

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1418 of 2013

=====

Tarachand Agarwal @ Tarachand Dhanuk S/o Late Rameshwar Lal Dhanuka
resident of Dukbangla Road, P.O & P.S- Thakurganj, District- Kishanganj(Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Kishanganj, District- Kishanganj (Bihar)
3. The Superintendent of Police, Kishanganj, District- Kishanganj, (Bihar)
4. The District Certificate Officer, Kishanganj, District- Kishanganj, (Bihar)
5. Sergeant Major, Police Centre, Kishanganj, District- Kishanganj, (Bihar)

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Advocate
Mr. Raju Giri, Advocate
For the Respondent/s : Mr. Kinkar Kumar, SC-27

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 30-11-2015

Heard Mr. Y.V. Giri, learned senior counsel appearing for
the petitioner and Mr. Kinkar Kumar, Standing Counsel-27 for the
State.

The petitioner is aggrieved by the initiation of certificate
proceedings bearing Certificate Case No. 5 of 2011-12 including the
order dated 10.9.2012 passed by the District Certificate Officer,
Kishanganj, a copy of which is present at Annexure-3 to the writ
petition whereby the objection filed by the petitioner under Section 9
of the Bihar and Orissa Public Demands Recovery Act, 1914
(hereinafter referred to as the 'Act'), has been rejected and directions
have been issued for taking follow-up action for recovery of the
requisition amount.



Fact of the case briefly stated is that the petitioner was provided with a Body Guard by the respondent State at the cost payable by the petitioner. The providing of facility of a Body Guard is not in dispute nor the petitioner disputes in availing the facility thereof. What is being disputed is that even if the order to such effect was passed by the authorities but the petitioner neither accepted to make payment thereof nor there is any such agreement in between the parties.

Mr. Giri, learned senior counsel appearing on behalf of the petitioner submits that in absence of any agreement in between the parties i.e. the petitioner and the State regarding availing of the facility of the Body Guard upon payment and unless such agreement contains stipulations that any amount found arrears on account of such would be recovered as arrears of land revenue, the respondents cannot take recourse to the summary proceedings under the 'Act' for recovery of the dues whatsoever. The fact remains that proceeding was initiated at the instance of the Sergeant Major who filed a certificate case in the court of District Certificate Officer, Kishanganj praying for recovery of an amount of Rs. 1,91,505/- stated to be the amount payable towards providing of facility of a Body Guard to the petitioner. Fact also remains that the objection was filed by the petitioner responding to notice under Section 7 of the 'Act' and which has been rejected and hence this writ petition. Although a forum of



appeal is provided under Section 60 of the 'Act' but Mr. Giri questioning the very initiation of the proceeding submits that since the certificate proceeding itself is without jurisdiction hence the petitioner may not be relegated to the statutory remedies before the statutory authorities. He submits that there is complete absence of agreement or any written instrument which would demonstrate that the petitioner is a signatory to any agreement regarding payment of the cost of the Body Guard or that such cost would be recovered as arrears of land revenue. Mr. Giri has also referred to the definition of 'Public Demand' found in Section 3(6) of the 'Act' as well as to the Schedule 1 appended to the 'Act' to submit that the demands so raised does not fall within the definition of a 'Public Demand'.

Mr. Kinkar Kumar has contested the argument relying upon proceedings present at Annexure-A series and B series to submit that even when the facility of Body Guard was provided to the petitioner such facility was only conditional upon payment of cost and at the instance of beneficiary. He thus submits that the petitioner cannot retract from his obligation and it is on his refusal to do so that the certificate proceeding was initiated.

I have heard learned counsel for the parties and I have perused the materials on record.

The argument of Mr. Giri regarding absence of any agreement in between the parties to the effect that the facility of Body

Guard would be conditional upon payment of cost goes uncontested. Although an order to such effect that the facility extended is upon payment of cost does exist but such order has not been translated into any kind of agreement in between the parties casting an obligation on the petitioner not only to make payment thereof but also that any arrears arising therefrom would be recoverable as arrears of land revenue under the 'Act'. Law is well settled and unless the demands so raised falls within the definition of a 'Public Demand' as provided under Section 3(6) of the 'Act' and/or there is any agreement in between the parties, by a written instrument which inter alia provides that any sum found due would be recovered as arrears of land revenue under the 'Act' the party complaining cannot take recourse to the summary proceedings provided under the 'Act' for recovery of the amount. On this limited score the entire proceedings arising from Certificate Case No. 5 of 2011-12 including the order dated 10.9.2012 impugned at Annexure-3 passed by the District Certificate Officer, Kishanganj cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

U			
---	--	--	--