IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10155 of 2013

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1. M/S Tata It (Bricks) Udyog Prop. Lalan Singh S/O Mudrika Singh R/O Village- Kazisarai, P.O. & P.S.- Kako, District- Jahanabad (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar Through Commissioner Of Commercial Tax Bihar, New Secretariat, Patna
2. The Assistant Commissioner of Commercial Taxes, Jehanabad Circle, Jehanabad
3. The Certificate Officer, Jehanabad, District- Jehanabad

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Krishna Mohan Mishra
For the Respondent/s : Mr. Anshuman Singh, A.C. to PAAG-1

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 18-03-2017 Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner seeks quashing of the certificate as well as whole of the proceeding initiated under the Bihar and Orrisa Public Demand Recovery Act by the Certificate Officer, Jehanabad, Certificate Case No. 37 of 2011-12 including notice under the Act dated 04.01.2012 whereby the petitioner has been directed to pay whole of the demand of Rs. 20,24,280/- during the pendency of revision petition before the Commissioner.

3. Learned counsel for the petitioner submits that the present notice under Section 7 of the PDR Act has been issued without compliance of the statutory provisions and, therefore, there is no proceeding in the eye of law. Furthermore, the

issuance of the warrant against the petitioner is wholly illegal as the Certificate Officer is required to proceed in accordance with the law under Section 4 and, thereafter, only the other legal consequence of such a proceeding can follow. He further submits that the distress warrant issued against the petitioner is wholly illegal and arbitrary and the same being contrary to the statutory provisions stands, wholly vitiated.

4. Having heard learned counsel for the State, it appears from the counter affidavit filed by the Respondents that they have addressed themselves wholly to the issue as to whether the amounts were due to the petitioner or not by way of realization of VAT dues. Furthermore, they have averred that the assessment order is also under challenge before the Revisional Authority. In the said case, till date, the matter has not been adjudicated and, therefore, the demand as filed before the Certificate Officer still survives.

5. Learned counsel for the petitioner submits, that be that as it may, the present proceeding against the petitioner under the PDR Act stands vitiated for non-compliance of the statutory provisions, inasmuch as that the ordersheet entry and the notice issued under Section 7 of the Bihar and Orrisa Public Demand Recovery Act indicate that the Notice dated 01.01.2012 was

served on the petitioner on 06.11.2012, but strangely enough the warrant against the petitioner was issued wayback on 03.03.2012 itself. Such an action clearly shows that the proceeding is bad in law as the procedure prescribed has not been complied with in the instant case. A perusal of Section 4 of the P.D.R. Act clearly reveals the non-compliance of statutory provisions, which reads as follows:-

> "4. **Filing of certificate for public demand payable to Collector**.-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."

6. Having noticed the rival contentions and there being no answer to the ordersheet which stands annexed with present application, I find that the notice as well as the warrant issued under the Bihar and Orrisa Public Demand Recovery Act as against the petitioner is wholly illegal and arbitrary and contrary to the statutory provisions and thus, stands vitiated. The impugned Notice dated 01.01.2012 and the warrant dated 30.03.2012 are set aside and quashed.

7. Accordingly, the writ application is allowed to the extent that the proceeding under the Bihar and Orrisa Public Demand Recovery Act stands vitiated.

8. It shall, however, be open to the respondent-State to

pursue the matter and raise this demand before the appropriate authority in accordance with law.

9. It is made clear that this Court has not gone into the merits of the claims of the Respondents so far as the realization of the VAT dues is concerned.

10. The writ application thus stands allowed.

(Anjana Mishra, J)

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