

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6383 of 2011

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Aaditya Kumar Issar son of Ram Ballav Issar, Resident of Village- Gudhama, P.S- Sarairanjan, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land and Revenue, Government of Bihar, Patna.
2. The District Collector, Samastipur.
3. The Special Officer Cum Sub Divisional Officer, Agriculture Produce Market Committee, Samastipur.
4. The Circel Officer, Sarairanjan, Samastipur.
5. The District Certificate Officer, Samastipur.
6. Shiv Narayan Sah son of Late Lallan Sah, Resident of Village- Dwarikapur, P.S- Sarairanjan, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Ranjan
Mr. Pankaj Kumar

For the Respondent/s : Mr. Sanjay Prakash Verma, AC to GA-1

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 08-07-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the orders dated 06.05.2010 as also 05.06.2010 passed in Certificate Case No. 18 of 2009 by the respondent No. 5, whereby distress warrant as also the order of attachment have been issued against the certificate debtor i.e. the petitioner. The petitioner has further prayed that a direction may be issued to the respondent District Certificate Officer, Samastipur to decide the aforesaid certificate case in accordance with law.

3. Learned counsel appearing on behalf of the petitioner submits that after filing the certificate in the office of respondent no.5 in terms of Section 6 of the Bihar & Orissa Public Demands Recovery



Act, 1914 (In short “PDR Act”) giving rise to certificate Case No. 18 of 2009, a notice was issued to the petitioner along with copy of the certificate so filed. According to him, on receipt of the aforesaid notice the petitioner filed his objection under Section 9 of the P.D.R. Act denying his liability and prayed for dropping of the aforesaid certificate case, yet without deciding the aforesaid objection filed on behalf of the petitioner, by impugned order dated 06.05.2010 distress warrant was issued against him and by the impugned order dated 05.06.2010 order of attachment was issued. It is pleaded that the action of the respondent no.5 either for issuing distress warrant or passing order of attachment without deciding the objection filed on behalf of the petitioner is contrary to the P.D.R. Act and is fit to be set aside by this Court. The order-sheet of the aforesaid Certificate Case No. 18 of 2009 has been brought on the record as Annexure-6 to the writ petition.

4. A counter-affidavit has been filed on behalf of the respondent no.3 to 5 contesting the claims raised on behalf of the petitioner. In compliance of the oral direction of this Court, learned State counsel has produced the original record of Certificate Case No. 18 of 2009 for perusal of this Court. Learned State counsel, by referring to the orders passed in the aforesaid certificate case, submits that, in fact, objection filed by the petitioner under Section 9 of the P.D.R. Act was finally disposed of by order dated 05.02.2011. Therefore, according to him, the petitioner, if so aggrieved, may challenge the same in an appeal or revision as provided under Sections 60 and 62 of the P.D.R. Act. But, on account of availability of alternative remedy, the writ petition is liable to be dismissed.

5. After having heard the parties and on perusal of the record of Certificate Case No. 18 of 2009, this Court finds that a



certificate was filed in the court of respondent no. 5 on 14.02.2009 for recovery of Rs. 58,065/- from the petitioner, being the certificate debtor. By aforesaid order dated 14.02.2009, the respondent no. 5 directed for issuance of a notice under Section 7 of the P.D.R. Act. In response to the aforesaid notice, the petitioner appeared before the respondent Certificate Officer and filed his objection on 04.05.2009 denying his liability. Thereafter, the matter was adjourned on different dates, but the objection filed on behalf of the petitioner under Section 9 of the P.D.R. Act was not disposed of, yet by order dated 06.05.2010, when the petitioner was represented and had filed his attendance, though the matter was adjourned for 05.06.2010 awaiting reply from the requisitioner, in a most mechanical manner distress warrant was ordered to be issued. In a similar fashion by order dated 05.06.2010 order of attachment was issued against the petitioner. Subsequent to the impugned orders dated 06.05.2010 and 05.06.2010 the objection filed on behalf of the petitioner under Section 9 of the P.D.R. Act has been rejected in a most mechanical and arbitrary manner. None of the points raised on behalf of the petitioner have been considered and decided by the Certificate Officer. By a cryptic order dated 05.02.2011 the objection filed on behalf of the petitioner under Section 9 of the P.D.R. Act has been rejected. Apparently, the distress warrant and order of attachment against the petitioner were issued prior to passing of the aforesaid order dated 05.02.2011.

6. In above view of the matter, in the considered opinion of this Court, the impugned orders dated 06.05.2010, 05.06.2010 as also final order dated 05.02.2011 passed by the respondent no. 5 in the aforesaid Certificate Case No. 18 of 2009 cannot be sustained in law. Accordingly, all the aforesaid three orders are hereby set aside and quashed. The entire matter is remitted back to the respondent District

Certificate Officer, Samastipur (respondent no.5) for proceeding in the aforesaid certificate case afresh from the stage of Section 9 of the P.D.R. Act.

7. In order to facilitate the early disposal of aforesaid Certificate Case No. 18 of 2009, the petitioner is hereby directed to appear before the respondent District Certificate Officer, Samastipur (respondent No. 5) with a certified copy of the present order on or before 7th August 2015. Whereafter a firm date shall be fixed by him for proceeding in the matter afresh from that stage. The petitioner shall be obliged to appear on the date(s) fixed by the respondent District Certificate Officer, Samastipur and shall further be obliged to cooperate for early disposal of the aforesaid certificate proceeding.

8. The writ petition stands allowed to the extent indicated above. However, the parties are left to bear their own costs.

9. The original record of Certificate Case No.18 of 2009 is being returned to the learned State counsel for transmitting the same to the respondent no.5 for disposing of the matter afresh as per direction of this Court.

(Birendra Prasad Verma, J)

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