

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2116 of 2015

In

Civil Writ Jurisdiction Case No.8683 of 2015

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M/s Maa Sita Rice Mill, Ajgeba, Sour Bazar, District - Saharsa, through its
Proprietor Mukund Kumar S/o Shri Pawan Prasad Yadav R/o Village Ajgeba,
P.S. Sour Bazar, District Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, New Secretariat, Patna.
2. The Bihar State Food and Civil Supplies Corporation Limited, Patna.
3. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Patna.
4. The District Manager, State Food Corporation, Saharsa.
5. The Managing Director, Food Corporation of India, Exhibition Road, Patna.
6. The District Magistrate, Saharsa.
7. The District Certificate Officer-cum-Senior Deputy Collector, Saharsa.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Surendra Kumar Singh, Advocate Mr., Avinash Shekhar, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

2 14-09-2017 The impugned order is dated 11.08.2015 passed by the
learned single Judge in C.W.J.C. No. 8683 of 2015.

Keeping in mind what a Division Bench has recently to say
in such a proceeding, a case is made out for interference with
the order of the learned single Judge.

The Division Bench while considering an identical matter,
Letters Patent Appeal No. 1132 of 2017 (Gayatri Devi Vs. The
State of Bihar and Others), has expressed its opinion as under :



“4. Be it as it may be, the respondent Bihar State Food and Civil Supplies Corporation in the meanwhile initiated certification proceedings under the Bihar and Orissa Public Demand Recovery Act, 1914 and in Certificate Case No. 65 of 2014-15 by an order passed on 17.03.2016, the certificate case of the respondent Corporation was allowed and challenging the order passed in the certificate case, the writ petition in question was filed.

5. The grievance of the appellant in the writ petition challenging the certification proceedings was that the amount in question is disputed. Until and unless the quantification of the amount is not undertaken by resolving the dispute or adjudicating the dispute in accordance to law by an appropriate forum, may be a civil suit or a common law remedy available, the certification proceedings was not maintainable and the learned Writ Court in the present case having not adverted to consider this question of law, learned counsel argues that in relegating the appellant to take recourse to the statutory remedy available under the Act was unsustainable. He invites our attention to a judgment of the Patna High Court in the case of Budha Singh Vs. The State of Bihar and Ors.- A.I.R. 1981 Pat 149 to say that until and unless the amount in dispute is not adjudicated, the certification proceedings are not maintainable.

6. Even though learned counsel for the respondents refuted the aforesaid contention, we are of the considered view that while relegating the appellant to take recourse to the statutory alternate remedy available, the learned Writ Court has not considered the question as to whether the amount in question is a disputed amount or a non-disputed amount, whether the certification proceedings was maintainable without adjudication of the dispute and whether the Corporation was liable to recover the amount without resorting to any adjudicatory proceedings treating the amount to be an admitted amount beyond the realm of a disputed amount. This aspect of the matter having not been adverted to by the learned Writ Court, it is a fit case where this appeal should be allowed and the writ petition remanded back for reconsideration in accordance with law.”

Keeping in view the said position in law, the impugned



order dated 11.08.2015 is set aside. The order passed in Certificate Case No.14/14-15 issuing a distress warrant, which is order dated 21.04.2015, or any other distress warrant issued thereafter stand quashed. Matter is remitted back to the learned single Judge to decide the case afresh keeping in mind the law laid down by the Division Bench.

Appeal is allowed in terms of the above.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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