

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4450 of 2019

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Krishana Kant Prasad Singh Son of late Awadh Kishore Singh Resident of
Village- Khaira, P.S. Saraiya, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The Certificate Officer, Muzaffarpur
5. The Branch Manager, Bank of India, Motijheel Puja Bazar, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vipin Kumar
For the State	:	Smt.Kumari Amrita (GP3)
For the Bank	:	Mr. Binod Bihari Sinha, Adv. Mr. Ajay Dutt Mishra, Adv. Mr. Amarjeet Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 18-07-2019 Heard learned counsel for the petitioner and learned
counsel representing the bank.

The petitioner in this case is aggrieved by and dissatisfied with the order dated 22.07.2013 passed by the Commissioner, Tirhut Division, Muzaffarpur in Certificate Revision Case No.22 of 2004 by which the revision application of the petitioner has been dismissed on the ground that he had not deposited 40% of the certificate amount of Rs.3,83,264.75.

Learned counsel for the petitioner submits that earlier after the impugned order was passed by the Commissioner, the petitioner had filed an application before him for restoration



vide Misc. Case No.13 of 2014, the same was also dismissed. Being aggrieved by the said order, the petitioner had moved this Court in CWJC No.15435 of 2014, but the same was dismissed in default vide order dated 10.09.2014 and thereafter restoration application being MJC No.533 of 2015 was also dismissed for want of prosecution on 10.02.2017. Learned counsel submits that the writ application was filed by the then lawyer Mr. K.N.Diwakar, who unfortunately died after filing of the writ application. In these circumstances the delay in filing of the writ application has been explained by the petitioner and the Court being satisfied with the explanation entertains this writ application.

Petitioner has raised a short question for the purpose of setting aside the impugned order. According to him a bare reading of Section 60 and 62 of the Bihar and Orrisa Public Demand Recovery Act, 1914 (hereinafter referred to as the 'Act of 1914') it would appear that provision to deposit 40% of the amount for the purpose of filing of appeal or revision must be looked into and be appreciated on a combined reading of the proviso to both the sections. According to him the 40% amount liable to be deposited by the appellants or revisionists will be 40% of the determined amount under Section 10 of the Act of 1914. It is



submitted that in the present case there was no determination of the liability of the petitioner because at the first instance certificate proceeding was dismissed. It is only when the appeal was preferred by Bank before the Collector, Muzaffarpur, the Collector, Muzaffarpur condoned the delay in filing of the certificate case and remanded the matter to the certificate officer for fresh consideration. Learned counsel therefore submits that the petitioner being aggrieved by the order of the Collector filed a revision application but because there was no determination of his liability, he was not required to deposit 40% of the amount. It is submitted that the Commissioner has completely erred in not appreciating this aspect of the matter and dismissed the revision application on the ground that the petitioner had not deposited 40% of the amount.

Learned counsel for the bank though opposed the writ application initially but having understood the provisions of the law and the facts of the present case, has taken a stand that in the given facts and circumstances of the case the matter may be remanded to the Commissioner for fresh consideration of the revision application in accordance with law.

In the given facts and circumstances of the case, this Court finds substance in the submission of the learned counsel



for the bank. Section 60 and 62 of the Act of 1914 reads as under:-

“60. Appeal.- (1) An appeal from any original order made under this Act shall lie-

(a) if the order was made by an Assistant Collector or a Deputy Collector, or by a certificate officer not being the Collector,- to the Collector; or

(b) if the order was made by the Collector, - to the Commissioner-

Provided that no appeal shall lie from any order setting aside a sale on an application made under section 28:

[Provided further that no appeal against an order passed under section 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid forty percent of the amount determined under that section or such amount as the appellant admits to be due from him, whichever is greater.]

(2) Every such appeal must be presented, in case (a), within fifteen days, or in case (b) within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorise-

(I) any Subdivisional Officer; or

(ii) any officer appointed under clause (3) of section 3 to perform the functions of a Certificate Officer;

to exercise the appellate powers of the Collector under sub-section (1).

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority



so directs, but not otherwise.

62. Revision. - The Collector may revise any order passed by a certificate officer, Assistant Collector or Deputy Collector under this Act;

the Commissioner may revise any order passed by a Collector under this Act;

and the Board of Revenue may revise any order passed by a Commissioner under this Act:

[Provided that no revision petition shall be entertained by any authority unless the certificate debtor deposits forty per cent of the certificate dues at the time of its filing.

Provided further that no certificate debtor shall be called upon to do so if he has already deposited this amount at any earlier stage.]”

It is apparent from reading of the two provisions that requirement of deposit of 40% of the amount would arise only when there will be a determination of the liability under Section 10 of the Act of 1914. At this stage when the petitioner is seeking to challenge the order passed by the Collector whereby he has remanded the matter for fresh consideration to the certificate officer, the liability has yet not been determined and therefore in the opinion of this Court the revision application could not have been dismissed on this ground alone.

As a result, this Court would set aside the impugned order and remit the matter back to the Commissioner, Tirhut Division, Muzaffarpur for fresh consideration of the Revision Case No.22 of 2004. The impugned order dated 22.07.2013 is accordingly set aside. The Commissioner, Tirhut Division,



Muzaffarpur is directed to pass a fresh reasoned order after hearing the parties in accordance with law within a period of 90 days from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J)

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