

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13065 of 2013

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Ashit Kumar Son Of Sri Ramdevii Rai Resident Of Magardahi, Ward No. 24/22,
P.S.- Samastipur, District Samastipur

.... Petitioner

Versus

1. The State Of Bihar Through The District Magistrate, Samastipur
2. District Magistrate, Samastipur
3. Additional Collector, Samastipur
4. Sub Divisional Officer, Samastipur
5. Certificate Officer, Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjeet Kumar, Advocate.

For the Respondents : Mr. Avnish Nandan Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 28-08-2018

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

2. The present writ petition has been filed for quashing
the order dated 07.03.2013 passed in Certificate Case No. 01/2005-06
by Certificate Officer, Samastipur by which the objection filed by the
petitioner under Section 9 of the Bihar and Orissa Public Demand
Recovery Act, 1914 (for short, "PDR Act") has been rejected; and for
connected reliefs.

3. Learned counsel for the petitioner questions the
validity and legality of the subject certificate proceedings on several
counts as follows –



(i) The requisition issued under Section 5 of the PDR Act has not been verified in the manner prescribed, nor dated, which are mandatory requirements under the PDR Act.

(ii) The demand raised against the petitioner in the certificate proceedings was time barred and hence, no certificate could have been filed.

(iii) The Certificate Officer could not have proceeded against the petitioner in absence of any written agreement and the petitioner had not consented for recovery of the demand through the certificate proceedings under the PDR Act.

(iv) A copy of the certificate was not enclosed with the statutory notice issued under Section 7 of the PDR Act, which was a mandatory requirement of the Act and failure in this regard vitiated the entire proceeding.

4. Learned counsel for the respondents appears and has been heard. No counter affidavit has however been filed.

5. Having heard learned counsel for the parties and on careful consideration of the materials available record, this Court finds merit in the writ petition. A bare perusal of the requisition discloses that the same is neither dated nor has been verified.

6. It has been held by this Court in *Hari Prasad Agrawal Vs. State of Bihar* reported in 1975 BBCJ 723 and also in *M/s Vishnu Sugar Mills Limited Vs. The State of Bihar & others* reported in 2015(1)



PLJR 863 that the entire certificate proceeding is rendered without jurisdiction for want of proper requisition and certificate.

7. The petitioner has further specifically pleaded that the certificate proceedings are time barred, and that even otherwise there is no written agreement between the petitioner and the respondents for recovery of the dues under the PDR Act. It has also been stated that a copy of the certificate was not enclosed with the notice under Section 7 of the Act and the certificate proceeding is invalidated on this count as well. None of these aspects has been controverted by the respondents in absence of a counter affidavit being filed.

8. In the above circumstances, the certificate proceeding initiated against the petitioner in connection with Certificate Case No. 01/2005-06 in the court of the Certificate Officer, Samastipur, (respondent no. 5) is hereby quashed. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.09.2018
Transmission Date	N.A.

