IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8276 of 2015

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M/s Sharda Chitra Mandir having its place of business at Swami Vivekanand Road, P.S.- Adampur District- Bhagalpur through its proprietor Virendra Kumar Singh Son of late Surendra Prasad Singh Resident of Naya Bazar P.S.- Tetarpur District- Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Dy. Commissioner of Commercial Taxes, In-charge, Bhagalpur Circle, Bhagalpur.
5. The Commercial Tax Officer, Bhagalpur Circle, Bhagalpur.
6. The Certificate Officer, Bhagalpur.
7. The District Magistrate, Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner : Ms. Sushmita Mishra, Advocate
Mr. Surya Narayan Sah, Advocate

For the Respondents : Mr. H.C.Roy, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-08-2015

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present petition has been filed for quashing the Memo No. 177 dated 09.05.2015 issued by the Certificate Officer, Bhagalpur whereby and whereunder the immovable property of the petitioner has been attached and further directed that the construction and any work related thereto on the land of the petitioner shall stand restrained with immediate effect.

3. Learned counsel for the petitioner submits that the impugned order dated 09.05.2015 erroneously enumerates the details of as many as five Certificate Cases said to be pending against the petitioner, whereas three of them being Certificate Case Nos. 05/2001-02, No. 16/2007-08 and No. 02/2009-10 have since been dropped in terms of orders dated 28.02.2007/12.03.2007, 10.03.2010 and 19.02.2010 as evident from copies of the relevant orders enclosed as Annexure-4 series forming part of rejoinder to the counter affidavit. With regard to the remaining two certificate cases being Certificate Case No. 01/1998-99 and Certificate Case No. 03/1998-99, it is submitted that the direction given in the impugned memo dated 09.05.2015 is wholly illegal in view of the provisions of Section 14 of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as 'the Act') inasmuch as the petitioner's objection petition in terms of Section 9 of the said Act continues to remain pending before the Certificate Officer.

4. Learned counsel for the respondents appears and opposes the writ petition on the ground that the petitioner has defaulted in payment of its due taxes which are liable to be recovered under the Act.

5. This Court finds considerable force in the submission of

learned counsel for the petitioner. The aforesaid orders dated 28.02.2007/12.03.2007, 10.03.2010 and 19.02.2010 reveal that the concerned Certificate Cases bearing Certificate Case No. 05/2001-02, No. 16/2007-08 and No. 02/2009-10 have been dropped and thus no recovery thereunder is possible until fresh proceedings for recovery of the amounts thereunder are initiated by the Certificate Officer.

6. As regards Certificate Case No. 01/1998-99 and Certificate Case No. 03/1998-99, the claim of the petitioner that an objection petition under Section 9 of the Act is pending before the Certificate Officer has not been disputed in the counter affidavits filed on behalf of the respondents. A plain reading of Section 14 clearly shows that so long as the objection petition under Section 9 is pending, there is a bar against executing the certificate.

7. The relevant extract from Section 14 of the Act is reproduced hereunder:-

> *"14. When certificate may be executed - No step in execution of a certificate shall be taken until the period of thirty days ha elapsed since the date of 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 ……."*

8. In the above view of the matter, therefore, the impugned memo No. 177 dated 09.05.2015 issued by the Certificate Officer, Bhagalpur insofar as it directs attachment of the immovable property of the petitioner and prohibits construction and other related work upon the said property is hereby set aside. It is made clear that the Certificate Officer shall be at liberty to take steps for realization of any dues that may be recoverable from the petitioner after following the procedure in accordance with law.

9. The writ petition stands allowed.

(Vikash Jain, J)

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