

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1519 of 2016

In
Civil Writ Jurisdiction Case No.17326 of 2015

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Ram Vinay Prasad, Son of Sri Ayodhya Prasad, Proprietor of M/s Vishwakarma, Oil Rice and Chura Mill, Puran Chapra, P.O. Puran Chapra, P.S. Chakiya, District - East Champaran, Motihari

... .. Appellant/s

Versus

1. The State of Bihar
2. District Certificate Officer, Sitamarhi
3. Bihar State Food & Civil Supplies Corporation Ltd. through the District Manager, Sitamarhi

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sumeet Kumar Singh, Advocate
		Mr. Abhiprav Singh, Advocate
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-10-2017

Seeking exception to an order dated 24.06.2016 passed by the learned Writ Court in C.W.J.C. No. 17326 of 2015 this appeal has been filed under Clause 10 of the Letters Patent.

In the matter of contract entered into between the appellant and Respondent No. 3 Corporation certain dispute arose and the matter went before the statutory authority under the Bihar and Orissa Public Demands Recovery Act, 1914. In Certification Case No. 21 of 2014-15 a certificate of recovery was issued to the tune of Rs. 37,89,816.62 paisa. Challenging



the recovery, the writ petition in question was filed and in the writ petition certain objections were raised with regard to mentioning of a title “Pandey” in the body of the certificate.

The learned Writ Court found that this could be a typographical error and on such hyper technical issue the certificate cannot be quashed and, therefore, dismissed the writ petition.

However, while arguing the matter in appeal before us on 26.07.2017 based on a judgment in the case of **Budha Singh Vs. The State of Bihar and Ors.- AIR 1981 Pat 149** and **Nageshwar Prasad Singh Vs. Rai Bahadur Kashinath Singh- 1958 BLJR 820** a legal question was raised before us to say that in a dispute pertaining to execution of an agreement without there being adjudication of the disputed claim in accordance with law before a proper and competent authority the certification proceeding and recovery by issuance of a certificate was not proper.

Taking note of the aforesaid legal provision we issued notice to the corporation and stayed the recovery in question. Today again learned counsel for the appellant relies on the judgment rendered in the case of **Budha Singh** and **Nageshwar Prasad Singh** (supra) and argues that this Court



under similar circumstances in L.P.A. No. 1373 of 2017 on 10.10.2017 has quashed identical certificate on the ground that without adjudication of the amount the certification proceedings cannot proceed and the matter was remanded back to the Certification Officer for reconsideration.

Even though learned counsel appearing for the Corporation vehemently opposed the aforesaid prayer by contending that neither before the Certification Officer nor before the Writ Court such an objection was raised, we are of the considered view that as this is a question of law with regard to jurisdiction of the Certification Officer in exercising jurisdiction and issuing a certificate without there being adjudication of the disputed claim, we cannot deny permission to raise this issue. In the case of **Nageshwar Prasad Singh** (supra) the matter has been dealt with by the Division Bench in the following manner :-

“The Certificate-Officer must meticulously apply his mind to filling the certificate and filling in the columns and blanks correctly and in appending his certificate in the form prescribed, and that the filling in of the forms is a matter of substance and is imperative, to give the certificate the force of a decree of court of law, and if it is found that the Certificate Officer had not applied his mind at all



and that some of the blank spaces were not filled up, or were incorrectly filled up, the document so prepared and filed is not a certificate under the Public Demands Recovery Act. The certificate proceedings are wholly invalid and the officer concerned acts without jurisdiction.”

and thereafter following the aforesaid and the law laid down in the case of **Budha Singh** (supra) this Court on 10.10.2017 has dealt with the issue in the following manner:

“That apart, it is well settled principle of law that certification proceedings are only execution proceedings of per-determined and adjudicated amount and if there being no adjudication of the amount, the certification proceedings cannot proceed. In this regard attention may be invited to the judgment of the Apex Court in the case of **Budha Singh Vs. The State of Bihar & Ors: AIR 1981 Pat. 149**. That being so, the writ petitioner having raised serious dispute with regard to entitlement of the respondents to recover the amount and there being no any prior adjudication of the disputed amount, the Certification Officer having not adverted or considered these aspects of the matter in the light of the principles of law as discussed above particularly in the case of **Budha Singh** (supra), we have no hesitation in allowing the appeal



quashing the order passed by the Certification Officer and remanding the matter back to the Certification Officer to decide all the questions as indicated hereinabove afresh in accordance with law.”

and allowed similar petition, quashed the certification proceedings and remanded back the matter to the Certification Officer for deciding the issue afresh.

We see no reason to take a different view now. Accordingly, we allow this appeal, quash the order passed by the Certification Officer and remand the matter back to the Certification Officer to proceed in accordance with law and decide all questions within a period of 60 days. The appellant shall appear before the Certification Officer along with a certified copy of this order and file all such objections as may be permissible by on or before 23rd of November, 2017.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.11.2017
Transmission Date	

