

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.32331 of 2011

Sadananda Behera

....

Petitioner

Mr. Rakesh Behera, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S.N. Das, Addl. Standing Counsel

Mr. G.K. Acharya, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K.PATTANAİK

Order No.

ORDER
16.03.2022

04.

1. The challenging in the present petition is to a demand notice dated 29th September, 2011 issued by the Odisha Scheduled Caste and Scheduled Tribe Development Finance Co-operative Corporation Limited, Dhenkanal requiring the Petitioner to pay the balance principal amount of Rs.10,768/- together with interest of Rs.31,027/- thus, totaling Rs.41,795/- as on 25th July, 2011.

2. While issuing notice in the present petition on 10th January, 2012, this Court stayed the operation of the above demand notice. That stay order has continued ever since.

3. The main contention of learned counsel for the Petitioner is that there was a certificate case earlier instituted against the Petitioner for recovery of sum of Rs.1,14,810/-. With full satisfaction having being recorded in the said certificate case, nothing more was owed to the Opposite Parties by the present Petitioner. According to him, once a certificate proceeding has ended with the full amount for which it was instituted having being recovered, there cannot be

another certificate proceedings for recovery of alleged balance dues. Learned counsel for the Petitioner further draws attention Section 10 of the Odisha Public Demands Recovery Act, 1962 ('Act') which permits the certificate officer to amend certificate "by addition, omission or substitution". He points out that the said provision was not resorted to in the present case. So, according to him, therefore, the entire proceedings seeking to recover further sum from the Petitioner is illegal.

4. In counter affidavit filed to the present petition by Opposite Party Nos.1 and 2 way back on 17th April, 2012 it was *inter alia* averred in paras 12, 13 and 14 as under:

"12. That after closer of the Certificate Case our Corporation before releasing of the mortgaged property on re-calculation learnt there being principle outstanding of Rs.10,768/- and interest to the tune of Rs.31,027/- as on 25.7.2011. The said principle outstanding of Rs.10,768/- was inadvertently not mentioned in the requisition for Certificate where the total outstanding was shown as Rs.1,14,810/-. A copy of the letter addressed to the Opp. Party No.4 on 28.9.2011 is annexed as Annexure-R/4.

13. That there is no bar under the OPDR Act for initiation of a second certificate proceeding for recovery of any outstanding dues which has been omitted in the original Certificate Proceedings. Hence initiation of a second proceeding under the OPDR Act for recovery of the outstanding amount is neither bad in law nor an arbitrary action.

14. That our corporation having borrowed money from notional SC and ST Finance Development Corporation of Government of India, hence has to return the amount borrowed with interest. Therefore, if the present principal outstanding of Rs.10,768/- is not recovered then public money will be at stake as our Corporation has to refund

the said amount to the National Corporation at New Delhi along with interest.”

No rejoinder has been filed to the above counter affidavit till date.

5. Learned counsel for the Petitioner has not been able to point out any provision of the Act which bars the Opposite Parties from seeking to recover an amount which is left out of the original certificate proceedings initiated in the first place. While Section 10 of the Act thus provides for amendment of the certificate, it does not mean that the failure to invoke that provision would preclude the authority from initiating fresh certificate proceedings for recovery of any balance sum found still due from the Petitioner. In the absence of any statutory bar, the Court finds no illegality having been committed by the Opposite Parties in issuing the impugned demand notice.

6. Consequently, the Court is not persuaded to interfere with the impugned demand notice. The interim order stands vacated. The writ petition is dismissed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge