, was not a party to the transfer deed in favour of the petitioner. Under these circumstances, if the law gives the sales tax authority right to proceed against the property in the hands of the petitioner for realisation of the certificate dues filed against the H. B. C. and the H. V. L., can it be said to be an arbitrary act on the part of the sales tax authority ? The answer undoubtedly is, no. The said authority gets right to proceed against the property under the law and in view of Section 8 of the P. D. Act to realise the dues from the property in the hands of the petitioner. For these reasons, it is difficult to accept the aforesaid submissions of Mr. Singh, and accordingly, this submission is also rejected.

11. During the course of arguments, Mr. Singh stated that the petitioner has to pay three lacs of rupees to the Financial Corporation as against the loan taken from the latter, and if the Financial Corporation agrees then the petitioner will have no objection in making payment of the said dues towards the dues under the certificate proceedings and the balance may be paid by the Financial Corporation in view of the indemnity clause in the sale deed of the petitioner.

Mr. Shankar Prasad, the learned counsel appearing on behalf of the Financial Corporation, stated that he would not agree to this proposal, as the petitioner has not mentioned in the writ application that the Financial Corporation was approached for indemnifying the petitioner and that any decision has been taken by the Board of Directors refusing to indemnify the petitioner. As it has already been held above that the property in the hands of the petitioner is liable for the certificate dues, and the sale deed of the petitioner shows that the said property was sold free from all encumbrances with a further clause to indemnify the petitioner against any claim, which the petitioner has to pay for the said property, it would be appropriate, reasonable and proper to consider the said request of the petitioner by the Board of Directors of the Financial Corporation in order to avoid any further future and protracted litigation. It is expected that it should not act arbitrarily and in an unreasonable manner. As the Financial Corporation is not proceeding against the petitioner for realisation of the certificate dues, the prayer of the petitioner to issue a direction to the sales tax authority to proceed against the Financial Corporation for realisation of the certificate dues cannot be granted specially when in view of Section 8 of the P. D.

Act, the sales tax authority has a right to realise the certificate dues from the property in the hands of the petitioner.

12. An argument was advanced by Mr. Shankar Prasad, the learned counsel for the Financial Corporation, that Section 29(4) of the Act will prevail over Section 8 of the P. D. Act in view of Section 46B of the Act. This argument has got no substance. Section 46B says that the provision of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, "but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern". I fail to appreciate as to how Section 46B takes away the effect of Section 8 of the P. D. Act. Section 46B of the Act expressly says that except as indicated in the first part, i.e., inconsistency contained in any other law or in the memorandum or article of association, or in any other instrument having effect by virtue of any law other than this Act, the provision of this Act shall be in addition to and not in derogation of, any other law for the time being applicable to an industrial concern. No provision of the Act has been pointed out which is inconsistent with Section 8 of the P. D. Act. Therefore, in my view, the effect of Section 8 of the P. D. Act is not taken away by Section 46B of the Act and it should be read as in addition to the provisions of the Act. This contention of Mr. Shankar Prasad has got no substance.

13. In the result, the writ application has no merit and is, accordingly, dismissed, but in the circumstances of the case, there will be no order as to costs.

I agree.

(Sharma, J.)

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PATNA HIGH COURT

NIRENDRA KUMAR BOSE AND ANR. VERSUS DISTRICT MAGISTRATE AND ORS.

AIR 1978 Pat 241

Decided on 20 July, 1977

Bench : ***Hon'ble Mr. Justice S. Jha, Hon'ble Mr. Justice S. A. Ahmed***

Nirendra Kumar Bose And Anr.
versus
District Magistrate And Ors.

JUDGMENT

S.K. Jha, J.

1. In this application under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for issuance of an appropriate writ quashing the order of attachment and sale of the house of the petitioners and other co-sharers of theirs as also the entire certificate proceeding registered as foreign certificate case No. 8 of 1969-70 pending in the court of the Collector of Santhal Parganas, Dumka, respondent No. 1.

2. The short facts giving rise to this application are these : Petitioner No. 1 is the son and petitioner No. 2, is the daughter of late Rajendra Kumar Bose and co-sharers in the house situate in Williams Town, Deoghar, in the district of Santhal Parganas. In the second week of June, 1973 the petitioners learnt that the aforesaid house had been attached by the Sub-divisional Officer, Deoghar, respondent No. 4. Having learnt the same, the petitioners went to the office of respondent No. 4 and on enquiry they came to know that the house had been attached in connection with some certificate proceeding, details of which could be known from the office of the Collector, Dumka. The petitioners after making enquiries at Dumka learnt that the house was attached in a certificate proceeding registered as foreign case No. 8 of 1969-70. On inspection of the case record through a lawyer, the petitioners found that a requisition had been sent by the Collector, Delhi, respondent No. 6, at the instance of the Administrator, Rehabilitation, Finance Administration Unit, Government of India in the Ministry of Finance, Department of Economic Affairs, New Delhi, respondent No. 3 under Section 3 of the Revenue Recovery Act, 1890 (Central Act I of 1890) hereinafter to be referred to as the Act.

3. The aforesaid requisition for certificate made by respondent No. 6 at the instance of respondent No. 5 was based on the following allegations. One Hemanga Nath Ghose was sanctioned Rs. 7,000 as loan from Rehabilitation, Finance Administration. Out of it Rs. 6,232.21 paise stood unpaid. The repayment of such loan was guaranteed by Rajendra Kumar Bose, the father of the petitioners. As such, Rajendra Kumar Bose stood guarantor or surety for the payment of the loan advanced to the principal debtor Hemanga Nath Ghose aforesaid. At the instance of respondent No. 5, the Collector of Delhi, respondent No. 6, sent the certificate to the Collector of Dumka, respondent No. 1, under the provisions of Section 3 (3) of the Act In the requisition, as the copy of the certificate requisition incorporated in annexure 1 shows, Hemanga Nath Ghose was described as the defaulter and Rajendra Kumar Bose as the surety. The requisition was for a total sum of Rs. 7,511.21 paise including interest up to the 31st Dec. 1963. It was further prayed in the petition tiled by respondent No. 5 before respondent No. 6 that Rajendra Kumar Bose owned a pucca house in Deoghar. Such a certificate was sent to the

Collector of Dumka for realisation of the amount mentioned therein from the surety Rajendra Kumar Bose. The Collector of Dumka, respondent No. 1, having received the requisition of certificate from the Collector of Delhi, respondent No. 6, sent the same to the Certificate Officer, Deoghar, to execute the same. It seems objection was filed on behalf of the guarantor or surety abovenamed with regard to the maintainability of the certificate case. On legal advice having been sought by the Certificate Officer, Deoghar, respondent No. 3, he was instructed that he had no jurisdiction to execute the certificate as he could not be a delegate of respondent No. 1 under the provisions of the Act. On such legal advice having been received, the Certificate Officer, Deoghar, remitted back the records of the case to the Collector, Santhai Parganas, by his order dated 27-1-1968. On 27-11-1970 the records of the case were received in the office of the District Certificate Officer, Dumka, respondent No. 2, who, in his turn, by his order dated 21-8-1971, directed that the records be placed before respondent No. 1 himself. Accordingly, the records of the certificate case were placed before respondent No. 1 on 13-10-1971 who directed notices to be issued to the principal debtor as well as the guarantor to appear for a hearing of the case on 23-11-1971. On the 23rd November, 1971 the notices which had been issued were returned unserved with a report of the process-server that the guarantor Rajendra Kumar Bose was dead and the principal debtor Hemanga Nath Ghose could not be traced out. Respondent No. 1 by his order of the same day sent the report of the process-server to respondent No. 5 who was also asked to furnish the names of the legal heirs of Rajendra Kumar Bose aforesaid. Respondent No. 5 wrote back a letter requesting respondent No. 1 to take effective action for realisation of the dues by attachment and sale of the properties left by Rajendra Kumar Bose, the deceased guarantor. On further enquiries having been made by respondent No. 1, he by his order dated 13-7-1972 directed notices to be issued to two sons of late Rajendra Kumar Bose, namely, Manendra Kumar Bose and Atin Kumar Bose to deposit the amount by 28-8-1972. That notice was returned unserved. Respondent No. 1 by his order dated 2-8-1972 directed respondent No. 4, the Sub-divisional Officer, Deoghar, to attach the house in question and to send a compliance report. Shorn of all details, objections began to pour in from various legal heirs of Rajendra Kumar Bose, the deceased guarantor. The objections not having found favour with the respondents, the two petitioners came up with this application.

4. Two points were urged by learned Counsel for the petitioners in support of this application. It was submitted in the first instance that the certificate proceedings were void as the Collector of Dumka was not competent to substitute the names of the legal heirs and representatives of Rajendra Kumar Bose who was mentioned as a surety in the requisition for certificate sent by the Collector of Delhi respondent No. 6. In the next place, it was argued, the attachment and sale proclamation made by either the District Certificate Officer or the Sub-divisional Officer, Deoghar, were not legal as the Collector of Dumka had no authority under the Act to delegate any of his powers to any one of them.

5. Apropos the second point, suffice it to say that the counter-affidavit filed on behalf of respondent No. 1 asserts that the order of attachment had been made by the Collector respondent No. 1, himself and it was that order of the Collector which was being carried out by the subordinate officials. In such circumstances, it cannot be said that there was any question of delegation of powers. It is not essential that each and every physical act in pursuance of the order of attachment must also be performed by the Collector himself. Once it be held, as is the case here, that the Collector had brought his mind to bear upon the facts of the case and ordered attachment, any step in aid following such an order of attachment cannot be indicative of the abdication by the Collector of his power in any essential and material regard. I am reinforced in this view by a Bench decision of the Calcutta High Court in the case of Union of India v. Jatindra Narayan, (AIR 1967 Cal 613). In that case it has been held that if a proclamation was issued by the Collector as required by the Act and further proceedings took place in accordance with the provisions of the Public Demands Recovery Act (a local Act), it could not be said that it was illegal as there is no procedure provided under the Act for the subsequent proceedings. In that view of (he

matter, if the order of attachment had been made by the Collector of Santhal Parganas himself and the consequential steps were taken by the officials under the Bihar and Orissa Public Demands Recovery Act, it cannot be said to be fatal to the certificate case by itself.

6. There seems, however, to be great substance in the first point urged on behalf of the petitioners.

Section 2 (3) of the Act defines a 'defaulter' as meaning-

"a person from whom an arrear of land revenue, or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum." Section 3 of the Act reads thus-

"(1) Where an arrear of land-revenue or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be ot the schedule, stating---

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, or by any officer to whom such Collector may, by order in writ-ing, delegate this duty, and save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district."

Section 4 (1) lays down that when proceedings are taken against a person under Section 3 "for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest.... . . . ., institute a suit for the repayment of the amount or the part thereof so paid".

Section 6 (1) provides that when the Cot-lector of a district receives a certificate under the Act, he will issue a proclamation prohibiting the transfer or charging of any immovable property belonging to the defaulter in the district and Section 6 (3) lays down that any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the Government and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate. Section 6 (4) enjoins that subject to the foregoing provisions of that section when proceedings are taken against any immovable property under the Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against and no encumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

7. From the provisions of the Act extracted above, it may well be seen that a person responsible as surety for the payment of any sum due as arrears of land-revenue is a defaulter within the meaning of the Act There can be no doubt, therefore, that Rajendra Kumar Bose was a defaulter within the meaning of the Act. From the provisions of Section 3, it may be seen that the sum recoverable from a defaulter having a property in another district may be so recovered by issuing of a certificate by the Collector of the district in which the arrears accrued or the sum was payable. Such a certificate must be in the form as nearly as may be set out in the schedule to the Act and it must state the name of the defaulter and such other particulars as may be sufficient for identifying such a defaulter and the amount payable by him

and the account on which it is due. The requisitioning Collector of a district has to send the certificate to the Collector of the district in which the property of the defaulter is situate. The certificate, again, must be signed by the Collector of the district wherein the arrear accrued or the sum is payable or by any of his delagates authorised in that behalf by an order in writing. Such a certificate has also been laid down to be conclusive proof of the matters stated therein. The schedule appended to the Act gives the form of the certificate. The form may usefully be quoted here-

"The Schedule Certificate [See Section 3, Sub-section (1)] From The Collector of To The Collector of Dated the of 19 ....

The sum of Rs. is payable on account of by son of resident of who is believed (to be at) to have property consisting of at in your district Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you Collector of A. B."

Section 4 gives a right to the person named as a defaulter in the certificate, who is denying his liability to pay the amount or has made a payment under protest, to institute a suit. The provisions of Section 6 empower the Collector of the district, within which the property is situate, to issue a proclamation prohibiting the transfer or charging of an immovable property belonging to the defaulter in the district. Private alienation of the property or of any of the defaulter's interests therein between the dates of issue of the proclamation and withdrawal thereof in pursuance of Sub-section (2) of Section 6 has been declared to be void as against the Government or any person purchasing at the auction sale. Sub-section (4) of Section 6 emphasises that the interests of the defaulter alone in any property shall be proceeded against.

8. On a careful scrutiny of the aforesaid provisions it may be seen that the Act is concerned primarily with procedural law; it does not confer any substantive right to the State or to any of the public authorities exercising power under the Act. The requirements to be fulfilled under the Act are really not empty formalities. The procedure must, according to the formal rule for construing and applying enactments of this nature, be strictly followed. The exceptional privileges accorded to the public officials as a matter of executive convenience, as it were, must be subject to the safeguards as provided by the Act by the procedure laid down in it Slovenly disregard of the formalities enjoined by the Legislature to be followed cannot be treated as immaterial and must be held to invalidate the acts done under the colour of authority. In the certificate or requisition sent by the Collector, Delhi, respondent No. 6, to the Collector of Santhal Parganas, the defaulter is mentioned as Hemanga Nath Ghose, the principal debtor with whom we are not concerned in this application. The only other defaulter mentioned is Rajendra Kumar Bose described as surety of the principal debtor. It is the admitted position that a certificate in strict compliance with the form prescribed in the schedule to the Act was sent by respondent No. 6 to respondent No. 1. From the facts set out above, it would further appear that when respondent No. 1 issued notice against Rajendra Kumar Bose, he was already dead. The certificate proceedings subsequently, in substance, are being pursued against the heirs and legal representatives of Rajendra Kumar Bose. Can it be said that the heirs and legal representatives of a defaulter are embraced within the definition of that term in Section 2 (8)? Can it be said that the provisions of Section 3 read with Section 4 (1) and the relevant provision of Section 6 of the Act empower the Collector of the other district, namely, Santhal Parganas to proceed against persons who are not mentioned as defaulters in the certificate sent by the Collector of Delhi? The answer, in my view, to the questions posed must obviously be in the negative. The changing of the name of the defaulter in the certificate would amount, to say the least, to the issuance of a fresh certificate which is not warranted by the provisions of Section 3, as the Collector of the other district, namely, respondent No. 1 in this case had absolutely no jurisdiction to add to, or subtract from, or alter, any ot the three essential particulars in the certificate, namely, the name and identity of the defaulter, the amount payable and the account on which it is due. To hold to

the contrary in the instant case would mean that the Collector of Santhal Parganas could be competent to change the name of the defaulter as well as the account on which the amount payable is due, for it cannot be said that any of the heirs or legal representatives of late Rajendra Kumar Bose is a surety. For this there is no authority either under Section 3 or in any of the other provisions of the Act. Nor is it possible to hold that the provisions in the Code of Civil Procedure for substitution of heirs and legal representatives can be pressed into aid as being auxiliary or ancillary to the power of execution vested under Section 3 of the Act in the Collector of the other district. In effect, to hold otherwise would be holding that respondent No. 1 was invested with the power to change the certificate by himself, which, as already stated above, is not warranted by the provisions of the Act. A certificate issued by the Collector of one district and sent to the Collector of another district for execution has to be executed as it is. There is no provision under which the Collector of the other district can issue a fresh certificate. Making material changes in the different particulars of the certificate as sent by the Collector of Delhi would amount to issuance of a fresh certificate by respondent No. 1, which cannot be countenanced by the provisions of the Act.

9. I may merely refer to the decisions in the cases of Gujraj Sahai v. Secy. of State for India in Council (1890) ILR 17 Cal 414, Nageshwar Prasad Singh v. Kashinath Singh 1958 BLJR 820 and Hari Prasad Agrawalla v. The State of Bihar (1975) BBCJ 723 : (AIR 1976 Pat 217) which were all cases under the local Public Demands Recovery Act wherein it has been held that such Acts being extremely stringent ones brought on the Statute Book as a matter of executive convenience, the demand of a public nature, the justice of which has been enquired into and certified by officials of high rank and unquestionable integrity, may properly enjoy, for the enforcement of them, the very exceptional privileges accorded to them by such Acts but subject always to whatever safeguards are provided in the Statute by the procedure laid down in it.

10. On the facts of the instant case, I do not propose to express any opinion as to what would have been the effect if Rajendra Kumar Bose had died after the attachment had taken effect for the purpose of decision of this case. All that is to be borne in mind is that he died long before the notice was issued to him--longer still before the attachment was purported to be ordered by the Collector of Santhal Parganas, respondent No. 1. In such circumstances, the order of attachment must also be held to be void.

11. In the result, therefore, this application succeeds and the order of attachment and sale of the house in question as also the entire certificate proceeding being foreign certificate case No. 8 of 1969-70 from the date of death of Rajendra Kumar Bose is quashed. There shall, however, be no order as to costs.

I agree.

(S. Ali Ahmed, J.)

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SUPREME COURT OF INDIA

R.B.H.M. JUTE MILLS, KATIHAR AND ...
VERSUS
CERTIFICATE OFFICER, KATIHAR AND ...

AIR 1967 SC 400, 1967 (0) BLJR 242, 1967 19 STC 151 SC

Decided on 13 October, 1966

Bench : ***Hon'ble Mr. Justice K. S. Rao, Hon'ble Mr. Justice R. Bachawat, Hon'ble Mr. Justice J. Shelat***

JUDGMENT

R.S. Bachawat, J.

1. The appellant, a registered dealer under the Bihar Sales Tax Act, was assessed to pay sales tax for four different periods. The arrears of taxes were public demands within Section 3 (6) read with item 3, Schedule 1 of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act No. 4 of 1914). On the requisition of the Superintendent, Sales Tax, Purnea, the Certificate Officer, Purnea, signed and filed four certificates under Section 6 of the Act stating that the demands were due from the appellant. The certificates were put in execution. In the course of the execution proceedings, the appellant paid the principal amounts of the certificates. The Certificate Officer claimed payment of the interest due on the certificates. The appellant filed objections disputing its liability to pay any interest. By his orders, dated March 20, 1958, the Certificate Officer dismissed the objections. The appellant filed four writ applications challenging these orders. The Patna High Court dismissed the writ applications. The appellant now appeals to this Court by special leave.

2. A certificate signed and filed under Section 6 of the Bihar and Orissa Public Demands Recovery Act, 1914 has the effect of a decree passed by the Certificate Officer and is executable as such, subject to the provisions of the Act. Section 17 (a) of the Act provides that there shall be recoverable in the proceedings in execution of every certificate filed under the Act, interest upon the public demand to which the certificate relates, at the rate of 6Vi per cent per annum from the date of the signing of the certificate up to the date of the realisation. In view of Section 17(a), simple interest at the prescribed rate is payable on the principal amount of the certificate, and is recoverable in the proceedings in execution thereof. It was suggested in argument that the certificate-holder has no right to claim interest unless assets are realised by sale or otherwise in execution of the certificate and are disposed of in accordance with Section 32 of the Act. This suggestion is baseless. Section 32 lays down the mode of disposal of the proceeds of execution and the priorities to be observed in such disposal. Out of the proceeds of execution, the certificate-holder is entitled to payment of the amount of the certificate, interest and costs. His right to claim interest is given by Section 17.

   Interest on the unpaid principal amount runs from the date of the certificate, and the certificate-holder is entitled to recover the interest in the execution proceedings. The certificate-debtor cannot escape liability to pay the accrued interest by paying the principal amount of the certificate. If any interest has accrued due and is outstanding, the certificate-holder is entitled to realise it by executing the certificate. The question as to how much is due from the appellant on account of interest is not in issue in these appeals, and we express no opinion on it.

3. The appeals are dismissed with costs, one hearing fee.

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BIHAR PUBLIC ENROACHMENT ACT, 1956

JHARKHAND HIGH COURT

SMT KAVITA DEVI ALIAS KAVITA ...
VERSUS
THE STATE OF JHARKHAND THROUGH THE ...

W.P. (C) No. 738 of 2017

Decided on 27 February, 2017

Bench : ***Hon'ble Mr. Justice Aparesh Kumar Singh***

1. Smt. Kavita Devi @ Kavita Dalmia 2. Smt. Neelam Devi @ Neelam Dalmia 3. Girdhari Lal Dalmia --- ---- Petitioners
Versus
1. The State of Jharkhand through the Deputy Commissioner, Giridih 2. The Sub Divisional Officer, Giridih 3. The Anchal Adhikari, Giridih --- --- Respondents

For the Petitioners: M/s Sumeet Gadodia, Anurag Kashyap, Advocates
For the Resp - State: Mr. Atanu Banerjee, GA

Heard counsel for the parties.

2. Petitioners apprehending forceful dispossession from the suit land comprising Plot No. 179 Thana No. 101 Khata No. 80 area 173 decimal situate at Mouza Lakhari P.S. Giridih (T) district Giridih, as described in the plaint at Annexure-3, instituted Title Suit No. 221/2016 before the Sub Judge-I, Giridih with a prayer for declaration of their right, title and interest over the suit land; restraint upon the Respondents from dispossessing the plaintiffs from the suit land during pendency of the suit and changing the nature and character of the suit land and injunction being made final at the time of judgment and decree; cost, if any, which they may be entitled. Though, defendants are State Officers requiring service of notice under section 80 of Code of Civil Procedure before institution of the suit, but due to urgency shown, by way of an application made under Order 39 Rule 1 and 2 of Code of Civil Procedure (Annexures-4&5), plaintiffs sought waiver of the requirement for early hearing of injunction petition itself. Learned Sub Judge-I, Giridih passed the following order on 20.12.2016,.

"Plaintiff files attendance through lawyer. Heard Ld. Court for the plaintiff and perused the record. Both defendants are government officials. Plaintiff is directed to comply the provisions U/s 80 C.P.C. To 30.01.2017 for taking steps on behalf of the plaintiff."

3. Being aggrieved, petitioners have approached this Court asserting that the requirement of Section 80 Rule 2 CPC has not been met by the learned Court leaving the plaintiffs remedyless. The impugned order amounts to return of the plaint without any application of mind to the urgency shown. Reference is made to the case of the parties in WPC No. 1834/2016 [Sushma Rashmi & others versus The State of Jharkhand & others] wherein also, petitioners being the claimants of same piece of land of Plot no. 179 Khata no. 80 Thana no. 101 village Lakhari district Giridih, approached this Court on the threat of removal of alleged encroachment and also partial demolition of wall of the petitioner no. 1 without any determination in terms of Section 6(2) of Bihar Public Land Encroachment Act, 1956.

4. It is submitted that this Court granted interim protection by order dated 06.04.2016 (Annexure-8) and on noticing the stand of the Respondents brought thereafter, vide order dated 03.05.2016, was pleased to find that no final determination in terms of the Act of 1956 has been done by the Respondent Circle Officer, Giridih where the instant proceedings were pending. The writ petition was disposed of in terms of judgment at Annexure-9 with an observation that the proceedings be concluded expeditiously in accordance with law and after due opportunity to the petitioners. Dependent upon the outcome of the

proceedings, consequence would flow. It is submitted that the petitioners who diligently invoked the forum of competent Civil Court being threatened by the action of the Respondent authorities in similar fashion, has been left without any redress in view of approach of the Learned Court in not appreciating the matter in its correct perspective. The impugned order therefore needs to be interfered with and protection may be granted to the petitioners till the Learned Court takes decision on the petition under Order 39 Rule 1 and 2 CPC pending before it. Learned counsel for the petitioners has also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of State of Kerala and others versus Sudhir Kumar Sharma and others [(2013) 10 SCC 178] in support of the submissions.

5. Learned counsel for the Respondent State submits that apparently, petitioners have not been able to show any concrete proof of threatened action, as agitated herein, only averments have been made in the writ petition. Learned counsel for the State Mr. Banerjee however, at the same time, submits that the Learned Trial Court could have considered the urgency shown by the plaintiffs in the matter in terms of the provisions of section 80(2) of Code of Civil Proceeding and only on being dissatisfied, could have returned the plaint for presentation after complying with the requirement of sub-section (1).

6. I have considered the submissions of the parties and perused the impugned order as well as materials on record. Prima facie, the order impugned shows non- application of mind. In terms of provisions of Section 80(2), it is permissible for aggrieved person to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purported to be done by such public officer in his official capacity, with the leave of the Court without serving any notice, as required by sub-section (1). However, Court shall not grant relief in the suit, whether interim or otherwise, except after giving reasonable opportunity of showing cause to the Government or public officer, as the case may be, in respect of the relief prayed for. Proviso to sub rule (2) indicates that if the Court is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, it shall return the plaint for presentation to it after complying with the requirement of sub-section (1).

7. The Learned Trial Court has given little attention to this requirement of law while simply directing the plaintiffs to comply with the requirement of Section 80 CPC. Plaintiffs may or may not be able to establish the need for injunction on grounds of urgency or immediate relief, but consideration has to be shown by due application of mind to such a prayer which is conspicuously lacking in the impugned order. Such an approach of the Learned Court results not only in denial of due consideration to the bonafide litigants, but at the same time, leads unnecessary journey to the higher forum on that ground. Learned Court should have exercised due diligence in applying its mind to the attendant facts and circumstances while recording a speaking order on such a prayer. The impugned order therefore is suffering from serious errors in exercise of jurisdiction, which certainly deserves interference under Article 227 of Constitution of India as it may lead miscarriage of justice also. It is accordingly set aside. Learned Trial Court would consider the application of the petitioners as early as possible, preferably within a period of three weeks from today, after due notice and opportunity to the affected parties / defendants therein. For a period of three weeks from today, no coercive steps be taken in respect of the suit property against the plaintiffs. The period of interim protection shall however expire after three weeks. It would be open for the petitioners / plaintiffs to seek interim injunction from the Learned Trial Court, which may be considered on its own merits in accordance with law without being influenced by any observation made herein-above.

8. Writ petition is allowed in the aforesaid manner.

9. Let a copy of the order be also sent to the Director, Judicial Academy, Jharkhand, Ranchi.

(Aparesh Kumar Singh, J)

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JHARKHAND HIGH COURT

NAZHAL PARWEEN
VERSUS
COLLECTARIATE

W.P. (C) No. 2215 of 2013

Decided on 16 July, 2013

Bench : ***Hon'ble Mr. Justice P.P. Bhatt***

Nazhal Parween .... .. Petitioner
Versus
The State of Jharkhand & Anr. ...... Respondents

For the petitioner : M/s. Birat Kumar, Ashok Kr. Sinha (4), Adv.

For the Respondents : M/s. Vikash Kishore Prasad, Adv.

Petitioner by way of filing the present petition under Article 226 of the Constitution of India has prayed for issuance of an appropriate writ for qushing and setting aside the notice dated 24.12.2012 which was served upon the petitioner on 23.03.2013 passed in Encroachment Case No.03 of 2012-13 by the respondent No.2, whereby the respondent No.2 has noticed to the petitioner to comply the order passed under Clause (C) of Sub Section (1) of Section 5 of the Bihar Public Land Encroachment Act, 1956 for removal of encroachment from Plot No.1392 of Area 0.02 and 0.04 of village Kapali, Thana No.332, P.S. Chandil, District Saraikella, Kharsawan.

2. Heard the learned counsel for the petitioner as well as respondents. Perused the materials placed on record.

3. It appears that the petitioner has approached this Court against the notice issued under Sub-Section 2 of Section 6 of the Bihar Land Encroachment Act, 1956.

4. On perusal of the said notice, it transpires that the petitioner was called upon to appear before the Circle Officer, Chandil on 21.09.2012. But, according to the petitioner he has not received copy of the said notice and, therefore, he could not remain present on the date fixed by the Circle Officer, Chandil. Subsequently, the petitioner received the copy of the notice from the office of Circle Officer, Chandil. According to learned counsel for the petitioner after obtaining copy of the show cause the petitioner has not filed any explanation in response to the said show cause notice. It appears that Circle Officer, Chandil has not given any another date to give response in pursuant to the said show cause notice. It appears that ex-parte proceedings has been taken out by the Circle Officer, Chandil and the petitioner was asked to comply with the order within a period of seven days from the date of notice issued under Sub- Section (2) of Section 6 of the Bihar Public Land Encroachment Act, 1956.

5. Under the circumstances, it appears that the said order has been passed without following the principles of natural justice and due and established procedure of the law and, therefore, the notice issued under Sub-Section 2 of Section 6 of the Bihar Public Land Encroachment Act, 1956 dated 24.12.2012 is required to be quashed and set aside and the petitioner is required to be given an opportunity of being heard before final decision is taken since the petitioner has not been heard in pursuant to show cause notice.

6. Accordingly, the said notice issued on 24.12.2012 (Annexure-4/A) under Sub- Section (2) of Section 6 of the Bihar Public Land Encroachment Act, 1956 is ordered to be quashed and set aside.

The Circle Office, Chandil shall issue fresh notice under Section 3 of Bihar Public Land Encroachment Act, 1956 to the petitioner.

7. The Circle Officer, Chandil shall issue notice within one month from the date of receipt of a copy of order passed by this Court. The Circle Officer, Chandil may serve notice upon the petitioner indicating date and time for appearance and thereafter, the petitioner shall appear in response to the said notice on the date fixed by the Circle Officer, shall also co-operate in the proceedings. The Circle Officer shall also after affording him a reasonable opportunity, take decision and the same shall be conveyed to him in writing.

8. With aforesaid observations and directions, the writ petition stands disposed of.

(P.P. Bhatt, J.)

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JHARKHAND HIGH COURT

KAMAL KUMAR SINGHANIA AND ANR.
VERSUS
STATE OF JHARKHAND AND ORS.

2003 (3) JCR 195 Jhr

Decided on 2 June, 2003

Bench : ***Hon'ble Mr. Justice S. J. Mukhopadhaya***

Kamal Kumar Singhania And Anr.
Versus
State of Jharkhand And Ors.

JUDGMENT

S. J. Mukhopadhaya, J.

1. An Encroachment Case No. 01/98 was filed to take steps for eviction of the petitioners under provisions of Section 66A of the Indian Forest (Bihar Amendment) Act, 1989 read with Section 6 of the Bihar Public Land Encroachment Act, 1956. It was alleged that the petitioners have encroached forest land on Plot No. 11 of Village Chakla, P.S. Ormanjhi, P.S. No. 32, district Ranchi. The complaint petition was filed by the Director, Bhagwan Birsa Jaiwik Udyan, Ranchi.

2. M/s. Vinimay Leasing Finance Pvt. Ltd. through its Director, having received a notice vide Memo No. 1910, dated 23rd May, 1998, moved before this Court in CWJC No. 1886/98(R). In the said case, this Court taking into consideration that the petitioner of the said case claimed right and title in respect of the land, in question, and relied on one or other orders passed by the State authorities and the fact that the respondents in their counter affidavit disputed the right and title of petitioner, vide order dated 19th February, 1999 directed the petitioner to bring the fact to the notice of the Divisional Forest Officer, Ranchi before whom the land encroachment proceeding, in question, is pending.

3. The petitioner of the said case was allowed to file relevant documents showing its "right and title over the land, in question and documents to show that the land, in question, was never notified as a forest land.

4. The petitioners appeared in the Court of Collector-cum-Divisional Forest Officer, Ranchi East, Forest division, Ranchi and filed objection in Encroachment Case No. 1/98. The petitioners brought on record the evidences, such as Khatian, Registered sale deeds dated 20th July, 1935 and 13th March. 1997; Mutation papers; Maps; correction Slip; orders passed by the D.C.L.R., Ranchi, S.D.O. Sadar, Ranchi; Deputy Commissioner, Ranchi and Commissioner South Chotanagpur, Ranchi in support of their claim of right and title over the land, in question.

5. The applicant i.e., the Director, Bhagwan Birsa Jaiwik Udyan, Ranchi tried to raise a dispute in his petition dated 30th July, 1999 that the entire of Plot No. 11 (i.e. 75.35 acres) belongs to the Government and the records of the opposite party -petitioner herein are not clear and creates a serious doubt.

6. On hearing the parties, the Collector-cum-Divisional Forest Officer, Ranchi East, Forest Division, Ranchi, vide his order dated 27th September, 1999 passed in Encroachment Case No. 1/98 ordered the petitioner to remove and vacate encroachment on 3.48 acres of the forest land from the south - eastern side of the Plot No. 11 as per revisional survey map (owned by the forest authorities) within five days from the service or production or receipt of the order.

7. It will be evident from the detailed order dated 27th September, 1999 passed in Encroachment Case No. 01/98 that there was a disputed question of right and title in respect to 3.48 acres of land in question: The authority accepted that there was a serious dispute and he was not in a position to give a clear finding relating to location of land nor in a position to determine whether the land, in question, belongs to the State or not. It will be evident from the following findings of the authority concerned.

"7. There is no dispute that the total area of Plot No. 11 of village Chakla of P.S. Ormanjhi, P.S. No. 32 is 75.35 acres. There is also no dispute that out of this 75.35 acres an area of 69.70 acres has been acquired by the Forest Department, Government of Bihar and notified as protected Forest vide Government Notification No. C/F-170 33/55-2180 (R) dated 1.7.1955. The interested party, the applicant, the O.P. in this proceeding as well as various revenue authorities have accepted it. Hence, it is admittedly settled that in Plot No. 11 of this locality, 69.70 acres is forest land and the remaining 5.65 acres is non-forest land. For the sake of convenience I take this remaining area as raiyati land or private land as has been pronounced by different Revenue Authorities.

This means that there is no dispute regarding acreage (i.e. the area) of the forest land and the non-forest land in the said Plot No. 11 of this locality.

8. The only dispute is about the location or situation or distribution of this 5.65 acre area of land in the said Plot No. 11. The O.P. contends that this area is situated entirely as one piece or chunk of land on the eastern side of the Plot No. 11 touching the boundary of Plot No. 10. This contention is made with the help of copies of land maps forming part of the four sale deeds referred to in para 12 of the petition dated 8.3.1999 which has been accepted by different revenue authorities in their reports in this regard which have been annexed with different petitions of the O.P.

12. *A close scrutiny of all the four sale deed documents executed in favour of the Vinimay Leasing Finance Pvt. Ltd. reveal the "Chauhaddi" on west side of the four pieces of land (marked as A, B, C and D in the four land maps forming part of the four sale deeds) "a murram road provided by the Government for common use of the public." This road has also been shown on these copies of the four land maps.*

13. *The O.P. produced on 6.6.1999 attested copies of two maps viz. the R.S. map of 1932-33 and the recent survey . map (declared not final by the O.P.) the first copy shows no demarcation line and boundary pillars of the forest land. To me it appears quite natural because any portion of the land in the said Plot No. 11 had not been declared forest land in or before 1932-33 and so there was no question of any such demarcation at that time. But it is very striking and palpable from this map that there also does not exist any such road (called murram roads in the sale deed document) like that depicted on the four land maps forming part of the four sale deeds.*

The copy of the so-called not-final recent survey map (which is presumably underway at present) also does not provide for the existence of any such road in Plot No. 16 (new name assigned to the bounded portion of land in Plot No. 11) or in its adjoining area in any direction. It is not difficult to discern i'rom this map that boundaries of this Plot No. 16 are exactly the same as that of the demarcation line (as claimed by the intervenor and the applicant) covering the forest land area in Plot No. 11 in the copy of the R.S. map produced by them (viz. Annexure-14 to the application dated 6.9.1999 of the intervenor or the interested party)".

8. Whether the revisional survey map was final or not was also in doubt. Merely on the presumption that the map must have been published, such finding has been given by the authority, as evident in the following observations of the authority concerned.

"14. *The O.P. tried to dismiss the validity and admissibility of this map current survey map by saying that this is not final meaning thereby that it is liable to some change later on. But in my considered*

opinion this not-final map (presuming it to be the worst case) cannot be dismissed altogether because even this map must have been published on the basis of some record and previous map applicable with the revenue or survey settlement authorities. It is noteworthy that even the no. of boundary pillars on the boundary lines of Plot No. 16 and on the demarcation line in the copy of the R.S. map (Annexure-14 as referred to in para 13 above) are the same precisely 17 in numbers in both the maps".

9. Now it is a settled law that a disputed question of right and title cannot be determined in a land encroachment proceeding. In this respect, one may refer to the Special Bench decision of Patna High Court in the case of Bhukan Kalwar and Ors. v. S.D.O., Siwan and Ors., reported in AIR 1955 Pat 1.

10. In the present case, there is a serious doubt relating to right and title over the land, in question. Its location is also not clear. Even the Collector-cum-Divisional Forest Officer, Ranchi East, Forest Division, Ranchi could not give a clear finding relating to exact location of land in dispute and the land as claimed by petitioners. In this background, it was not open for the authorities to decide the issue in a summary proceeding, such as the proceeding under Section 66-A of the Indian Forest (Bihar Amendment) Act, 1989 or Section 6 of the Bihar Public Land Encroachment Act, 1956, but could have asked the aggrieved party to move before a Civil Court of competent jurisdiction for appropriate relief.

11. For the reasons aforesaid, the order dated 27th September, 1999 passed in Encroachment Case No. 01/98 cannot be upheld nor the appellate order dated 5th September, 2001 passed in Encroachment Appeal No. 16/99. They are, accordingly, set aside.

12. Liberty is given to aggrieved party to move before a civil Court of competent jurisdiction for declaration of right, title and possession/confirmation of possession or any other appropriate relief.

13. The writ petition stands disposed of with the aforesaid observations and directions. No cost.

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BIHAR TENANTS HOLDINGS (MAINTENANCE OF RECORDS) ACT 1973

JHARKHAND HIGH COURT

MAHABIR MAHTO & ORS
VERSUS
STATE OF JHARKHAND & ORS

L.P.A. No. 316 of 2011

Decided on 27 August, 2012

Bench : ***Hon'ble Mr. Justice Prakash Tatia, CJ & Hon'ble Mrs. Justice Jaya Roj***

Mahabir Mahto & Others ... Appellants
Versus
The State of Jharkhand & Ors. ... Respondents

For the Appellants : Mr. Kalyan Ray, Advocate

For the Respondent State : Mr. V.K.Prasad, S.C.(L&C).

For the Respondent Nos. 7 to 12 : Mr. V.Shivnath, Sr. Advocate & Mr. Niraj Kishore, Advocate

REPORTABLE **Dated 27th August, 2012**

Heard learned counsel for the parties.

2. The appellant is aggrieved against the judgement dated 29.06.2011 passed in W.P.(C) No. 1565 of 2008 whereby the learned Single Judge set aside the order dated 19.02.2008 passed by the Commissioner, Hazaribagh in Miscellaneous Revision No. 158 of 2005.

3. It will be appropriate to place on record facts in brief :-

The appellants' claimed that, by virtue of a settlement of land in favour of the appellants, their names were required to be entered in the revenue record/in record of rights to be maintained under the Bihar Tenants Holdings (Maintenance of Records) Act, 1973. However, for the said claim of settlement of 8th September, 1925, the appellants' submitted an application No. 37/1961-62 on 27.01.1961 upon which the appellants' names were entered into the revenue records. The appellants continued to pay the rent till the year 1967-68. After 1968, the revenue authorities refused to accept the rent from the appellants. The appellants, in the year 1998, came to know that in the Jamabandi, the name of the respondents have been wrongly entered and because of that reason the revenue authorities are not accepting the rent from the appellants. Finding this wrong entry in Jamabandi, the appellants submitted an application before the Circle Officer in the year 1998 and that application was in fact, for deletion of the wrong entry of the names of the respondents but was considered as application for mutation under Section 14 of the Act of 1973. Said application was dismissed by the Circle Officer on 08.11.1998.

According to learned counsel for the appellants, against this rejection order, no appeal was preferred by the appellants but according to learned counsel for the private respondents in fact appeal was preferred by the appellants against the order dated 08.11.1998 before the Deputy Collector Land Reforms who rejected the appeal also. Be that as it may be, in either case the order of rejection of the appellants' application for deletion of names of respondents dated 08.11.1998 attained finality.

The appellants then submitted an application before the Additional Collector for the same reliefs and the Additional Collector by order dated 22.12.2004 set aside the order of the Circle Officer dated 08.11.1998 and directed that appellants' names may be entered in the revenue record and the Circle Officer was directed to accept the rent from the appellants. According to appellants, aggrieved against

the order dated 22.12.2004, a review application was filed by the respondents before the same authority, the Additional Collector. The successor Additional Collector allowed the said review application and set aside the order dated 22.12.2004 by order dated 27.10.2005. Aggrieved against the order dated 27.10.2005, a revision petition was submitted before the Commissioner by the present appellants. Learned Commissioner allowed the revision petition vide order dated 19.02.2008 and held that the Additional Collector had no jurisdiction to review the order dated 22.12.2004 and, therefore, set aside the review order dated 27.10.2005 restoring the order dated 22.12.2004 by which the names of the respondents stand deleted from the revenue record.

Against the order passed in revision by the Commissioner dated 19.02.2008, the respondents preferred present writ petition being W.P.(C) No. 1565 of 2008 which has been allowed by the learned Single Judge and the orders dated 19.02.2008 and order dated 22.12.2004 both were set aside. According to learned Single Judge the Additional Collector could not have entertained revisions under Section 16 of the Act of 1973 which lies before Collector of the District under Section 16. The Additional Collector also could not have heard the application as appeal because appeal against against the said order could have been before Land Reform Deputy Collector (L.R.D.C.).

Therefore, the order dated 22.12.2004 of the Additional Collector was wholly without jurisdiction. Learned Single Judge also held that the order dated 22.12.2004 was passed ex- parte and without affording an opportunity of hearing to the respondents and when correct law was brought to knowledge of the learned Additional Collector, the Additional Collector passed the order dated 27.10.2005 and rectified the order dated 22.12.2004. Learned Single Judge, therefore, held that, in this legal position the Commissioner should not have entertained the revision petition and set aside the order dated 19th February, 2008 passed by the Commissioner, Hazaribagh in Miscellaneous Revision No. 158 of 2005.

4. Learned counsel for the appellants submitted that till 1967-68, appellants' names were in the revenue record obviously, in Jamabandi and, therefore, this entry in Jamabandi could have been altered only by the order of a competent authority but the respondents' names were entered absolutely illegally and, therefore, the respondents' names should have been deleted and that was rightly deleted by order dated 22.12.2004 and appellants' names were rightly ordered to be entered in the Jamabandi. It is submitted that even if, the view of the learned Single Judge is correct that Additional Collector had no jurisdiction to entertain the application filed by the appellants, then the Additional Collector had also no jurisdiction to entertain the application filed by the respondents/writ petitioners upon which the order dated 22.12.2004 was passed. In that situation, the Court should have remanded the matter to the competent authority who should have decided the application of the parties in accordance with law relating to mutation proceedings. Learned counsel for the appellants submitted that learned Single Judge himself has considered the Division Bench judgement of this Court delivered in the case of Kapildeo Singh & Others Vs. The State of Bihar & Others reported in 2003(2) PLJR 431 wherein the Division Bench of this Court finding the similar situation, when the application was submitted before a wrong authority, directed to remand the matter to the competent authority for consideration in accordance with law. In that situation also, the learned Single Judge was bound by the decision of the Division Bench of this Court rendered in Kapildeo Singh's case.

5. Learned counsel for the respondents/writ petitioners vehemently submitted that in fact the proceeding initiated by the appellants were not a mutation proceeding as the mutation proceeding could have been initiated only on the basis of accrual of right in agricultural land by devolution of interest which may be by way of sale, gift or by virtue of succession claiming the same right title and interest which was possessed by the recorded tenant of the land as recorded in the revenue record. A rival party to the recorded person cannot avail the mutation proceeding for deletion of name of any person from the revenue record and for entry of his name in revenue record because of plain and simple reason that in

mutation proceeding, no right title and interest can be decided by any authority. Therefore, a person who is having hostile title against the recorded person in Jamabandi, he has only option to file a civil suit for declaration and correction in revenue record. A mutation proceeding cannot be converted into a title suit for deciding the right, title and interest of any party in the property.

6. Learned counsel for the respondents/writ petitioners further vehemently submitted that for initiation of any proceeding there must be some material on record in support of the claim of any party and according to learned counsel for the respondents/writ petitioners, the appellants failed to produce any lawful document on the basis of which they could have claimed their right to have their names entered in the revenue records. Learned counsel for the appellants and respondents drew out attention to the relevant provisions of law for the agriculturists having the right under the various land revenue laws and particularly, under the Bihar Tenants Holdings (Maintenance of Records) Act, 1973 prescribing the procedure for mutation.

7. We considered the submissions of the learned counsel for the parties and perused the facts of the case.

8. It is not in dispute that this proceeding arises out of a fiscal proceeding of mutation whereunder no right, title or interest of the parties can be declared as can be done in a regularly instituted suit in competent court of jurisdiction. The definition of mutation given in the Act of 1973 in Clause (I) of Section 2 is as under :-

2(I) - "Mutation" means any alteration in the entries in the Continuous Khatian and the Tenants' Ledger Register maintained under this Act. On the basis of the mutation, the person whose name has been mutated may get the right to enter his name in the revenue record and record of rights.

9. Subject of Mutation is given in the Act of 1973, under Section 3 to 14. As per Section 3 of the Act of 1973, the Circle Officer is required to maintain Continuous Khatian, Tenants' Ledger Register and Village Maps.

10. Section 4 of the Act of 1973 is also relevant which is as under :-

4. Registering Authority to give notice of transfer and registration to Anchal Adhikari - when the registration of any instrument of transfer by way of sale, exchange, mortgage, lease, partition or gift or by any other mode of transfer of a holding or part thereof is complete, the registering authority shall give notice of such registration in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

It is clear from Section 4 that in case of transfer of property by way of sale, exchange, mortgage, lease, partition or gift or by any other mode of transfer of a holding or part thereof, then the registering authority shall give notice of such registration of the document effecting the transfer to the Circle Officer in the prescribed form.

11. Section 5 of the Act of 1973 deals with the effect of the decree passed by the competent civil courts. Section 5 reads as under :-

5. Civil Courts to give notice of delivery of possession to the decree-holder or auction purchaser or of decree for partition or for foreclosure to the Anchal Adhikari. - When under the Code of Civil Procedure, 1908 (Act 5 of 1908) possession of a holding or part thereof and possession has been delivered in execution of decree to the decree holder or to a purchaser at Court auction sale or when a final decree for partition or for foreclosure of a mortgage has been passed the Court executing the decree or the Court passing the final decree for partition or foreclosure, as the case may be, shall give notice of facts in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

12. Section 6 of the Act of 1973 provides :-

6. Certificate officer to give notice to the Anchal Adhikari of delivery of possession to the auction purchaser. - When under the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), possession of a holding or part thereof has been delivered to a purchaser at auction sale held in execution of a certificate, the Certificate Officer shall give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

13. Section 7 of the Act of 1973 is as under :-

7. Collector to give notice of acquisition under the Land Acquisition Act, 1894 to the Anchal Adhikari. - Where holding or part thereof has been acquired under the Land Acquisition Act, 1894 (Act 1 of 1894), the Collector or the Court, as the case may be, making the award under that Act, shall give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated.

14. Section 9 provides provision for giving notice by the civil courts of acquisition of land under Section 84 of Bihar Act VIII of 1885.

15. As per Section 10 of the Act of 1973, when any land is granted by the Bhoodan Yagna Committee to any landless person under the Bihar Bhoodan Yagna Act, 1954, the said committee shall give notice of the fact in the prescribed form to the Anchal Adhikari of the area.

16. Section 11 provides that under-raiyat claiming to have acquired the status of occupancy raiyat under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, he is required to file an application before the Anchal Adhikari, obviously for the purpose of getting his name entered.

17. Section 12 is very important and relevant for the purpose of deciding this Letters Patent Appeal which is as under :-

12. - Persons claiming interest by partition effected either privately or through Court or intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift, or by any other means to give notice to the Anchal Adhikari - After the commencement of this Act in any area every person having interest in a holding or part thereof in that area by partition effected either privately or through Court of intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means, shall within six month of accrual of such interest, give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated, and may apply for mutation of his name in respect of that holding or part thereof in the Continuous Khatian and the Tenants' ledger Register on receipt of such information of application the Anchal Adhikari shall grant a receipt to such person.

As per Section 12 of the Act of 1973 in certain circumstances mentioned in Section 12 itself, like if any person is claiming interest in a holding or part thereof by way of partition, privately or through court or in a intestate land or by virtue of testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means, then he is required to give information to the Anchal Adhikari within the stipulated time.

18. In addition to above, Section 13 cast duty upon Mukhia, Circle Inspector and Karamchari who are required to obtain information of partition, intestate, deliberation of interest, testamentary succession or acquisition of interest or any other means in holding or part thereof then he is to visit the village and the area obviously, the land itself and is required to furnish the information to the Anchal Adhikari in prescribed format.

19. Therefore, it is clear from the Act of 1973 that all contingencies as far as possible have been taken care of with respect to the maintenance of the revenue record by revenue officers under the Act of 1973 so that all informations with respect to the devolution of interest by transfer, land acquisition by Government for itself or for others, acquisition of title by virtue of decree of the civil court and obtaining possession, or by will or under personal law of succession etc. are required to be furnished to the Anchal Adhikari. Upon receipt of such information, the Chapter III comes into operation.

20. Section 14 of the Act of 1973 gives the jurisdiction to Anchal Adhikari to pass appropriate order in above contingencies. Section 14 is as under :-

14. Requisition and disposal of mutation case.- (1) On receipt of notice under Sections 4, 5, 6, 7, 8, 9 and 10 or an application under Sections 11 and 12 or a report under Section 13, the Anchal Adhikari shall start a mutation proceeding and, after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such enquiry to be made as may be deemed necessary.

(2) The Anchal Adhikari shall issue a general notice and also give notice to the parties concerned to file objection, if any, within 15 days of the issue of the notice. On receipt of objection, if any, the Anchal Adhikari shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and dispose of the objection and pass such orders as may be deemed necessary.

(3) In cases in which no objections are received the Anchal Adhikari shall dispose them of within one month of the date of expiry of filing objection and in cases in which objections are received, the Anchal Adhikari shall dispose them of in not more than three months from the date of expiry of the period of filing objections.

21. So complete scheme of the Act of 1973 which has been discussed above in detail clearly indicates that mutation proceeding is confined to matters cognizance of which can be taken by the Anchal Adhikari regarding possession in consequence of devolution of interest and transfers upon receipt of such information, as provided under Sections 3 to 13. The purpose of mutation is only, as we have noticed from the definition of mutation given in Clause (I) of Section 2 is for "alteration in the entries in the Continuous Khatian and the Tenants' Ledger Register maintained under this Act" obviously, under the Act of 1973 under happening of events mentioned in Sections 4 to 13 and not for deciding the dispute of rival claims, like adverse claim to the recorded person.

22. The entry of the names of right persons in the revenue record is required so that the Government, who is the owner of the land, may collect the revenue from the persons whose names are entered in the revenue records and so in larger interest of the public also that whenever a land acquisition proceeding is started, the Government may give appropriate notice to such persons and further in public interest that in case of any lapse on the part of the person holding any right, title or interest in the agricultural holding if alleged to have committed some wrong so as to vesting any agricultural land in the State Government, he may be served appropriate notice by the revenue authorities before re-vesting of the agricultural land in the State Government. By maintaining these land records up to date, every dispute can be shorten.

23. From the nature of the proceeding which is only for the purpose of making alteration in the entries in the Continuous Khatian and Tenants' Ledger Register, a lower revenue officer has been given jurisdiction to decide these disputes by taking evidence but for the limited purpose and such revenue authority cannot decide complicated legal dispute as well as adverse claims.

24. At this juncture, it will be appropriate to mention here that the mutation proceeding may be uncontested in case of no dispute and it can be contested as is clear from Sub- Section (2) of Section 14 of the Act of 1973. Therefore, a right of appeal has been given to the aggrieved party under Section 15 of the Act

of 1973 and appeal against the order of the Anchal Adhikari lies before the Land Reforms Deputy Collector and revisional power vests in the Collector of the District who has been given power to examine the legality and propriety of any order made under the Act of 1973 or Rules made thereunder by any authority. However, nature of the order which may attain finality by order passed in the appeal under Section 15 or in revision under Section 16 will remain the same of fiscal nature having limited effect. After attaining finality of the order which were referred above, the Anchal Adhikari is required to give effect to the order under Section 18 by making correction in Continuous Khatian and Tenants' Ledger Register and is required to forward the copies of the corrected entries thereof to the Sub-Divisional Officer and the Collector.

25. The value of the entry made in the revenue record has presumptive value and Section 19 deals with this provisions. Section 19 of the Act of 1973 is as under :-

19. Presumption of correctness of entries in Continuous Khatian and Tenants' Ledger Register. - Every entry in the Continuous Khatian and Tenants' Ledger Register finally published under clause (iii) of sub-section (4) of Section 3 -

(i) shall be an evidence of the matter referred to in such entry, and

(ii) shall be presumed to be corrected until it is proved by evidence to be incorrect in the following proceedings -

(a) in a proceeding in a Civil Court of competent jurisdiction, or

(b) in a proceeding under Chapter X of the Bihar Tenancy Act, 1885 (Act VIII of 1885), or chapter XII, of the Chhotanagpur Tenancy Act, 1908 (Act VI of 1908) or under the Santhal Paragana Settlement Regulations, 1872 (Regulation 3 of 1872) or the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of the 1956) in any area where the State Government has made an order directing that a survey be made and a record of rights be prepared in respect of the lands in that area, and in pursuance of such an order survey and settlement operation is already in proves.

Section 19 says that every entry in the Continuous Khatian and Tenants' Ledger Register finally published under clause (iii) of sub-section (4) of Section 3 shall be an evidence of the matter referred to in such entry, and as per sub-clause (ii), shall be presumed to be corrected until it is proved by evidence to be incorrect in the proceedings referred in clause (a) and (b) of this Section which includes, proceeding in a Civil Court of competent jurisdiction as well as in other proceedings under various provisions of Bihar Tenancy Act, 1885, Chhotanagpur Tenancy Act, 1908, Santhal Paragana Settlement Regulations, 1872 and the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

26. In sum and substance, the mutation proceedings have limited scope so far as its effect is concerned and the purpose of mutation proceeding is very clear from the Act of 1973 itself which substantially suggests that these are proceedings to safeguard the interest of the State and the revenue authorities primarily so that the State may know the persons' right over the agricultural land and once the names are entered in the revenue record they can be altered only because of the reasons mentioned in Sections 3 to 13 of the Act of 1973. The provisions referred above are not meant for getting a declaration in serious dispute cases with respect to the entitlement and, therefore, it has been specifically provided by Section 5 of the Act of 1973 that when under the Code of Civil Procedure, possession of a holding or part thereof has been delivered in execution of a decree to the decree holder or to a purchase at Court auction sale or when a final decree for partition or for foreclosure of a mortgage has been passed the Court executing the decree or the Court passing the final decree for partition or foreclosure, as the case may be, shall also give notice of the fact in the prescribed form to the Anchal Adhikari of the area. The Anchal Adhikari has no jurisdiction to alter or modify or disobey the court's decree and

consequential effect of the possession under the Act of 1973 or otherwise. Looking to the nature of the proceeding and limited jurisdiction of the Anchal Adhikari of making correction in the revenue record, the Anchal Adhikari has no power and jurisdiction to pass a decree or order of declaration of a right, title or interest in the property or has right to declare about legality and validity of an instrument of transfer or a settlement or decide the issue of contentious succession cases which power vest under the provisions of the Indian Succession Act, in civil courts.

27. The question arises is that in a case where one party claims right adverse to the person whose name is recorded in the Continuous Khatian or Record of Rights whether he can move application for mutation.

28. The scheme of the Act of 1973, as we have noticed from Sections 3 to 13, nowhere provides for it. Meaning thereby, any information under Sections 4 to 10 and on application under Sections 11 and 12 or upon report under Section 13, only the Anchal Adhikari can proceed to decide the application under Section 14. In Sections 3 to 13 and in Section 14, it is nowhere provided that any person who has any grievance against wrong entry in the Continuous Khatian and Record of Rights can submit an application for getting determination of his right, title and interest in the land vis-a-vis a recorded entry. We may recapitulate here that as per the duty cast upon the Anchal Adhikari, he is required to prepare and maintain Continuous Khatian and Tenants' Ledger Register by following the procedure as provided in sub-clause (1) of Section 3 itself and in other cases the Anchal Adhikari can get the information as provided under Sections 4 to 13 only.

29. From the scheme of the above provisions it is clear that the application for mutation, obviously for alteration of the entries in the Continuous Khatian and Tenants' Ledger Register cannot be claimed by a person having totally adverse interest to the person whose name is entered in the revenue record and, therefore, the application filed for the entry of the names of the appellants with a claim that their source of right is independent and is adverse to the respondents / writ petitioners itself, was not maintainable. It appears that by passage of time, the mutation proceedings which has limited scope and which gives limited jurisdiction to the Anchal Adhikari under the Act of 1973 expanded to beyond its scope and in practice may have become an adversary litigation in a proceeding for entering the names of the person who is claiming right through the person whose name is recorded in the revenue record and, claiming the right by virtue of either death of original recorded person and being successor of the recorded persons or by virtue of transfer, exchange, agreement, settlement, lease, mortgage, gift, or by any other means or by virtue of the court's decree or by virtue of grant of land by the Bhoodan Yagna Committee or by virtue of consequence of the acquisition of the land under the Land Acquisition Act or other statutes, but legaly, Anchal Adhikari has no jurisdiction to decide adverse claims, other than provided under Sections 3 to 13 of the Act.

30. Learned counsel for both the parties could not dispute this fact that in mutation proceeding no declaration can be made with respect to the right, title and interest of any party nor any decree/order of possession can be passed so as to give possession to one party by evicting the other party, may be he has a valid and legal document of transfer of land. Learned counsels rightly admitted so because of the reason that in mutation proceeding primarily the question of transfer and succession referred above are relevant and the possession is more relevant as is apparent from Section 5 of the Act of 1973 which says that mutation can be effected not merely by passing of the decree but consequential delivery of possession is also required.

31. In this situation, the parties litigated since 1998 for getting their names entered in the revenue record without any consequential reliefs like declaration of their right, title and interest in the property and without there being any consequential relief of delivery of possession from one party to another party. Such reliefs have not been claimed because of plain and simple reason that such reliefs cannot be granted by Anchal Adhikari or by appellate authority or by revisional authority under the Act of 1973.

Therefore, if the parties are permitted to litigate mere for entries of their names in the revenue record without actual relief of declaration and possession and injunction by filing appeal and revision and, thereafter by challenging the orders in writ petition and Letters Patent Appeal and thereafter before the Hon'ble Supreme Court in Special Leave to Appeal, then after getting a decision from even the Apex Court, the parties will get only their names entered in the revenue record which only has presumptive value under Section 19 of the Act of 1973 and this evidence since is rebuttable in civil court proceeding where the suit will be filed after litigating up to the Hon'ble Supreme Court and where the other party can show that there is no value of such evidence of entry in the revenue record and civil court can certainly reach to the conclusion that presumption has been rebutted sufficiently by the contesting party then such circuitous route can be avoided if, the finality is attached to the order of the Anchal Adhikari and by making provisions that the Anchal Adhikari can decide the uncontested cases of the nature mentioned under Sections 3 to 13 leaving the parties to obtain actual relief in suit from the competent court of law.

32. This is one of the case where the facts are not in dispute that in the year 1998, when the application was submitted before the Circle Officer, the names of the respondents/writ petitioners were there in the revenue record since long and the appellants were not claiming title through the respondent and, therefore, had a rival claim and adverse to the writ petitioners/respondents. Since 1998, parties approached total seven forums for obtaining order in fiscal proceeding matter wherein no actual relief can be granted to the parties. If the parties would have filed the suit of appropriate nature in competent court of jurisdiction in the year 1998, they may have paid the court fees according to the market value of the property as it was in the year 1998. After fighting the litigation for about 14 years, the parties can get the entries of their names in the revenue record without there being declaration of right, title or interest in the property. After this delay of 14 years, if the parties will file a suit, they will have to pay the court fees as per the value of the property in the year 2012 provided this order attains finality and the parties chose to file the suit for actual relief. At the cost of repetition, we may observe that the appellants neither can get declaration nor can get possession nor can evict any party in these proceedings yet they are compelled to litigate because of the reason of availability of law as it is or more important reason may be that they may not have been advised to file a civil suit forthwith when they found that there is wrong entry in the revenue record. All these rounds of litigation could have been avoided by advising them to file the suit for appropriate reliefs.

33. We are of the considered opinion that in a mutation proceeding also if there is serious dispute with respect to the claims and rival claims even amongst the successors of the recorded person then they may be directed to file the appropriate suit. We may taken help of earlier decision of the Patna High Court delivered in the case of Sundari Devi Vs. The State of Bihar & Others reported in 1993(1) PLJR 231 wherein it has been held by the Hon'ble Mr. Justice S.B.Sinha, as he was then, that even if, procedure required to be followed for mutation has not been strictly complied with by the revenue authorities, the High Court should not exercise its extraordinary jurisdiction under Article 227 and remedy lies in filing a civil suit for obtaining appropriate relief before a competent civil court.

34. This type of litigation can be avoided by making appropriate amendment in Section 15 and Section 16 of the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 as well as appropriate amendment in Section 14 so as to give the finality of the order of the Anchal Adhikari and by inserting appropriate Section or provision requiring that after the order of the Anchal Adhikari under Section 14 the aggrieved party may file civil suit in a court of competent jurisdiction so that the parties aggrieved against the order passed under Section 14, merely because of the availability of the right to appeal under Section 15 and right to challenge the order in revision under Section 16, may not be misguided for taking this route resulting into the same effect i.e., thereafter, requiring parties to seek declaration from the court and also pray for the relief of possession etc. where they can also get the interim relief of protection

of their possession or even appointment of receiver for the property, which reliefs are not available in these proceedings where the litigants may fight for decades for no actual relief to them.

35. Therefore, we are of the considered opinion that there is no reason to interfere in the order passed by the learned Single Judge which has been passed for different reasons but since we are of the view that the original application filed by the appellants was not maintainable, therefore, this Letters Patent Appeal is dismissed.

36. A copy of this judgement be sent to State Law Commission and the State Government through Law Secretary so that they may examine the issue raised in this order as well as the State Government may also consider whether in a suit for declaration with relief of possession or without possession and for any ancillary relief for agricultural land, whether ad-valorem according to market value of the property is justified or it should be a nominal fixed court fees as may be leviable in other States looking to the important fact that the agriculturists may have a big chunk of land but they may not have means to pay the court fees according to market value of their land and we can take judicial notice of this fact that in other States there may not be such type of burden of court fees upon the person claiming any right over agricultural land. At this stage, learned counsel for the respondents pointed out that under Civil Procedure Code there is a provision for filing suit without paying the court fees. However, we are of the considered opinion that the litigant of the agricultural land need not to be asked to obtain a declaration that they are indigent persons and, therefore, we are of the considered opinion that the State Government should consider appropriate law for dispensing with the court fees for the agriculturists in suits for right, title, possession and interest over the agricultural land only.

L.P.A. is dismissed for the reasons mentioned above. No order as to cost.

(Prakash Tatia, C.J.)
(Jaya Roy, J)

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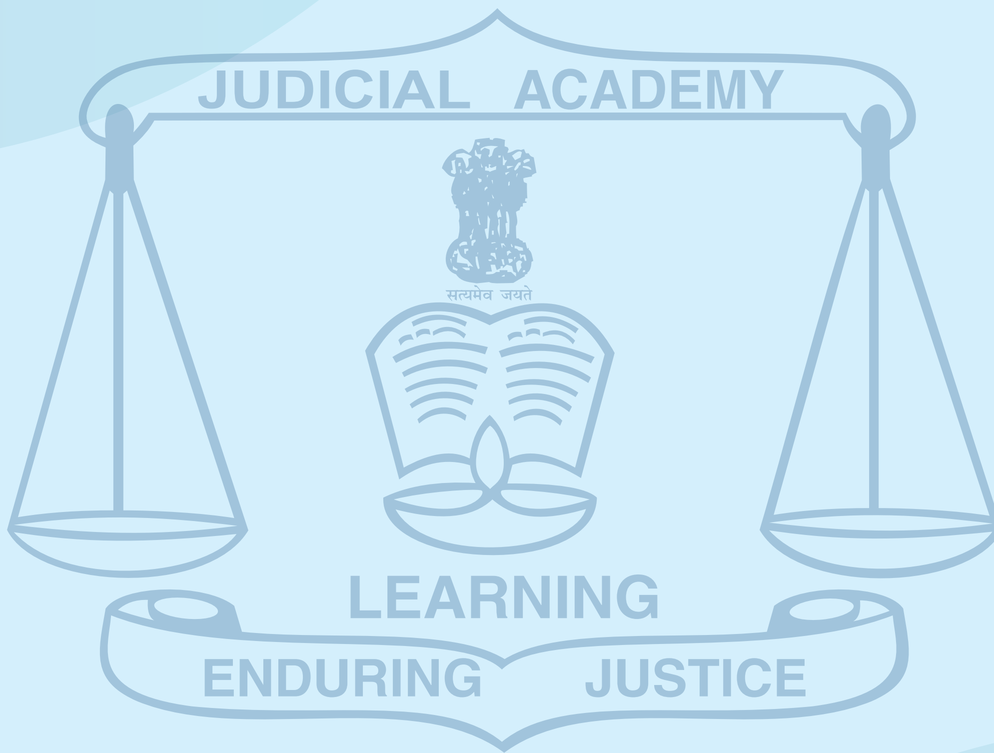

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