

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4616 of 2011

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1. M/S Himalaya Agro Chemicals Private Ltd. Unit-2, N.H.-31, Bye Pass Road, Po.S. Sadar, Distt-Purnea, through its Director Kumar Krishna Prakash , S/O Sri Onkar Mal Agrawal, R/O Unit-2, N.H.31, Bye Pass Road, P.S.Sadar, Distt-Purnea

2. Kumar Krishna Prakash, S/O Shri Onkar Mal Agrawal, R/O Unit-2, N.H.-31, Bye Pass Road, P.S.Sadar, Distt-Purnea

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Old Secretariat, Patna

2. The Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Patna

3. The Collector -Cum-District Magistrate, Purnea

4. The Additional Collector, Purnea

5. The Certificate Officer-Cum-Assistant Commissioner of Commercial Taxes, Purnea Circle, Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sumit Kumar Jha

For the Respondent/s : Mr. Harishankar Roy, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 30-06-2015 Heard the parties.

The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the notice dated 30.11.2010 (Annexure-5) issued in Certificate Case No.06 of 2007-08 by the Certificate Officer-cum-Assistant Commissioner, Commercial Taxes, Purnia Circle, Purnia asking them to show cause as to why the order of attachment of movable and immovable property be not issued and further as to why warrant of arrest be not issued against them on account of non-payment of the arrears of amount despite repeated reminders.

Learned counsel appearing on behalf of the petitioners submits that though a requisition was made against the petitioners



for recovery of public demand giving rise to Certificate Case No.06 of 2007-08, whereafter on receipt of notice in terms of Section 7 of the Bihar and Orissa Public Demand Recovery Act 1914 (in short PDR Act), the petitioners filed objection under Section 9 of the PDR Act, but without deciding the aforesaid objection filed on their behalf final order has been passed. It is contended that, since the objection filed under Section 9 of the PDR Act was not finally decided, therefore, consequential action taken by the respondent authorities are not sustainable in law and on that ground alone the impugned notice, as contained in Annexure-5 and consequential action taken are fit to be set aside by this Court.

The matter has been contested by the respondents by filing a counter affidavit on behalf of the respondent nos.2 and 5. In the aforesaid counter affidavit, it has been asserted that the objection filed under Section 9 of the PDR Act on behalf of the petitioners was considered and was finally disposed of by the order dated 26.02.2011. It has further been asserted that, despite the final order passed in the aforesaid certificate case, the amount is not being deposited by the petitioners. Therefore, the impugned notice was issued asking the petitioners to show cause as to why their property be not attached and warrant of arrest be not issued against them for execution of the order passed in the aforesaid certificate case.

Learned State counsel appearing on behalf of the respondents, in view of oral observations made by this Court on earlier occasion, has produced the original record of aforesaid Certificate Case No.06 of 2007-08 for perusal of the Court. He submits that, in fact, the objection filed under Section 9 of the



PDR Act was considered and finally decided and thereafter final order under Section 10 of the PDR Act was passed on 18.06.2011. It is contended by the learned State counsel that the final order passed under Section 10 of the PDR Act is appealable in terms of Section 60 and revisable under Section 62 of the PDR Act before the prescribed appellate authority and prescribed revisional authority, but the petitioners have not challenged the aforesaid final order passed under Section 10 of the PDR Act before the prescribed Appellate and Revisional Authority or in the present proceeding and instead have questioned the validity and correctness of the notice dated 30.11.2010 (Annexure-5). Therefore, according to him, the present writ petition is not maintainable and is fit to be dismissed by this Court.

After having heard the parties and on consideration of the materials available on the record, this Court finds that the contention raised on behalf of the petitioners that the impugned notice, as contained in Annexure-5, was issued without deciding the objection filed on their behalf under Section 9 of the PDR Act is completely misconceived and untenable. In fact, the objection filed on behalf of the petitioners under Section 9 of the PDR Act was considered and finally decided by the respondent Certificate Officer and thereafter the final order under Section 10 of the PDR Act was also passed. But for the reasons best known to the petitioners they have neither challenged the aforesaid final order nor they have filed any appeal and/or revision before the prescribed appellate and revisional authority against the final order passed by the respondent Certificate Officer.

In above view of the matter, this Court is of the opinion that the present writ petition filed on behalf of the petitioners is

completely misconceived and is accordingly dismissed. However, the petitioners, if so advised, shall be at liberty to file an appeal/revision before the prescribed appellate/revisional authority in terms of Section 60 and 62 of the PDR Act.

If such an appeal is filed on behalf of the petitioners against the final order, then the same shall be considered on its own merits without being prejudiced by the rejection of the present writ petition.

The interim order of stay dated 29.03.2011 passed by a Bench of this Court stands vacated. The original record of the Certificate Case No.6 of 2007-08 produced by the learned State counsel is returned to him for taking follow up action in the matter.

(Birendra Prasad Verma, J)

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