

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2095 of 2020

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Rajmani Devi, Wife of Late Rang Bahadur Singh, Resident of Village-Basaur,
P.O.-Daulatpur, P.S.-Bhagwanganj, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The Certificate Officer-cum-Sub-divisional Officer, Masaurhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Advocate
For the Respondent/s	:	Mr.Arvind Ujjwal (SC4)
		Mr. U.P. Singh, AC to SC-4
		Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-09-2022

Petitioner has prayed for the following relief(s):

“(i) For issuance of writ in the nature of certiorari for quashing of memo no. 1778 dated 27-11-2019 whereby the Certificate Officer-cum-Sub-divisional Officer, Masaurhi has directed for attachment and sale of the properties standing in the name of the petitioner, which is the joint family property of the late husband of the petitioner.

(ii) For issuance of writ in the nature of certiorari for quashing of the



notice dated 31-12-2019 published in daily newspaper Hindustan whereby the property standing in the name of the petitioner has been subjected to auction sale for satisfaction of the certificate dues against the son the petitioner, namely, Sunil Kumar.

(iii) For holding that the auction of property on the name of the petitioner cannot be made as the same is not the property of the certificate debtor and it is merely an expectancy of succession, which cannot be put to auction and the same is specifically protected from attachment and sale in terms of section 18 (1) proviso (m) of the PDR Act.

(iv) For restraining the respondent authorities, particularly the Certificate Officer-Cum-Sub-divisional Officer, Masaurhi from proceeding with the attachment and sale pursuant to the impugned notice bearing memo no. 1778 dated 27-11-2019 and the auction notice dated 31-12-2019 as the same is against section 18 (1) proviso (m) of the Bihar & Orissa Public Demand Recovery Act, 1914.

(v) For necessary direction upon the respondent authorities to produce the report of the auction dated 10-01-2020 and if the property has been auctioned, the auction may be set aside.



(vi) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

We find the impugned order dated 27.11.2019 (Annexure-11), passed by the Certificate Officer-cum-Sub Divisional Officer, Masaurhi, Patna in Certificate Case No. 01/2013-14 to have been passed without even dealing with the objections raised by the petitioner, though referred to therein.

In the order, the officer has, without assigning any reason, returned the finding holding the petitioner's liability with interest to the extent of Rs. 2,96,13,740.97/-. The order is *ex facie* illegal inasmuch as the objections material in nature, were never dealt with by the officer. Even the maintainability of the proceedings, under the provisions of the Public Demand Recovery Act, 1914, was not dealt with. The issue with regard to the quantity of the goods received and/or stored in the godown was also not dealt with.

As such, on this short ground alone, impugned order dated 27.11.2019 (Annexure-11), passed by the Certificate Officer-cum-Sub Divisional Officer, Masaurhi, Patna in Certificate Case No. 01/2013-14 is quashed.

Petitioner shall appear in the office of the appropriate



authority on 10.10.2022, at 10:30 a.m. along with a copy of this order, and file a fresh petition under Section 9 of the Act.

The appropriate authority shall consider and dispose of the petitioner's petition expeditiously, by a reasoned and speaking order, preferably within a period of two months from the date of appearance of the petitioner before him and till then no coercive steps be taken against the petitioner;

The authority shall also examine as to whether the amount in question falls within the definition of public demand or not;

Needless to add, while considering such petition, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

Order assigning reasons shall be supplied to the parties;

Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;



Liberty reserved to the petitioner to challenge the order passed by the appropriate authority, before the appropriate forum, if so required and desired.

We have not expressed any opinion on merits. All issues are left open;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	23.09.2022
Transmission Date	

