

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11094 of 2016

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Gopal Agrawal, son of Tarachand Agarwal @ Tarachand Dhanuka, resident of
Dukbangla Road, P.O. & P.S. Thakurganj, District Kishanganj (Bihar)

.... Petitioner

Versus

1. The State of Bihar.
 2. The District Magistrate, Kishanganj, District Kishanganj (Bihar).
 3. The Superintendent of Police, Kishanganj, District Kishanganj (Bihar).
 4. The District Certificate Officer, Kishanganj, District Kishanganj (Bihar).
 5. Sergeant Major, Police Centre, Kishanganj, District Kishanganj (Bihar).
- Respondents

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Appearance :

For the Petitioner : Mr. Raju Giri,
Mr. Santosh Kumar Mishra, Advocates

For the Respondents : Mr. Harish Kumar, GP 8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-04-2018

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. The present writ petition has been filed for the
following reliefs --

“(i) To issue an appropriate writ/order/direction, in the nature of Certiorari quashing the Order dated 10.09.2012 passed in Case No. 04/2011-2012 by the District Certificate Officer, Kishanganj by which objection filed by the petitioner under Section 9 of the Bihar & Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the “Act”) has been rejected and it has been held that Rs. 44,625/- (Forty Four Thousand Six Hundred Twenty Five Only) is recoverable from the petitioner as Public Demand as contained in Annexure-3.

(ii) To issue an appropriate writ/order/direction to the



Respondents not to take any coercive action against the Petitioner.

(iii) To any other relief or reliefs for which the Petitioner is found to be entitled in the facts and circumstances of the case."

3. According to the petitioner, a Body Guard was provided to him in view of the security threat to his life in the year 2003 for which there was no stipulation of payment, nor had the petitioner asked for the Body Guard. Specifically there was no written agreement between the petitioner and the respondents in this behalf much less to the effect that any payment in relation thereto would be recovered by resort to the certificate proceeding. It is therefore submitted that the recovery of Rs. 44,625/- sought to be made from the petitioner towards cost of providing Body Guard through Certificate Case No. 04 of 2011 is wholly illegal and without jurisdiction. Reliance is placed on a decision of this Court dated 30.11.2015 passed CWJC No. 1418 of 2013 in the case of *Tarachand Agarwal @ Tarachand Dhanuk*, who happens to be the father of the present petitioner. It is stated that the facts of the two cases are similar and the decision in the said case is applicable to the present set of facts as well.

4. Learned counsel for the respondents submits that the petitioner, who has approached this Court after an inordinate delay of four years in 2016 seeking quashing of the order dated 10.09.2012 passed by the District Certificate Officer, Kishanganj, does not deserve



any relief. It is further submitted that in any event, remedy by way of appeal is available to the petitioner against the impugned order.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. No doubt, the forum of appeal was available to the petitioner against the impugned order. However, if the respondent authorities have acted without jurisdiction, the availability of alternative remedy does not constitute a bar to exercise the power of writ jurisdiction by this Court. In *Tarachand Agarwal @ Tarachand Dhanuk Vs. The State of Bihar & ors.* (supra), this Court has held as follows –

“The argument of Mr. Giri regarding absence of any agreement in between the parties to the effect that the facility of Body Guard would be conditional upon payment of cost goes uncontested. Although an order to such effect that the facility extended is upon payment of cost does exist but such order has not been translated into any kind of agreement in between the parties casting an obligation on the petitioner not only to make payment thereof but also that any arrears arising therefrom would be recoverable as arrears of land revenue under the ‘Act’. Law is well settled and unless the demands so raised falls within the definition of a ‘Public Demand’ as provided under Section 3(6) of the ‘Act’ and/or there is any agreement in between the parties, by a written instrument which inter alia provides that any sum found due would be recovered as arrears of land revenue under the ‘Act’ the party



complaining cannot take recourse to the summary proceedings provided under the 'Act' for recovery of the amount. On this limited score the entire proceedings arising from Certificate Case No. 5 of 2011-12 including the order dated 10.09.2012 impugned at Annexure 3 passed by the District Certificate Officer, Kishanganj cannot be upheld and is accordingly set aside."

6. The decision in the above case is squarely applicable to the facts of the present case and it is quite apparent that the demand in question does not constitute a public demand in terms of Section 3(6) of the PDR Act and the question of taking recourse to certificate proceeding through certificate case does not arise.

7. The impugned order dated 10.09.2012 passed in Certificate Case No. 04 of 2011 is quashed. The writ petition stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
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