

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.402 of 2020**

Arising Out of PS. Case No.-1177 Year-2015 Thana- SASARAM MUFFSIL District- Rohtas

Vijay Kumar Singh Son of Radhia Singh Proprietor of Priyanshu Mini Rice Mill, Beda, P.O-Mor Saray, P.S.-Sasaram, District-Rohtas, Sasaram.

... .. Petitioner

Versus

1. State of Bihar through Principal Sectt Food and Consumer Protection Deptt., Govt. of Bihar at Patna.
2. The District Manager, Bihar State Food and Civil Supplies Corporation, Rohtas at Sasaram.
3. The Superintendent of Police, Rohtas, Sasaram, District Rohtas at Sasaram.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Sumeet Kumar Singh,Advocate
For the Respondent/s	:	Mr.Arvind Ujjwal,SC-4
For the BSFCSC	:	Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 05-07-2021 Heard Mr. Sumeet Kumar Singh, learned counsel for the petitioner, Mr. Shailendra Kumar Singh, learned counsel representing Bihar State Food and Civil Supplies Corporation, Rohtas, Sasaram (hereinafter referred to as 'BSFCSC') and Mr. Arvind Ujjwal, learned SC-4 for the State.

The petitioner in the present writ application is seeking quashing of the letter dated 04.01.2020 bearing letter no. 95 issued under signature of the District Manager, BSFCSC, Rohtas, Sasaram. By this notice, the petitioner has been informed about outstanding amount equal to the value of the custom mill rice (CMR). The orders of the Hon'ble Supreme Court passed on 28.02.2017 and 13.08.2017 in SLP (Crl) No. 1779 of 2016 and SLP (Crl) No. 9196 of 2017



respectively have been referred to. It states that the petitioner was liable to submit a bank guarantee for the value equal to the outstanding amount against the CMR which he has failed to do. As a consequence thereof, the BSFCSC is constrained to proceed against the property under the deed of pledge being situated under Mauja Balthua Khata No. 14, Khasra No. 23 measuring area 30 decimal.

Learned counsel for the petitioner submits that the 'BSFCSC' is threatening to proceed against the aforesaid property by way of auction without following due process of the law.

Learned counsel has relied upon the order dated August 13, 2018 passed by the Hon'ble Supreme Court in Cri. Appeal No. 998 of 2018 arising out of SLP (Cri) No. 9196 of 2017. Referring to the sub-paragraph(e) of paragraph '20' of the said order, learned counsel submits that it talks of taking action against the unincumbered immovable property placed by the millers after due process of law.

The submission is that by merely issuing notice in terms of Annexure 'P-10' it cannot be said that BSFCSC followed the due process of law. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (dead) through LRS reported in **(2012) 5 SCC 370 (paragraph 79)** to submit that "due process of law" shall be taken as complied with only after giving an appropriate opportunity to the petitioner to defend himself and upon adjudication



of the issues arising in the proceeding.

On the other hand, Mr. Shailendra Kumar Singh, learned counsel representing BSFCSC submits that this writ application is only misconceived. According to him, the petitioner was liable to submit the bank guarantee in terms of the provisions contained in the agreement itself and despite there being order of the Hon'ble Supreme Court, he has failed to provide the bank guarantee. Under these circumstances, the BSFCSC is within its right to proceed for auction of the property under deed of pledge with the BSFCSC.

Learned counsel submits that the petitioner is changing his stand from one proceeding to another. He is not co-operating with the BSFCSC in recovery of the due amount and despite the fact that he has defaulted in providing the 'CMR' to the extent of the value of Rs.23,18,556.81, he is trying to litigate and keep on litigating on one ground or another.

Learned counsel submits that in similar circumstance, the case of Prithvi Narayan Singh was decided up to the Hon'ble Apex Court and the learned counsel for the petitioner is well aware of the same because he was very much there in the said case.

It is lastly submitted that the petitioner has directly moved to this Court in this writ application without submitting any reply to the notice contained in letter no. 95 dated 04.01.2020 (Annexure 'P-10'). It is, thus, his submission that at first instance the petitioner should have submitted his reply with the District Manager, Bihar



State Food Civil Supplies Corporation, Rohtas at Sasaram.

Having heard learned counsel for the petitioner and learned counsel for the BSFCSC as also on perusal of the records, this Court finds that few facts are not in dispute.

Mr. Sumeet Kumar Singh, learned counsel for the petitioner does not dispute that in terms of the agreement the petitioner was obliged to furnish a bank guarantee referable to the terms of the agreement. There is no dispute that there is an outstanding against the petitioner for non-supply of the CMR to the extent of the value of Rs. 23,18,564.81/-. There is also no dispute that in terms of the agreement in case of failure of the petitioner to pay the amount the BSFCSC may realise the same by auction of the land in question which is covered under the deed of pledge.

Learned counsel for the petitioner admits that where the petitioner was unable to furnish the bank guarantee he was liable to provide a property as security as per clause 3 of the agreement.

This Court further finds that Annexure 'P-10' is a notice to the petitioner. In case the petitioner had any objection to the same he was required to submit his reply/objection as the case may be with the BSFCSC. He has failed to do so and has directly moved to this Court. This Court is of the considered opinion that it is not a fit case in which extraordinary writ jurisdiction of the High Court is required to be exercised. The stand of the BSFCSC is very clear and in case the petitioner has anything to say he may submit his reply with the



District Manager of the BSFCSC, Rohtas, Sasaram within two weeks from today and thereafter the competent authority shall consider the same and communicate its decision to the petitioner within further two weeks. There will be no stay on the process of auction of the property in question, however, it will be open for the petitioner to point out the discrepancies, if any, in course of auction.

The writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

U		T	
---	--	---	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

