

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.23952 of 2013**

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Gopal Prasad Sah @ Gopal Kumar Sah S/O Kamla Prasad Sah Resident Of
Village- Batarvadi, P.O- Pategana, P.S- Taravari, District- Araria.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Deputy Development Commissioner- Cum- Chief Executive Officer,
Araria
3. The District Certificate Officer, Araria.
4. The Sub- Divisional Officer, Araria, District- Araria.
5. The Marketing Officer, Araria, District- Araria.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. RAVINDRA NATH DUBEY,ADV

For the Respondent/s : Mrs. Anuradha Singh, SC 21

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-08-2018

The present writ petition has been filed for quashing the notice dated 12.08.2013 issued under the signature of Respondent No. 3 by which the respondent no. 3 demanded price of rice from the petitioner.

2. Learned counsel for the petitioner invites reference to the order dated 14.10.2011 passed by this Court in CWJC No. 15856 of 2011 (Gopal Prasad Sah @ Gopal Kr. Sah vs. The State of Bihar and Ors.) (Annexure-3) which was disposed of in the following terms—

“As the facts and issues are common, the order dated 06.07.2011 passed in CWJC No. 711 of 2011 and CWJC No. 757 of 2011 would also govern in these writ applications as



well. The writ application is accordingly disposed of in terms of the order dated 06.07.2011 passed in CWJC No. 711 of 201 and CWJC No. 757 of 2011 including interim protection as mentioned therein, with the condition that the petitioner would either deposit 15% of the value of undistributed rice at Rs.10 per Kg. or the rice itself in present form within ten weeks from today.

This order would not come in the way of petitioner, if he wants to deposit the value of rice or rice itself in excess of 15%.”

3. It becomes relevant also to take note of the observations of this Court in CWJC No. 711 of 2011 (Awadh Prasad Singh vs. The State of Bihar and Ors.) and analogous case disposed of on 06.07.2011 (Annexure-4) in the following terms—

“Learned counsel for the petitioner submits that quite a number of similar cases came up for consideration before this Court. In one such case, namely, CWJC No. 16366 of 2009 (Satyadeo Rai vs. The State of Bihar & Ors.) a learned Single Judge by order dated 28.02.2011 disposed of the case noticing that no adequate opportunity has been given to the petitioner thereof before issuance of the impugned memo demanding refund of the price of balance undistributed rice at the APL rate of Rs. 13.10 per Kg. The learned Judge observed that the impugned memo of demand be treated as a show cause to which the petitioner would be entitled to file a detailed reply and thereafter the authorities concerned would dispose of the application/representation of the writ petitioner in



accordance with law.

As the facts of these cases are similar, I do propose to pass order in the aforesaid term. The impugned demand as contained in Annexure-1 to these writ petitions would be treated as a show cause notice. The petitioners would file their reply before the concerned Sub-Divisional Officer or the officer issuing the demand memo along with a copy of this order within six weeks from today, who in turn would consider the submissions of the petitioners and pass final order within three months thereof. In the meanwhile, no coercive steps would be taken against the petitioners. In case no representation is filed by the petitioners before the Sub-Divisional Officer or the officer concerned within six weeks from today, the latter would be at liberty to pass appropriate order. In such cases the interim order would be limited to six weeks from today."

4. Learned counsel for the petitioner submits that pursuant to order of this Court dated 14.10.2011 passed in his case (Annexure-3) the petitioner has deposited an amount of Rs. 30,000/- on 24.10.2011, but no order has been passed by the respondents thereafter and instead the instant recovery proceedings have been initiated.

5. Learned counsel for the respondents refers to para 11 of the counter affidavit to submit that no doubt the petitioner deposited Rs. 30,000/- as claimed, but no show cause/representation was filed before the Deputy Development Commissioner-cum-Chief Executive



Officer, Araria as directed by this Court.

6. Having heard the parties and on consideration of the materials on record, this Court finds substance in the submission of learned counsel for the petitioner. It appears from the notice dated 29.07.2011 (Annexure-2) that the petitioner was required to make payment in respect of 200 quintals of undistributed rice. This Court in its order dated 14.10.2011 directed the petitioner to deposit 15% of the value of the undistributed rice at Rs. 10.00 per kg. or the rice itself. It is not in dispute that the petitioner has deposited Rs. 30,000/- on 24.11.2011 which works out to the requisite 15% of 200 quintals of rice at Rs. 10.00 per kg. The respondents have however, failed to bring on record any order passed by them which was required even in the event of failure of the petitioner to file representation as directed in CWJC No. 711 of 2011. It is therefore, difficult to sustain the Certificate proceeding in absence of any prior order as contemplated to be passed by the respondents in terms of the order of this Court.

7. The impugned notice dated 12.08.2013 issued under Section 7 of the PDR Act is quashed as also the entire certificate proceeding in Certificate Case No. 01 of 2013-14 with liberty to the respondents to pass appropriate orders in terms of this Court's order dated 14.10.2011 passed in CWJC No. 15856 of 2011 and dated 06.07.2011



passed in CWJC No. 711 of 2011 as regards to the petitioner prior to initiating fresh certificate proceedings, if necessary.

8. The writ petition stands allowed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2018
Transmission Date	NA

