

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.61 of 2020

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Jaymanti Devi @ Jayanti Devi, daughter of Late Kali Charan Singh and wife of late Mahendra Singh resident of Village- Dariyapur, P.O.- Bhaiswan, P.S.- Masaurhi, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Certificate Officer-Cum- Sub Divisional Officer, Masaurhi.
5. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Daroga Rai Path, Patna.
6. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Daroga Rai Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Smriti Singh, Advocate Mr. Baua Jha, Advocate
For the Respondent/s	:	Mr. S. Raza Ahmad, AAG-5 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 : 30-08-2022

Petitioner has prayed for the following relief(s):-

- (i) For issuance of writ in the nature of certiorari for quashing of memo no.1780 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 for recovery of Rs. 94,72,010.24.

- (ii) For holding that the steps taken by the Certificate Officer for execution of the certificate is totally in violation of section 14 of the PDR Act, which stipulates that the certificate cannot be executed unless and until the objection filed under section 9 is determined, in the case of the petitioner, the objection filed by the petitioner under section 9 has not been determined in terms of and in the manner prescribed in section 10 of the PDR Act as directed by this Hon'ble Court.
- (iii) For holding that the property standing in the name of the petitioner is the ancestral property of her late husband and she is holding the property as being Karta of the family and there is no partition in the family, therefore, the property cannot be subjected to auction and sale as being barred by 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. 1780 dated 27-11-2019 as a civil suit is pending against the order passed by the Certificate Officer before the Sub-Judge, Masaurhi.
- (v) 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 17.09.2016 (Annexure-9, Page 62), passed by the Certificate Officer-cum-Sub Divisional Officer, Masaurhi, Patna in Certificate Case No. 03/2013-14 to have been passed without even dealing with the objections raised by the petitioner, though referred to therein.

In a five page order, the officer in the first-four pages, has merely reproduced the objections and the provisions of law and then without assigning any reason returned the finding holding the petitioner's liability to the extent of Rs. 84,57,152/- and interest thereupon cumulatively amounting to Rs. 1,06,08,651/-. The order is *ex facie* illegal inasmuch as the objections material in nature, were never dealt with by the officer. One of the parties to the agreement had pleaded satisfaction of the terms of the agreement, which fact was not considered 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 17.09.2016 (Annexure-9, Page 62), passed by the Certificate Officer-cum-Sub Divisional Officer, Masaurhi, Patna



in Certificate Case No. 03/2013-14 is quashed.

Petitioner shall appear in the office of the appropriate authority on **19.09.2022 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)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2022
Transmission Date	

